

House of Commons
Foreign Affairs Committee

**FOREIGN POLICY
ASPECTS OF THE WAR
AGAINST TERRORISM**

Second Report of Session 2002–03

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AGAINST TERRORISM**

Second Report of Session 2002–03

*Report, together with
Proceedings of the Committee,
Minutes of Evidence and Appendices*

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. Reference to written evidence are indicated by the page number as in 'Ev 12'.

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SECOND REPORT

LIST OF CONCLUSIONS AND RECOMMENDATIONS

- (a) We commend the high level of commitment the Government has shown towards the United Nations Counter-Terrorism Committee in the past year. We recommend that the Government consider carefully how to ensure that the United Nations Counter-Terrorism Committee is effective in the long run, and continues to foster international co-operation and goodwill (paragraph 17).
- (b) We recommend that, in its response to this Report, the Government set out what further measures it will take to encourage and assist governments, particularly in the Middle East and Gulf region, to stem the flow of terrorist financing (paragraph 22).
- (c) We conclude that, despite the emergence of significant differences of opinion between European Union leaders over the conduct of the war against terrorism, the EU has taken some constructive steps forward in co-operation against terrorist activities, both within Europe and in forging agreements with third countries (paragraph 33).
- (d) We conclude that Britain can work constructively with European Union partners on some areas of foreign policy—such as development, the ICC and Iran—while aligning itself more closely to the United States on policy towards Iraq. We recommend that, in the war against terrorism and elsewhere, the Government continue to judge each of its major partners' policies on their own merits: the experience of the past year has demonstrated the extent to which Britain can work with both the EU and the US, without damaging its relationship with either (paragraph 36).
- (e) We recommend that the Government set out, in its response to this report, how NATO's new military concept for defence against terrorism will now be implemented, and how its adoption at the Prague summit will affect NATO's future role in the war against terrorism (paragraph 43).
- (f) We fully support the Government's decision to align itself closely with the United States in the war against terrorism. We conclude that this policy has enhanced Britain's influence over current policy decisions, and has also helped to foster the 'special relationship' in the long run (paragraph 46).
- (g) We recommend that, in its response to this Report, the Government set out its policy on targeted killings, such as that carried out by the United States in Yemen on 3 November 2002 (paragraph 54).
- (h) We recommend that the Government inform us, and likewise the House, if it decides to change its own nuclear posture or learns that the United States is planning a new generation of tactical nuclear weapons (paragraph 62).
- (i) We conclude that, despite over a year of vigorous international efforts to disrupt the network, al Qaeda and associated organisations continue to pose a grave threat to the United Kingdom and its interests abroad (paragraph 76).

- (j) **We conclude that, although the possibility that Saddam Hussein might employ terrorist methods must be taken seriously, there is no compelling evidence linking the Iraqi regime to al Qaeda. Neither the British nor the US Government has thus far provided any evidence that Iraq had any involvement in the attacks of 11 September 2001. Until any such evidence is provided, any military action against the Iraqi regime must therefore be justified on grounds other than its past or current involvement with the al Qaeda network (paragraph 86).**
- (k) **We conclude that evidence of Iraq's retention and continued development of weapons of mass destruction is compelling, and a cause for considerable concern. We commend the Government's decision to draw international attention to the scale of Iraq's illegal weapons of mass destruction programme, through the publication in September 2002 of *Iraq's Weapons of Mass Destruction: the Assessment of the British Government* (paragraph 96).**
- (l) **We conclude that, given Saddam Hussein's record of human rights abuses, he would not hesitate to use torture and weapons of mass destruction against foreign troops and civilians if he believed that this would benefit his regime (paragraph 100).**
- (m) **We conclude that failure to address the threat from Iraq's weapons of mass destruction could pose very high risks to the security of British interests in the Middle East and the Gulf region (paragraph 108).**
- (n) **We commend the Government's commitment always to work within international law, although we recognise that international law must evolve to meet new challenges such as the unprecedented terrorist threat. We further commend the Foreign Secretary's commitment to strengthen the credibility of multilateral institutions—and, in particular, the United Nations—in pursuit of international security (paragraph 109).**
- (o) **We urge the Government to ensure that its efforts to address the threat from Iraq's weapons of mass destruction do not detract in any way from those to eliminate al Qaeda and associated terrorist groups (paragraph 110).**
- (p) **We commend the Government's decision to work closely with the United States, to produce a strong and unanimous Security Council Resolution establishing an unconstrained weapons inspections regime and demanding Iraq's full disarmament of Weapons of Mass Destruction (paragraph 120).**
- (q) **We conclude that the difficulties faced by UN weapons inspectors are formidable. We urge the Government to offer every assistance to facilitate the inspectors' work, provided that such assistance does not compromise United Kingdom intelligence assets (paragraph 128).**
- (r) **We conclude that should the US, British and other governments seek to justify military action against Iraq for example, on an expanded doctrine of 'pre-emptive self-defence,' there is a serious risk that this will be taken as legitimising the aggressive use of force by other, less law-abiding states (paragraph 154).**
- (s) **We recommend that, in its response to this Report, the Government set out in detail the thinking behind its policy on the pre-emptive use of military force, and whether this policy has been reviewed following the publication of the United States National Security Strategy in September 2002 (paragraph 160).**

- (t) **We conclude that the notion of ‘imminence’ should be reconsidered in light of new threats to international peace and security—regardless of whether the doctrine of pre-emptive self-defence is a distinctively new legal development. We recommend that the Government work to establish a clear international consensus on the circumstances in which military action may be taken by states on a pre-emptive basis (paragraph 161).**
- (u) **We commend the Government’s decision, in its efforts to address the threat from the Iraqi regime, to focus on Iraq’s persistent violation of UN Security Council Resolutions. We conclude that unless new evidence emerges that Iraq poses an imminent threat to the security of the United Kingdom, any military action against Iraq should be taken on the basis of Iraq’s violation of successive Security Council Resolutions, culminating to date in UNSCR 1441 (paragraph 170).**
- (v) **We conclude that Iraq must not be permitted to continue to defy the authority of the United Nations. The unanimous adoption by the UN Security Council of Resolution 1441 has made the obligation on the Iraqi regime to disarm absolutely clear, and has given the regime a final opportunity to comply with successive UN Security Council resolutions (paragraph 171).**
- (w) **We further conclude that UN Security Council Resolution 1441 would not provide unambiguous authorisation for military action, were Iraq to fail to comply with its provisions. We therefore recommend that, in the case of Iraq’s violation of Resolution 1441, the Government do its utmost to ensure the adoption of a further Security Council resolution authorising the use of “all necessary means” to enforce Iraqi disarmament (paragraph 172).**
- (x) **We recommend that the Government clarify, in its response to this Report, whether it believes that a further United Nations Security Council Resolution is legally necessary before military action is taken against Iraq (paragraph 173).**
- (y) **We conclude that the establishment of the rule of law and functioning representative government in Iraq after a war would pose formidable challenges. We recommend that the Government examine carefully the possible models for post-conflict reconstruction in Iraq, including a United Nations transitional authority. We recommend that, in its considerations, the Government bear in mind the necessity for country-wide peacekeeping, civil policing, transitional justice, and representation of all groups in Iraqi society (paragraph 191).**
- (z) **We recommend that the Government treat seriously the possibility that a war with Iraq could trigger instability in the Arab and Islamic world, and could increase the pool of recruits for al Qaeda and associated terrorist organisations there and in Western Europe (paragraph 200).**
- (aa) **We commend the Foreign Secretary’s decision to examine carefully the *Arab Human Development Report 2002*. We conclude that addressing *inter alia* the problems highlighted by its authors is important for the medium and long term success of the war against terrorism (paragraph 209).**

- (bb) **We recommend that, in its response to our own Report, the FCO set out its progress towards a comprehensive strategy for the Arab world, including an explanation of the extent to which it is working with the Department for International Development, the BBC World Service and the British Council on this strategy (paragraph 210).**
- (cc) **We conclude that the Government is right to engage the leaders of Israel and the Palestinian Authority in an effort to revive the Middle East peace process. We are convinced that this policy must be pursued in parallel with international efforts to address threats from al Qaeda and from the Iraqi regime (paragraph 220).**
- (dd) **A year after the collapse of the Taliban, the stabilisation of Afghanistan and its surrounding region continues to be a critical objective in the war against terrorism. We urge the Government to continue and, if necessary, to enhance its efforts to stabilise Afghanistan, and to ensure that the lives of ordinary Afghans continue to improve (paragraph 227).**
- (ee) **While we understand that the US government has obtained valuable intelligence from prisoners detained at Guantánamo Bay, Cuba, we are nonetheless concerned that the US government continues to detain many of these prisoners without trial. We recommend that the Government continue to press the US government to move rapidly towards the trial of these alleged terrorists, in accordance with international law (paragraph 238).**
- (ff) **We recommend that the Government supply us with further information about the seven British citizens currently being held, including details about when and how they can expect to be tried, and whether, if found guilty, they will be liable to the death penalty (paragraph 239).**
- (gg) **We recommend that, in its response to the Report, the Government set out in detail the Cabinet Office mechanisms for co-ordinating the “government-wide response” to the threat from international terrorism (paragraph 241).**
- (hh) **We recommend that the Government publish and implement the results of its review of the travel advice system at the earliest opportunity (paragraph 248).**
- (ii) **We recommend that, at the earliest possible date, the Government supply us with a full description of the process according to which travel advice is agreed among Government departments. Specifically, we seek details of the process of collating information in this area; of the relationship between the FCO and the Joint Intelligence Committee in deciding travel advice; and full details of the organisational structure and decision-making process within the Foreign Office, at both official and ministerial level, for the taking of travel advice decisions and issuing them to the public (paragraph 249).**
- (jj) **We conclude that the Government must continue to address with the utmost seriousness its obligation to keep the British public informed of developments in the war against terrorism. This, we believe, is essential to ensure the widest possible public support for Government actions (paragraph 252).**

- (kk) **We commend the Government's stated commitment to keep Parliament fully informed of developments in the war against terrorism, through statements to the House, through regular Ministerial meetings with Select Committees, and also through further meetings between the Prime Minister and Select Committees. We look forward to receiving the specific dates of these proposed meetings (paragraph 253).**
- (ll) **We commend the Government for its firm and committed leadership in the war against terrorism. We conclude that Britain has contributed substantially to ensuring that the "international coalition" remains a reality, more than a year after the devastating terrorist attacks on the United States (paragraph 256).**

The Foreign Affairs Committee has agreed to the following Report:

FOREIGN POLICY ASPECTS OF THE WAR AGAINST TERRORISM

INTRODUCTION

1. In June 2002, we made an interim Report to the House on the Government's response to the terrorist attacks on the United States on 11 September 2001.¹ We described the Prime Minister's immediate and strong statements of support of the United States, and the Government's role in mobilising a broad international coalition, in the United Nations and elsewhere, to address the terrorist threat. We examined Britain's role in overthrow of the Taliban in Afghanistan, and in the planning and subsequent establishment of a new Government in that war-torn country. We also looked at the beginning of 'Phase II' of the war, and the emergence of a heated debate, within this country and across the Atlantic, about how best to proceed against the terrorist threat. The relevance of the conflict in the Middle East, and the Iraqi regime's development of weapons of mass destruction, were discussed at some length.

2. Our conclusions in June 2002 were broadly supportive of the Government, though we asked for clarification of some aspects of policy.² We stated our belief that the international coalition leadership, especially that of the United States and the United Kingdom, had performed remarkably well: "Resolve and determination have been tempered with restraint and sensitivity."³

3. We warned, however, of the scale and complexity of the terrorist problem. In our view, the military campaign against terrorism "is likely to be long and may spread beyond Afghanistan." Our consideration of why the 11 September attacks were not foreseen and prevented led us to conclude that "priority must be given to the gathering, assessment and use of high-grade intelligence information. Without that information, this country and its allies are appallingly vulnerable."⁴ We further concluded that, to succeed, the international coalition would have to determine "how the conditions that have contributed to the development of terrorism can be removed, or at least reduced."⁵

4. Between the publication of that interim Report in June 2002 and the beginning of October, the main public focus of the 'war against terrorism' shifted decisively towards addressing the threat from Iraq. The debate about the extent of this threat, the legal, diplomatic and security implications of possible military action, and the relevance of Iraq to the wider war against terrorism are detailed in this Report.

5. We also examine the series of terrorist atrocities which took place in October, in Kuwait, the Gulf of Aden, Bali and Russia, and in November in Kenya, and we draw conclusions from these attacks about the state of the al Qaeda network after more than a

¹ Foreign Affairs Committee, Seventh Report of Session 2001–02, *Foreign Policy Aspects of the War against Terrorism*, HC 384.

² For example, we asked the Government for clarification of the role of NATO in the war against terrorism; for an update of EU-wide counter terrorism activities; for a statement of its policy on tactical nuclear weapons; for clarification of the FCO's role in preventing attacks by weapons of mass destruction on the British mainland; and for its policy on 'regime change' and on pre-emptive strikes against Iraq. For the Government's reply, see Response from the Secretary of State for Foreign and Commonwealth Affairs to the Seventh Report from the Foreign Affairs Committee, *Foreign Policy Aspects of the War Against Terrorism*, Cm 5589, August 2002.

³ HC (2001–02) 384, para 239.

⁴ We note comments made by Alan Beith MP, of the Intelligence and Security Committee, that while there was "undoubtedly a security failure" on 11 September 2001, "for it to be a massive intelligence failure there would have to have been a failure to use available intelligence—we did not conclude that that had happened—or a failure to use available means of gaining intelligence effectively. That was not so as far as the UK was concerned." HC Deb, 31 October 2002, col 345 [Westminster Hall].

⁵ HC (2001–02) 384, paras 240–242.

year of 'war'. We continue to raise questions about the conflict between Israel and Palestine, and about Britain's relationship with the broader Arab world.

6. The relationship between the Government and the Bush administration is of central importance to any inquiry into this subject, and this is accordingly examined in this Report.⁶ Indeed, one indication of the importance we attach to the transatlantic relationship, and also to the role of the United Nations, has been our decision to visit New York and Washington DC three times since 11 September 2001. The most recent such visit was in October 2002, when we met member states' representatives at the United Nations, including those of three of the permanent five members of the Security Council and our own Permanent Representative, Sir Jeremy Greenstock. We also met United Nations officials before leaving for Washington, where we spent three days meeting with senior figures in the Bush administration, in Congress and elsewhere.

7. Since our Report to the House on this subject in June, we have heard evidence from the Foreign Secretary, the Rt. Hon. Jack Straw, on two occasions. Three sets of independent witnesses have also appeared before the Committee. The first group—Dr John Chipman, Dr Gary Samore and Mr Steven Simon—represented the International Institute of Strategic Studies in London, and discussed issues relating to Iraq's weapons of mass destruction and al Qaeda. Professors Ian Brownlie and Christopher Greenwood gave evidence on the international legal aspects of the war against terrorism. Lord Wright of Richmond and Sir Harold Walker also appeared before us to discuss diplomatic aspects of the war against terrorism, and possible regional consequences of conflict with Iraq.

8. We have also held informal meetings with officials and politicians from countries central to the war against terrorism, including Pakistan, Egypt, China and Australia. To all those we met, and to those who submitted their views in writing, we are most grateful.

9. In our June Report, we highlighted the complexity of issues to be addressed in the war against terrorism, and concluded that this campaign would necessarily be protracted. Despite some successes in the early phases of the campaign, it would be vain to envisage any declaration of victory, any peace treaty with the forces of international terrorism.

10. Subsequent events have given us no reason to doubt these conclusions. This Report therefore constitutes an interim assessment the continuing threat, and of progress made by the international coalition against terrorism—of which the United Kingdom remains a leading member.

⁶ The Committee has also made a full Report on this subject. See Foreign Affairs Committee, Second Report of Session 2001–02, *British-US Relations*, HC 327.

MULTILATERAL DEVELOPMENTS SINCE JUNE 2002

11. The Government has described the United Nations as the “primary forum for building and consolidating global support” for the campaign against terrorism, and has been energetic in its support of UN activities in this field.⁷ In the immediate aftermath of the 11 September attacks, the UN Security Council passed Resolution 1373, which specified that UN member states must prevent all financing of terrorist organisations, refrain from assisting such organisations, and find ways of enhancing counter-terrorist activity, both at a national level and through international co-operation.⁸ Compliance by UN member states with these measures is monitored and co-ordinated primarily through the UN Counter-Terrorism Committee (CTC), which has been chaired by Sir Jeremy Greenstock, British Permanent Representative to the United Nations, since its establishment in September 2001.⁹

12. In our Seventh Report, we noted the significant progress made by the CTC in mapping the response of member states to UNSCR 1373, and in maintaining a high level of international co-operation.¹⁰ Sir Jeremy Greenstock assessed the CTC’s progress over the past year at a UN Security Council open debate on terrorist threats to international peace and security on 4 October 2002. He told the Council that the response of Member States to Resolution 1373 had been “remarkable.” Though 16 member states have not yet reported, these are considered to be ‘down and outs’ rather than rogues: they have failed to supply the CTC with information mainly because they lack the capacity, rather than because they refuse to co-operate.¹¹

13. In his summary of international co-operative measures to counter terrorism over the past year, Sir Jeremy Greenstock explained that the CTC’s efforts to ensure that member states’ anti-terrorist legislation was adequate had been supported by the Commonwealth Secretariat, which—with major funding from the United Kingdom and Canada—was offering help to 46 member states with legislative drafting. Sir Jeremy also explained that the United States had already offered training to representatives of over 48 countries.¹²

14. The Counter-Terrorism Committee will, by the end of 2002, have processed the entire second round of reports submitted by member states on their measures to counter terrorism. The two rounds of member states’ reports give the CTC a fairly good idea about where it needs to focus attention and resources. Sir Jeremy Greenstock has pointed out that the UN’s richer member states have been quite generous in their provision of assistance to weaker members,¹³ and the CTC has helped to co-ordinate this assistance by establishing a central directory.

15. Beyond this co-ordination and information role, however, the UN has little capacity to enforce Resolution 1373. For this, it is essentially reliant upon its more powerful members. In extreme cases of member states’ failure to comply with repeated requests by the CTC to address terrorist problems, the CTC could call for specific Security Council resolutions, or request assistance from a powerful member state. The CTC’s lack of enforcement capabilities may, however, mean that it will be difficult to sustain the momentum of the Committee in the coming years. The UN’s “three pronged counter-

⁷ HC (2001–02) 384, Ev 2, para 7.

⁸ UNSCR 1373 is available at: <http://www.un.org/Docs/sc/committees/1373/>.

⁹ UNSCR 1373 (2001) established the CTC, which is “a Committee of the Security Council, consisting of all the members of the Council.” For further details of the establishment and early work of the CTC, see HC (2001–02) 384, paras 64–9 and 118–30.

¹⁰ HC (2001–02) 384, paras 118–21.

¹¹ See transcript of Security Council debate, ‘Security Council considers terrorists threats to international peace and security’, 4 October 2002, available at: <http://www.un.org/News/Press>.

¹² *Ibid.*

¹³ *Ibid.*

terrorism strategy”—summarised by the Secretary-General as “dissuasion, denial and co-operation”—will be increasingly difficult to implement unless member states can be persuaded to sustain the current high level of commitment to the CTC’s work.¹⁴

16. The loss of momentum and international commitment to the CTC’s work would be unfortunate. The CTC has provided an important focus for counter-terrorism actions in the past year, through fostering international co-operation to address technical aspects of counter-terrorism and, crucially through promoting good will between governments. Sir Jeremy Greenstock’s energetic and sensitive leadership of the process has contributed substantially to this success.

17. We commend the high level of commitment the Government has shown towards the United Nations Counter-Terrorism Committee in the past year. We recommend that the Government consider carefully how to ensure that the United Nations Counter-Terrorism Committee is effective in the long run, and continues to foster international co-operation and goodwill.

Terrorist financing

18. Another important aspect of multilateral co-operation against terrorism has focused on the elimination of sources of terrorist financing. The International Monetary Fund (IMF), World Bank and the OECD Financial Action Task Force¹⁵ have established programmes to help states to stop their financial systems from being abused by terrorists.

19. Despite some successes, international progress to eliminate sources of funding to al Qaeda and associated terrorist groups has been frustratingly slow. The UN Monitoring Group, a committee of experts established on 16 January 2002 by the Security Council to monitor implementation of measures against Osama bin Laden, al Qaeda and the Taliban¹⁶, notes that “al Qaeda continues to have access to considerable financial and other economic resources.” Since January 2002, “only about US\$10 million in additional assets has been frozen... It has proved exceedingly difficult to identify these additional al Qaeda related funds and resources.”¹⁷ Both an independent Task Force appointed by the Council on Foreign Relations and Canadian intelligence services have substantiated the concerns raised by the UN Monitoring Group about the level of financing still available to terrorist organisations.¹⁸ The Council on Foreign Relations Task Force concluded that the al Qaeda

¹⁴ Secretary-General Kofi Annan set out a “three pronged counter-terrorism strategy” for the UN on 4 October 2002. “First” he explained, “we must dissuade the would-be perpetrators of terror by setting effective norms and implementing relevant legal instruments; by an active public information campaign; and by rallying international consensus behind the fight against terrorism ... Second, we must deny would-be terrorists the opportunity to commit their dreadful acts. We can do this by supporting the efforts of the Counter-Terrorism Committee to monitor compliance with Security Council resolution 1373; by greater efforts to achieve disarmament — especially through strengthening global norms against the use or proliferation of weapons of mass destruction; and by giving technical support to States seeking to curb the flow of arms, funds, and technology to terrorist cells ... Third, we must sustain cooperation in the struggle against terrorism on as broad a basis as possible, while encouraging subregional, regional, and global organizations to join forces in a common campaign. In overcoming as elusive a transnational threat as terrorism, cooperation is essential.” See UN press release, 4 October 2002, available at: <http://www.un.org/News/Press>.

¹⁵ The Financial Action Task Force (FATF) is run by the Organisation for Economic Cooperation and Development (OECD), and has been established to co-ordinate international efforts to prevent the financing of terrorist organisations.

¹⁶ The measures are adopted under Chapter VII of the United Nations Charter, and are thus mandatory. Measures include an assets freeze, a travel ban, and an arms embargo on Osama bin Laden, al Qaeda and the Taliban and “associated individuals and entities”.

¹⁷ Second Report of the Monitoring Group established pursuant to Security Council Resolution 1390 (2002), S/2002/1050, 20 September 2002, Executive Summary, <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02>.

¹⁸ The Canadian intelligence report was described in the Canadian *National Post*: ‘Muslim donors still funding al Qaeda, Saudi Arabia a key source of bin Laden’s money, police say’, 11 September 2002, available at: <http://www.nationalpost.com>.

network has been disrupted, but not destroyed; and that “as long as al Qaeda retains access to a viable financial network, it remains a lethal threat to the United States.”¹⁹

20. One of the central difficulties identified in these reports has been how to stem the flow of funds from charities in the Gulf region—particularly from Saudi Arabia—to Islamic terrorist organisations. The Council on Foreign Relations Task Force asserts that al Qaeda’s “global fundraising network is built upon a foundation of charities, nongovernmental organisations, mosques, websites, intermediaries, facilitators and banks ... For years, individuals and charities based in Saudi Arabia have been the most important source of funds for al Qaeda.” The Task Force accuses Saudi Arabia of turning a “blind eye to this problem ... US efforts to curtail the financing of terrorism are impeded not only by a lack of institutional capacity abroad, but by a lack of political will among US allies.”²⁰

21. We discussed this issue while in New York, at the UN, and subsequently in Washington DC. In New York, we noted some agreement among those with whom we met that the government of Saudi Arabia was failing fully to accept its responsibilities in this area. In Washington DC, however, we were reassured that the report by the Council on Foreign Relations is now somewhat out of date. In the US administration’s view, the Saudi government had indeed initially resisted international pressure to investigate its large Islamic charitable sector; more recently, however, it has accepted that though many of these charities do conduct perfectly legitimate charitable works, some are funding extremists and terrorists, and this problem must be addressed. The Saudi government, we were told, is now doing more to clamp down on terrorist funding through these channels.²¹

22. We note the UN Monitoring Group’s recommendation that “States should exercise greater surveillance over the operations of charities and the disbursement of funds. Greater efforts should be made to track down and close down businesses and entities supporting al Qaeda.”²² The goodwill and commitment of governments in the Arab and broader Islamic world will be essential to arrest the flow of funding to al Qaeda and related organisations. We welcome the Government’s provision, through the CTC, of assistance to other UN member states to support implementation of legislative, administrative, and charity regulatory measures, and law enforcement training.²³ **We recommend that, in its response to this Report, the Government set out what further measures it will take to to encourage and assist governments, particularly in the Middle East and Gulf region, to stem the flow of terrorist financing.**

European Union actions against terrorism

23. In its response to a request made in our Seventh Report, the Government described in some detail European Union co-operation measures to counter the threat from international terrorism. Some of the most significant steps have been made in the field of police co-operation, justice and home affairs.²⁴ The framework decision for a European

¹⁹ *Terrorist Financing: Report of an Independent Task Force supported by the Council on Foreign Relations*, New York, October 2002, p 7.

²⁰ *Terrorist Financing: Report of an Independent Task Force supported by the Council on Foreign Relations*, New York, October 2002, p 8.

²¹ In November—a month after our visit—the US administration appeared to be less optimistic about the Saudi government’s willingness or capacity to end terrorist financing from Saudi Arabia. A US National Security Council task force was reported to be recommending an action plan to force Saudi Arabia to crack down on terrorist financiers within 90 days, or face “unilateral US action to bring suspects to justice.” See ‘Saudis face US demand on terrorism’, *Washington Post*, 26 November 2002, available at: <http://www.washingtonpost.com>.

²² Second Report of the Monitoring Group established pursuant to Security Council Resolution 1390 (2002), Executive Summary.

²³ Ev 71–72.

²⁴ Charles Grant, director of the Centre for European Reform, argues that “the policy area most directly affected by September 11 has been police and judicial co-operation, where member-states have agreed to give the EU a bigger role.” ‘The European Union and September 11’, September 2002, available at: <http://www.cer.org.uk>.

Arrest Warrant was adopted by the Justice and Home Affairs Council of the European Union on 13 June 2002. This will “dramatically speed up extradition,” and “significantly reduces the grounds on which extradition can be challenged, including removing the bar on extradition of our own nationals.”²⁵ This will be implemented in the United Kingdom by the Extradition Bill, which was introduced in Parliament on 14 November.

24. The EU has also adopted a framework decision on terrorism, to ensure “tough common terrorism offences and penalties” throughout the Union. The United Kingdom already has amongst the most comprehensive anti-terrorist legislation in the EU, so to implement the framework decision on terrorism will only require an expansion of the list of terrorist related offences over which the United Kingdom has extra-territorial jurisdiction. The Government claims that the effect of the framework decision on terrorism will be to “bring the rest of the EU up to the standard of the UK.”²⁶

25. The Spanish government has also proposed an initiative to extend the functions of the Schengen Information System, a database that pools information on criminal suspects entering the EU’s border-free Schengen area. The initiative is in the form of a Council Regulation and Council Decision concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism. The Spanish government proposes that police and criminal intelligence services feeding information into the Schengen Information System should now specify whether the criminal suspects concerned are “armed, violent or otherwise present an immediate danger.” This would, in the Spanish government’s view, enhance the EU’s powers to gather information on suspected terrorists. The Swedish government has, however, raised objections to this proposal because of concerns about civil liberties.²⁷

26. The EU is in the process of signing data-sharing agreements with non-EU countries—including the United States and Russia—to enhance counter-terrorism co-operation. EU-Russian co-operation on counter-terrorism took steps forward on 11 November, when a European Union-Russian Federation meeting in Brussels concluded with agreement to enhance counter-terrorism co-operation in international fora, to ratify UN counter-terrorism conventions and implementation of UN Security Council Resolutions, to increase joint efforts to stop financing of terrorism and freeze terrorist assets, and to strengthen joint co-operation with third countries towards implementation of UN Security Council Resolution 1373.²⁸ These measures built on earlier EU-Russia counter-terrorism measures agreed shortly after the initial attacks, in September 2001.

27. Progress has been made in co-operation with the United States on judicial, police and intelligence matters. On 14 September, after a meeting with the US Attorney General, John Ashcroft, the Danish Presidency announced that an agreement between the European Police Unit, Europol, and the United States providing for the exchange of personal data should be concluded before the end of the year. US experts will be invited to attend the meeting of the European Judicial Network, which takes place in Denmark in December, as a “first step” towards strengthening and intensifying the operational co-operation between European and US law enforcement authorities.²⁹

28. Negotiations on an agreement between the European Union and the United States on extradition and mutual legal assistance are also scheduled to conclude before the end of 2002. This agreement should ensure “the application of swift and efficient extradition

²⁵ Foreign and Commonwealth Office, *Foreign Policy Aspects of the War against Terrorism*, Cm 5589, August 2002.

²⁶ *Ibid.*

²⁷ See ‘Fears voiced over Swedish anti-terrorist plans’, *European Voice*, 31 October 2002.

²⁸ EU-Russian Joint Statement on the Fight against Terrorism, 11 November 2002, available at: http://europa.eu.int/comm/external_relations/russia/summit_11_02/js_terr.htm.

²⁹ Danish EU Presidency Press Release: ‘EU-US co-operation in fighting terrorism’, 14 September 2002. Available at: <http://www.eu2002.dk/news>.

rules,” and “address new types of mutual legal assistance, such as interrogation by means of video conferences.”³⁰ The initiative to start negotiations on a streamlining of extradition procedures across the Atlantic came from the European side (under the Spanish presidency).³¹ The European Union and the United States are also engaged in “close dialogue concerning the negotiations within the UN on a comprehensive convention on international terrorism.”³²

29. Tom Ridge, the US Director of Homeland Security, acknowledged during a recent visit to Brussels that information exchange between the US and the EU has improved assessments of threats posed by terrorists.³³ Steven Everts, of the Centre for European Reform, wrote to us that while “there was some grumbling among European agencies that the transatlantic intelligence flow was one-way” in late 2001, “transatlantic co-operation in this area is now functioning well, and has produced some impressive results—leading to numerous arrests of terrorist cells in Europe and elsewhere. The initial squabbles on one way traffic in information have abated.”³⁴ Dr Everts notes that “the Europeans initiated this [intelligence] co-operation immediately after September 11, with the United States somewhat unsure how to respond. This differs from the dominant picture of the US urging, pushing, cajoling, bullying the Europeans to co-operate.”³⁵

30. Despite the generally productive working relationships described above, significant differences have undoubtedly emerged between some EU leaders and the United States over the overall conduct of the war against terrorism. These amount to far more than disagreements over the details of judicial and intelligence co-operation,³⁶ going to the heart of how to deal with the threats of international terrorism and weapons of mass destruction. The most striking example of this divergence between European and US views came in September, when—during his re-election campaign—German Chancellor Gerhard Schroeder publicly ruled out Germany’s participation in any US-led “adventure” in Iraq.³⁷ Throughout September and October, France led opposition to US policies towards Iraq in the United Nations Security Council.

31. Javier Solana, EU High Representative for Foreign and Security Policy, defined the source of difference between the EU and the US at the end of October 2002: “We have a different sense of where the centre of gravity of the fight against terrorism should be. There’s no doubt that in some occasions military action will be necessary, but we have been pressing that other elements of the political activity would be absolutely fundamental if we want to defeat terrorism [for] example, cooperation ... on intelligence, rapid cooperation on financial aid. All these type of things are probably much more important to defeat the actual challenge of the terrorism than some military operation that may be needed.”³⁸

32. During our visit to Washington in October 2002, we witnessed a certain amount of frustration on the part of Bush administration officials that “the Europeans” (with the exception of Britain) were not prepared to pull their weight militarily, in the war against terrorism or elsewhere. Javier Solana points out, however, that after the military campaign in Afghanistan, the “politically correct reasoning was well, some Islamic country will have

³⁰ Danish EU Presidency Press Release: ‘EU-US co-operation in fighting terrorism’, 14 September 2002. Available at: <http://www.eu2002.dk/news>.

³¹ Ev 106.

³² Danish EU Presidency Press Release: ‘EU-US co-operation in fighting terrorism’, 14 September 2002. Available at: <http://www.eu2002.dk/news>.

³³ ‘Bush advisor admits ‘much work’ needed in EU-US war on terror’, *European Voice*, 7–13 November 2002.

³⁴ Ev 106.

³⁵ *Ibid.*

³⁶ EU-US differences have emerged over the amount of data on airline passengers that can be made available to security services, or which organisations should be proscribed. See also ‘Bush advisor admits ‘much work’ needed in EU-US war on terror’, *European Voice*, 7–13 November 2002.

³⁷ See ‘Schroeder rules out Iraq “adventure,”’ BBC news, 9 August 2002, available at: <http://news.bbc.co.uk>.

³⁸ ‘Analysis’, *BBC Radio 4*, 31 October 2002. Transcript available at: <http://news.bbc.co.uk>.

to do it and, as you know very well, the Islamic states that finally were deployed were the United Kingdom, Spain, Italy, Germany, France. At the end, when the chips are down, the countries that can help on these matters are the Europeans.”³⁹ The danger is that, until the moment when the chips go down, the coalition can appear divided.

33. We conclude that, despite the emergence of significant differences of opinion between European Union leaders over the conduct of the war against terrorism, the EU has taken some constructive steps forward in co-operation against terrorist activities, both within Europe and in forging agreements with third countries.

34. One area of policy in which the EU is taking an important and co-ordinated role is in relation to the conflict between Israel and the Palestinians. The European Union is one of four parties to the ‘Quartet’ on the Middle East peace process—a position justified partly by its massive contribution to sustaining the Palestinian Authority, and through its autonomous economic and humanitarian assistance programmes in the West Bank and Gaza Strip.⁴⁰ There is little doubt that EU assistance has contributed substantially to the alleviation of the suffering of populations affected by conflict in this troubled region.

35. Common European Union policies have diverged from those of the United States in areas such as sustainable development (at the Johannesburg summit in September), the International Criminal Court, and Iran. The Government has expressed full support for the common EU approach in these policy areas. Meanwhile—in the face of substantial opposition from EU partners—the Government has succeeded in maintaining a policy close to that of the US on addressing the threat from Iraq.

36. We conclude that Britain can work constructively with European Union partners on some areas of foreign policy—such as development, the ICC and Iran—while aligning itself more closely to the United States on policy towards Iraq. We recommend that, in the war against terrorism and elsewhere, the Government continue to judge each of its major partners’ policies on their own merits: the experience of the past year has demonstrated the extent to which Britain can work with both the EU and the US, without damaging its relationship with either.

The role of NATO in the war against terrorism

37. Immediately after the 11 September attacks, NATO invoked Article V for the first time in its history—a decision which implied willingness by all members of the Alliance to act ‘Out of Area’. Since then, however, the Alliance has played a limited role in the war against terrorism—though the Government notes that, although it was not a NATO-led operation, “NATO interoperability underpinned the ability of coalition partners to work together”⁴¹ in the International Security Assistance Force in Afghanistan.

38. NATO played no role in the operation to overthrow the Taliban in Afghanistan. Air Commodore Dick Lacey, NATO Director at the Ministry of Defence, told us on 14 November that “I would doubt for a variety of good reasons that NATO *qua* NATO would have a formal role in any international coalition to enforce UNSCR 1441”⁴² in Iraq. The absence of NATO involvement in the military aspects of the war against terrorism is consistent with a sense we have gained during our visits to Washington, that the US no longer perceives NATO as a central to international security.

³⁹ ‘Analysis’, *BBC Radio 4*, 31 October 2002. Transcript available at: <http://news.bbc.co.uk>.

⁴⁰ The other three parties to the Quartet are the United States, Russia and the United Nations.

⁴¹ Cabinet Office, *The United Kingdom and the Campaign Against Terrorism: Progress Report*, September 2002.

⁴² Evidence taken before the Foreign Affairs Committee on Thursday 14th November 2002, *Prague NATO Summit*, Q 47.

39. NATO is accorded rather limited coverage in the US National Security Strategy, which was published in September 2002. The Strategy reads: “NATO must develop new structures and capabilities to carry out [its] mission under new circumstances. NATO must build a capacity to field, at short notice, highly mobile, specially trained forces ... to act wherever our interests are threatened.” According to the Strategy, *if* NATO succeeds in enacting specified changes—ensuring that “the military forces of NATO nations have appropriate combat contributions,” developing “planning processes to enable those contributions to become effective,” and streamlining command structures—“the rewards will be a partnership as central to the security and interests of its member states as was the case during the Cold War.”⁴³

40. In our Seventh Report, we asked the Government to clarify “how it sees the role of NATO in the conduct of US-led military operations against terrorists or the states that sponsor them”, and also to clarify “NATO’s role in providing and co-ordinating intelligence in the war against terrorism.”⁴⁴ In its response, the Government informed us that NATO crisis management arrangements have been activated since 11 September to enhance Allied intelligence gathering and co-ordination, and that the Government was working with Allies to improve NATO’s capabilities to cope with the new threats made apparent by the 11 September attacks.

41. The Government response to our Seventh Report also set out the United Kingdom’s specific objectives for the Prague Summit. The Government hoped that the summit would result in a “clear statement of NATO’s role in dealing with new threats... Command and force structures which provide greater flexibility and deployability... Commitment to a major effort to make NATO forces more deployable; [and] Increased NATO preparedness against terrorist attack, possibly with the use of Weapons of Mass Destruction.”⁴⁵

42. A number of new measures were agreed at the Prague summit of 21–22 November 2002. The Alliance “approved a comprehensive package of measures, based on NATO’s Strategic Concept, to strengthen our ability to meet challenges to the security of our forces, populations and territory, from wherever they may come.” Measures include the creation of a “NATO Response Force consisting of a technologically advanced, flexible, deployable, interoperable and sustainable force including land, sea, and air elements ready to move quickly wherever needed”; approval of a defence ministers’ report to streamline military command arrangements; and endorsement of the agreed military concept for defence against terrorism. The latter includes improved intelligence sharing and crisis response arrangements, and the implementation of a Civil Emergency Planning Action Plan to enhance civil preparedness against biological, chemical or radiological attacks. The Alliance also endorsed the implementation of five nuclear, biological and chemical weapons defence initiatives.⁴⁶

43. We note that forms of co-operation between the NATO Response Force and the EU Rapid Reaction force have yet fully to be agreed. Nonetheless, we welcome the agreements reached by NATO Allies at the Prague summit. **We recommend that the Government set out, in its response to this report, how NATO’s new military concept for defence against terrorism will now be implemented, and how its adoption at the Prague summit will affect NATO’s future role in the war against terrorism.**

⁴³ *National Security Strategy of the United States of America*, September 2002, p 25 .

⁴⁴ HC (2001–02) 384, para 55.

⁴⁵ Foreign and Commonwealth Office, *Foreign Policy Aspects of the War Against Terrorism*, Cm 5589, August 2002, p 4.

⁴⁶ NATO Prague Summit Declaration, 21 November 2002, available at: <http://www.nato.int>.

DEVELOPMENTS IN UNITED STATES FOREIGN POLICY SINCE JUNE 2002

44. The multilateral actions described above imply that, over a year after the terrorist attacks on New York and Washington DC, the global “coalition against terrorism” remains a meaningful concept. The role of the United States in the war against terrorism is, however, unquestionably paramount.

45. We have noted in two earlier Reports the close relationship between the Government and the Bush administration, which has developed since 11 September 2001.⁴⁷ During the six months since we last reported to the House on this subject, the Prime Minister has held two bilateral meetings with President Bush, and the Foreign Secretary has met bilaterally with his counterpart Colin Powell five times. Those we met in New York and Washington alluded to a strong transatlantic relationship, and suggested that contact between London and Washington is extremely frequent, at all levels. A number of those to whom we spoke suggested President Bush’s September decision to seek a UN Security Council Resolution on Iraq was partly a consequence of the Prime Minister’s influence with the President. Others spoke of a “Powell-Blair” axis to counter the “Cheney-Rumsfeld” influence in Washington.

46. We fully support the Government’s decision to align itself closely with the United States in the war against terrorism. We conclude that this policy has enhanced Britain’s influence over current policy decisions, and has also helped to foster the ‘special relationship’ in the long run.⁴⁸

47. Given the United States’ central importance, and Britain’s closeness to US positions in the war against terrorism, it is worth noting some important developments in US foreign policy during the past six months. These developments, detailed below, appear to be one consequence of America’s paradoxical position since 11 September 2001—its continued vulnerability, combined with its extraordinary status as ‘hyperpower’.

The doctrine of pre-emptive self-defence

48. In our Seventh Report, we noted the development by senior Bush administration officials of a doctrine of “pre-emptive defence,”⁴⁹ which would enable the United States to take military action against a potential adversary in advance of a suspected attack. This doctrine has now been spelt out officially in the National Security Strategy of the United States, which was published on 20 September 2002.

49. The National Security Strategy explains that “We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries. Rogue states and terrorists do not seek to attack us using conventional means ... they rely on acts of terror and, potentially, the use of weapons of mass destruction—weapons that can be easily concealed, delivered covertly, and used without warning.” A new concept of self-defence is needed: “The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. To

⁴⁷ Foreign Affairs Committee, Second Report of Session 2001–2002, *British-US Relations*, HC 327, para 16; HC (2001–02) 384, paras 31–40.

⁴⁸ For a fuller explanation, see HC (2001–02) 327.

⁴⁹ In his January 2002 State of the Union address, President Bush set out his objectives in the war against terrorism: “First, we will shut down terrorist camps, disrupt terrorist plans, and bring terrorists to justice. And, second, we must prevent the terrorists and regimes who seek chemical, biological or nuclear weapons from threatening the United States and the world.” For our own discussion of the emergence of the doctrine of ‘pre-emptive self-defence’, see HC (2001–02) 384, paras 213–227.

forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.”⁵⁰

50. It has long been accepted that states have an inherent right to self-defence. This right is made explicit in the United Nations Charter, which states that “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations.”⁵¹ The United States, in arguing that it may act in self-defence *before* rather than *if* an armed attack occurs, now appears to be seeking an explicit extension of this right.

51. Although there is widespread acceptance that the new threats described in the US National Security Strategy do exist, and were brought starkly to light by the attacks of 11 September 2002, the extension of the right of self-defence has significant and potentially dangerous consequences in international law. The implications of this new US policy, and the British Government’s approach to ‘pre-emptive self-defence’, are discussed at greater length in paragraphs 141-161 below.

US attacks by un-manned aerial vehicles: extra-judicial killings?

52. On 25 October, the United States Department of Defense admitted for the first time that it was using armed aerial drones to attack targets which threatened US and British air patrols over southern Iraq.⁵² Then on 3 November, a CIA-operated RQ-1 Predator un-manned aerial vehicle (UAV) fired a Hellfire missile at a car 160km east of the Yemeni capital, Sana’a. The six occupants of the car—all of whom were killed—were al Qaeda suspects. On 5 November, the US Deputy Secretary of State for Defence, Paul Wolfowitz, described the attack as a “very successful tactical operation.”^{53,54}

53. This attack raises further legal questions about the United States’ conduct of the war against terrorism. The United States has condemned the Israeli policy of extra-judicial killings of Palestinian terrorist suspects: on 27 September, for example, US State Department spokesman Richard Boucher criticised the Israeli government’s attempt to kill a Hamas militant, and stated that “We are against targeted killings”: any individual “responsible for terror and violence needs to be brought to justice.”⁵⁵ On 5 November, after the Predator attack in Yemen, Mr Boucher maintained that “our policy on targeted killings in the Israeli-Palestinian context has not changed.” However, Mr Boucher went on: “if you look back at what we have said about targeted killings in the Israeli-Palestinian context, you will find that the reasons we have given do not necessarily apply in other circumstances.”⁵⁶

54. We recommend that, in its response to this Report, the Government set out its policy on targeted killings, such as that carried out by the United States in Yemen on 3 November 2002.

⁵⁰ The National Security Strategy of the United States of America, 20 September 2002. Available at: <http://www.whitehouse.gov/nsc/nss.html>.

⁵¹ Charter of the United Nations, Article 51.

⁵² ‘US drones take combat role’, *BBC news*, 5 November 2002, available at: <http://news.bbc.co.uk>.

⁵³ See transcript of Paul Wolfowitz’s interview on CNN, 5 November 2002, available at: <http://www.defenselink.mil/news/Nov2002>.

⁵⁴ We note that on 14 December 2002 the *New York Times* reported that the US administration has also prepared a list of terrorist leaders which the Central Intelligence Agency is authorised to kill, if capture is impractical and civilian casualties can be minimised. See ‘Bush has widened authority of CIA to kill terrorists’, *New York Times*, 14 December 2002.

⁵⁵ Excerpt from US State Department press briefing: ‘US is against Israel’s “targeted killings,” says Boucher,’ September 26, 2002, available at: <http://www.usembassy.it>.

⁵⁶ Richard Boucher, State Department Briefing Transcript, available at: <http://www.usembassy-israel.org.il/publish/peace/archives/2002/november/110601.html>

US policy on Weapons of Mass Destruction

55. On 11 December 2002, the United States published its National Strategy to Combat Weapons of Mass Destruction. The Strategy argues that ‘Some states, including several that have supported and continue to support terrorism, already possess WMD and are seeking even greater capabilities, as tools of coercion and intimidation. For them, these are not weapons of last resort, but militarily useful weapons of choice intended to overcome our nation’s advantages in conventional forces and to deter us from responding to aggression against our friends and allies in regions of vital interest. In addition, terrorist groups are seeking to acquire WMD with the stated purpose of killing large numbers of our people and those of friends and allies—without compunction and without warning.’⁵⁷

56. The US National Strategy to Combat WMD expresses the administration’s intention to ‘ensure that all needed capabilities to combat WMD are fully integrated into the emerging defense transformation plan’; calls for the enhancement of ‘traditional measures—diplomacy, arms control, multilateral agreements, threat reduction assistance, and export controls—that seek to dissuade or impede proliferant states and terrorist networks’; and proposes the development and maintenance of capabilities ‘to reduce to the extent possible the potentially horrific consequences of WMD attacks at home and abroad.’⁵⁸

57. The difficulty inherent in addressing the threat from terrorist use of WMD is raised in the Strategy. Preventing terrorists from acquiring and using WMD is ‘one of the most difficult challenges we face ... The current and potential future linkages between terrorist groups and state sponsors of terrorism are particularly dangerous and require priority attention.’⁵⁹

58. Notably, the Strategy makes clear that the United States ‘reserves the right to respond with overwhelming force—including through resort to all our options—to the use of WMD against the United States, our forces abroad, and friends and allies.’⁶⁰ The United States believes that its nuclear weapons are a valid deterrent against WMD use by its enemies.

59. In our Seventh Report, we noted that the Bush administration was reassessing its nuclear posture, and would consider their use “against targets able to withstand nuclear attack; in retaliation for attack with nuclear, biological, or chemical weapons; or ‘in the event of surprising military developments.’”⁶¹ We also noted numerous press reports indicating that the United States is developing a new generation of tactical nuclear weapons in response to the terrorist threat. In our view, this would have significant implications for arms control policy.⁶²

60. In its response to our Seventh Report, the Government stated that its own nuclear posture had not changed since the Strategic Defence Review was published in 1997. It also stated that “the UK is neither developing nor planning to develop any new nuclear weapons, nor is it modifying current systems to lower their yield.”⁶³ An earlier memorandum from the FCO had also confirmed that all activities at the Government’s Atomic Weapons Establishment at Aldermaston “are fully consistent with the UK’s international

⁵⁷ National Strategy to Combat Weapons of Mass Destruction, p 1.

⁵⁸ National Strategy to Combat Weapons of Mass Destruction, p 2.

⁵⁹ National Strategy to Combat Weapons of Mass Destruction, p 6.

⁶⁰ National Strategy to Combat Weapons of Mass Destruction, p 3.

⁶¹ The United States Nuclear Posture Review was leaked to the *Los Angeles Times*, 9 March 2002.

⁶² HC (2001–02) 384, paras 168–173.

⁶³ Foreign and Commonwealth Office, *Foreign Policy Aspects of the War Against Terrorism*, Cm 5589, August 2002, p 11.

commitments, including the NPT [Non-Proliferation Treaty] and the Comprehensive Nuclear Test Ban Treaty.”⁶⁴

61. In response to questions about the United States’ alleged development of tactical nuclear weapons, the Parliamentary Under-Secretary of State, Mike O’Brien, wrote on 5 July that “The US has emphasised ... that there is no such programme.”⁶⁵ Mr O’Brien quoted US Secretary of State Colin Powell, who said on 10 March that “What we are looking at, and what we have asked the Pentagon to do, is to see whether or not within our lowered inventory levels we might want to modify or update or change some of the weapons in our inventory to make them more effective. But we are not developing brand new nuclear weapons, and we are not planning to undergo any testing.”⁶⁶

62. We are reassured by the Government’s current maintenance of its existing nuclear posture, and by its assurance that the United States is not developing a new generation of tactical nuclear weapons. **We recommend that the Government inform us, and likewise the House, if it decides to change its own nuclear posture or learns that the United States is planning a new generation of tactical nuclear weapons.**

⁶⁴ Ev 66, para 4.

⁶⁵ Ev 49, para 3.

⁶⁶ *Ibid.*

AL QAEDA AND OTHER TERRORIST GROUPS

63. In November 2001, the US National Security Adviser, Condoleezza Rice, stated that finding Osama bin Laden and the al Qaeda leadership “is the most important element of this war... Al Qaeda has got to be broken up. Its leadership has got to be found. And Osama bin Laden has got to be found.”⁶⁷

64. More than a year after the terrorist attacks on the United States, it seems likely that Osama bin Laden is still alive,⁶⁸ and his terrorist network extremely active. In mid-November, the US Federal Bureau of Investigation released a bulletin warning that al Qaeda was likely planning a “spectacular attack,” which would—if unchecked—result in “mass casualties, significant damage to the US economy, and maximum psychological trauma.”⁶⁹

65. The United States administration has issued repeated warnings that terrorists will strike the United States and its interests abroad again. Tom Ridge, US Director of Homeland Security, said in May that it was not a question of if, but when terrorists would strike; in the same week, Donald Rumsfeld stated that it was “inevitable” that terrorists would acquire weapons of mass destruction, and “will not hesitate to use them.”⁷⁰ In September and October, the US government reported increased ‘noise’ among terrorist networks, and issued heightened warnings of possible attacks.

66. In October, terrorists did strike. On 6 October, a French-registered ship, the *Limburg*, was attacked by a small boat off the coast of Yemen. The attack resembled closely the al Qaeda attack on the *USS Cole* two years ago. The following day, the Qatar-based *al Jazeera* television station broadcast an audiotape in which, it was alleged, Osama bin Laden promised to repay the United States “twofold” for any attack on Muslim countries. Then on 8 October, one US Marine was shot dead and another wounded while undertaking military training exercises in Kuwait. The Kuwait attacks were part of a series of shootings at American marines by civilians in pick-up trucks. Kuwaiti officials said that some of the fifteen men detained in relation to the shootings confessed to links with al Qaeda, and said that they had trained in Afghanistan.⁷¹ During the week after these attacks, *Al Jazeera* received a fax, allegedly signed by Osama bin Laden, which praised the attacks in Kuwait and in the Gulf of Aden as a strike at the “umbilical cord of the Christians.”⁷²

67. The next attack came within days: on 12 October, a huge bomb destroyed the Sari Club at Kuta Beach, Bali. More than 180 people were killed, most of them Australian tourists. Thirty three Britons died in this attack. It now seems likely that Jemaah Islamiya, an organisation which has known links with al Qaeda, was responsible for the bombing.⁷³

68. Another terrorist attack occurred in Russia twelve days later, when Chechen terrorists took over a Moscow theatre, holding seven hundred people hostage. The siege ended after sixty hours, when Russian special forces pumped gas into the theatre to sedate the terrorists. All the terrorists and 119 of the hostages were killed; almost all of these victims died from the effects of the gas. Though the Moscow terrorists had more specific demands than those generally made by al Qaeda—the withdrawal of Russian forces from Chechnya—Russian President Vladimir Putin argued that the attack was part of a wider pattern of global

⁶⁷ Condoleezza Rice, interview with Tim Russert on NBC News ‘Meet the Press’, 18 November 2001.

⁶⁸ In mid-November, a tape recording was released which, according to Federal Bureau of Investigation analysts, sounds convincingly like Osama bin Laden. According to a US official quoted in the *Financial Times*, the tape shows “that he is playing a role of leadership, but because of physical and logistical challenges he is further removed from the daily running of events.” *Financial Times*, 16 November 2002.

⁶⁹ Cit. *Financial Times*, 16 November 2002.

⁷⁰ ‘Gauging the seriousness of vague new terror warnings’, *Christian Science Monitor*, 23 May 2002.

⁷¹ *Economist*, 19 October 2002

⁷² ‘Bin laden gloats at terror attacks’, *Daily Telegraph*, 15 October 2002, available at: <http://www.telegraph.co.uk>.

⁷³ Q 158.

terrorism.⁷⁴ This claim has some credibility: a number of regional experts concur that significant links do exist between some of the Chechen fighters and radical Islamist groups from the Arab world.⁷⁵

69. This series of violent attacks continued on 28 October, when a US embassy official was gunned down as he left his home in Amman, Jordan. Islamic terrorists were widely assumed to be responsible for this fatal shooting. Exactly a month later, on 28 November, a further sixteen people⁷⁶ were killed when terrorists drove a car packed with explosives into the Israeli-owned Paradise Hotel in Mombasa, Kenya. On the same morning, two missiles were fired at an Israeli airliner as it took off from the airport at Mombasa. President Bush stated on 4 December that al Qaeda was involved in the bombing in Kenya.⁷⁷

An assessment of the state of the al Qaeda network

70. Some kind of al Qaeda involvement seems likely in all the atrocities that took place in October and November. The attacks appear to support the conclusions of the UN Monitoring Group which, in its September 2002 report, described al Qaeda's "operational links with Islamic militant groups in Europe, North America, North Africa, the Middle East and Asia," and stated that al Qaeda is "still able to work with, or from within, these groups to recruit new members and to plan and launch future terrorist attacks."⁷⁸

71. We perceive some important differences between these attacks and other al Qaeda operations since the late 1990s, however. In the past, al Qaeda has demonstrated a preference for 'hard' targets which were 'legitimated' by al Qaeda's ideology. United States Embassies, troops and ships located in the Gulf fit this scheme, as does the Pentagon, the centre of US military power, and the World Trade Center, which was perhaps the most prominent symbol of the global dominance of American capitalism. Neither a Bali night club nor a Kenyan hotel fits the pattern, though both might be construed loosely as symbols of Western decadence. The Moscow attack also differs, because—in contrast to al Qaeda operations aimed mainly at the United States' influence in the Middle East and the Gulf region—the Chechen terrorists were motivated by a desire to rid Chechnya of Russian dominance.

72. The Kuwait shootings do conform to the al Qaeda pattern in terms of target, but they inflicted only two casualties. They would have required a lower level of planning and co-ordination than earlier al Qaeda atrocities. This may be an example of al Qaeda associates 'freelancing', or of a degree of decentralisation of decision-making following the disruption of the organisation's operations in Afghanistan.

73. On 28 October, we asked the Foreign Secretary whether al Qaeda was likely to have been responsible for the October attacks. He replied that "We cannot be certain at the moment about the precise nature of the links in the cases of these particular atrocities," though the groups suspected of attacks in Bali and Moscow "are known to have links with al-Qaeda."⁷⁹ The Foreign Secretary continued: "The fact that well over 300 people have been killed and many more injured in terrorist outrages in the space of two weeks should

⁷⁴ President Putin "immediately linked the siege with the global war on terror, and charged that the action was planned in a 'foreign terrorist centre.'" See 'Behind the Moscow Theatre Siege', *Time*, 25 October 2002.

⁷⁵ For example, Thomas de Waal, of the Institute of War and Peace Reporting and author of a book on Chechnya, said: "I don't think it's a matter of Chechen leaders being on the line all the time to members of al Qaeda, I think it's a matter of certain Arabs slipping in and out of Chechnya with money, with propaganda, with weapons." See 'Chechen rebel divisions', *BBC*, 26 October 2002, available at: <http://news.bbc.co.uk/2/hi/world/europe/2364271.stm>.

⁷⁶ Three Israelis, ten Kenyans and three suicide bombers were killed in the attacks.

⁷⁷ 'Bush believes al Qaeda involved in Kenya attack', Reuters, 4 December 2002.

⁷⁸ Second Report of the Monitoring Group established pursuant to Security Council Resolution 1390 (2002), Executive Summary.

⁷⁹ Q 158.

alert us to the continuing threat that we all face from this kind of terrorism ... I am afraid to say that the threat is going to stay. Indeed, the combination of failing states, proliferation of weapons of mass destruction by rogue states and international terrorism represents the greatest strategic challenge to the civilised world at the moment and I think for at least the next two decades.”⁸⁰

74. This is a depressing conclusion. Does it imply that international efforts to eliminate al Qaeda are failing? There has been some progress in tackling the threat from al Qaeda: Francis X. Taylor, former US Coordinator for Counter-terrorism, stated recently that 2,700 al Qaeda suspects had been detained in over 90 countries; “entire al Qaeda cells have been wrapped up in nations such as Singapore and Italy”; and “over 160 countries have joined us in blocking \$116 million in terrorist assets.”⁸¹ Overall, however, the picture is gloomy. According to the UN Monitoring Group, although there has been an “unprecedented effort to combat terrorism,” and “measures adopted by the international community have had a marked impact on al Qaeda, causing it to go to ground, to reposition its assets and resources and to seek new recruits ... al Qaeda is by all accounts ‘fit and well’ and poised to strike again at its leisure.”⁸²

75. Numerous commentators have pointed out that al Qaeda is a flexible, amorphous network. It issues no membership cards; its loose affiliates are unlikely to be prevented from committing further atrocities by disruptions to the leadership. The attacks in October and November appear to vindicate the UN Monitoring Group’s assessment that, “Despite having lost its physical base and sanctuary in Afghanistan, al Qaeda continues to pose a significant threat to international peace and security.”⁸³

76. On 12 November, the Prime Minister said that “barely a day goes by without some new piece of intelligence coming via our security services about a threat to UK interests” from terrorists.⁸⁴ **We conclude that, despite over a year of vigorous international efforts to disrupt the network, al Qaeda and associated organisations continue to pose a grave threat to the United Kingdom and its interests abroad.**

⁸⁰ Q 158.

⁸¹ Francis X. Taylor, address to the Institute for National Security Studies, National Defense University, Washington DC, 23 October 2002.

⁸² Second Report of the Monitoring Group established pursuant to Security Council Resolution 1390 (2002), Executive Summary.

⁸³ Second Report of the Monitoring Group established pursuant to Security Council Resolution 1390 (2002), Executive Summary.

⁸⁴ Text of the Prime Minister’s speech to the Lord Mayor’s Banquet, 12 November 2002. Available at: <http://www.number-10.gov/output/Page6535.asp>.

THE THREAT FROM IRAQ

77. In our Seventh Report, we noted—despite the Foreign Secretary’s reluctance to speculate about further military action in the “war against terrorism”—that since December 2001 “Iraq has been identified as the state most likely to be targeted” after the military operation in Afghanistan.⁸⁵ During our visit to Washington DC in March 2002, we had observed that “huge resources were being devoted to the development of plans to act against the Iraqi regime.”⁸⁶

78. Between June and September 2002, speculation about the scale and nature of the threat from the Iraqi regime intensified, on both sides of the Atlantic. The debate focused on two questions. The first concerned the extent of links between the Iraqi regime and al Qaeda. The second concerned the Iraqi regime’s development of weapons of mass destruction, and whether the threat from such weapons would justify military action to enforce disarmament.

Is the Iraqi regime linked to al Qaeda?

79. The United States administration has asserted that quite substantial links exist between the Iraqi regime and al Qaeda. The Secretary of State for Defence, Donald Rumsfeld, has stated that the link between al Qaeda terrorists and Iraq is “accurate and not debatable,”⁸⁷ and National Security Adviser Condoleezza Rice has said that “We clearly know that there were in the past and have been contacts between senior Iraqi officials and members of al Qaeda going back quite a long time... Iraq provided some training to al Qaeda in chemical weapons development.”⁸⁸ In his Cincinnati speech on 7 October, President Bush stated that “We’ve learned that Iraq has trained al Qaeda members in bomb-making and poisons and deadly gases.”⁸⁹

80. It is notable that the CIA document *Iraq’s Weapons of Mass Destruction* contains no reference to Iraq’s links with terrorist organisations, although the Iraqi regime could use terrorists as a ‘delivery mechanism’ for weapons of mass destruction. On 7 October 2002, however, the US Director of Central Intelligence, George Tenet, wrote to Senator Bob Graham, chairman of the Senate Select Committee on Intelligence: “Our understanding of the relationship between Iraq and al Qaeda is evolving and is based on sources of varying reliability... We have solid reporting of senior level contacts between Iraq and al Qaeda going back a decade. Credible information indicates that Iraq and al Qaeda have discussed safe haven and reciprocal non-aggression... we have solid evidence of the presence in Iraq of al Qaeda members, including some that have been in Baghdad.”

81. George Tenet also asserted that the Central Intelligence Agency possessed “credible reporting that al Qaeda leaders sought contacts in Iraq who could help them acquire WMD capabilities. The reporting also stated that Iraq has provided training to al Qaeda members in the areas of poisons and gases and making conventional bombs. Iraq’s increasing support to extremist Palestinians, coupled with growing indications of a relationship with al Qaeda, suggest that Baghdad’s links to terrorists will increase, even absent US military action.”⁹⁰

82. Two of our witnesses were highly sceptical about alleged links between Iraq and al Qaeda. Lord Wright told us that “I think it is unlikely, that Saddam Hussein would want

⁸⁵ HC (2001–02) 384, para 202.

⁸⁶ HC (2001–02) 384, para 203.

⁸⁷ US Department of Defense News, 27 September 2002, available at: <http://www.defenselinek.mil/news/Sep2002>.

⁸⁸ Newshour, PBS News, 25 September 2002, available at: <http://www.pbs.org/newshour>.

⁸⁹ Available at: <http://www.whitehouse.gov/news/releases/2002>.

⁹⁰ Letter from George Tenet, Director of Central Intelligence, to Senator Bob Graham, Chairman, Select Committee on Intelligence, 7 October 2002.

to enter into a collaboration with Islamic extremists over whom he has no control. Perhaps the greatest internal threat to Saddam Hussein is precisely from that sort of Islamic extremist. I think it is very unlikely ... that Saddam Hussein is willing to enter into collaboration with al Qaeda.”⁹¹ Sir Harold Walker agreed, arguing that “Saddam is seen by al Qaeda and the Muslim world as a totally bogus Muslim ... one needs to be a bit careful about associating Saddam’s regime with this particular bunch of terrorists, although there is plenty of historical evidence of links with [other] terrorists.”⁹²

83. On this matter, the British Government also takes an apparently different view from that of the US administration. On 5 December 2001, the Foreign Secretary told us that “I have seen no evidence to link the Iraqi regime with Osama bin Laden, al Qaeda or the Taliban.”⁹³ The Prime Minister told the Liaison Committee that “As far as I am aware there is no evidence linking Saddam Hussein to the actual attack on 11 September.” The Prime Minister continued: “There are various rough linkages [between al Qaeda and the Iraqi regime] but the issue [with the Iraqi regime] is weapons of mass destruction. It is not what happened on 11 September or the al Qaeda terrorist network.”⁹⁴ The Government has not subsequently produced evidence to counter these assertions. Its dossier on Iraq, published in September this year, makes no mention of links between the Iraqi regime and al Qaeda.⁹⁵

84. A possible explanation for this divergence of views is that the 11 September attacks clearly heightened awareness of the potential of linkages between ‘rogue states’ and terrorist organisations. As Vice President Dick Cheney told the US war veterans’ convention in August, the attacks “awakened this nation to danger, to the true ambitions of the global terror network, and to the reality that weapons of mass destruction are being sought by determined enemies who would not hesitate to use them against us.”⁹⁶ In Washington, we heard from a number of people that even if Saddam Hussein was not directly involved in the 11 September attacks, those events might now be copied by the Iraqi regime. Saddam Hussein has used terrorism before—he tried to assassinate the first President George Bush, during his visit to Kuwait in 1993—and al Qaeda has now demonstrated how effectively terrorism can be used against the United States.

85. The potential, if not the actuality, of links between al Qaeda and the Iraqi regime has been recognised by the Government. On 25 September 2002, the Foreign Secretary explained that, while “no one has ever suggested that Saddam Hussein is directly behind the al-Qaeda organisation ... given the fact that Saddam Hussein’s regime has unquestionably been supportive of terrorist organisations in the Middle East, which it has, and given his hatred for the United States, which is visceral, it is reasonable to see that he has some sympathy with the al-Qaeda regime and, therefore, for us to look for evidence.” For this reason, the Government is “investigating all reports of links [between the Iraqi regime and al Qaeda] and there may be some evidence which we are still investigating about whether there were [such links] post-September 11.”^{97 98} This low-key response suggests at least

⁹¹ Q 108.

⁹² Q 108.

⁹³ Q 52.

⁹⁴ House of Commons Liaison Committee, Session 2001–02, evidence presented by the Rt Hon Tony Blair MP, Prime Minister, HC 1095, Qq 96–98.

⁹⁵ Iraq’s Weapons of Mass Destruction: *The Assessment of the British Government*, available at www.fco.gov.uk/files.

⁹⁶ Cheney argued that “containment is not possible when dictators obtain weapons of mass destruction, and are prepared to share them with terrorists who intend to inflict catastrophic casualties on the United States.” ‘Remarks by the Vice President to the Veterans of Foreign Wars 103rd National Convention, 26 August 2002; available at: <http://www.whitehouse.gov/news/releases>.

⁹⁷ Q 28.

⁹⁸ The Prime Minister also said in a BBC Online discussion on 3 December that “I have got absolutely no doubt at all that the issue of weapons of mass destruction in the hands of unstable, dangerous rogue states—if that issue is not dealt with, then at some point we will have to find those weapons in the hands of international terrorists. And then the discussion will be truly awful.” Available at: <http://news.bbc.co.uk>.

a degree of scepticism on the part of the United Kingdom Government about the extent of current links between the Iraqi regime and al Qaeda.

86. We do not dismiss the possibility that Saddam Hussein has links with some Islamist terrorist organisations, and that he tolerates their presence in Iraq. However, **we conclude that, although the possibility that Saddam Hussein might employ terrorist methods must be taken seriously, there is no compelling evidence linking the Iraqi regime to al Qaeda. Neither the British nor the US Government has thus far provided any evidence that Iraq had any involvement in the attacks of 11 September 2001. Until any such evidence is provided, any military action against the Iraqi regime must therefore be justified on grounds other than its past or current involvement with the al Qaeda network.**

The extent of Iraq's weapons of mass destruction programme

87. The preceding section of this Report highlights the difficulties inherent in linking the Iraqi regime to al Qaeda. Intelligence relating to its engagement in another illegal activity—the development of weapons of mass destruction—is far less ambiguous. Since the publication of our last report, extensive details of Iraq's weapons of mass destruction programmes have been published in three major reports. The first of these, the International Institute of Strategic Studies' *Iraq's Weapons of Mass Destruction: a Net Assessment*, was published on 9 September. On 24 September, the British Government published its long-awaited dossier, *Iraq's Weapons of Mass Destruction*. The United States Central Intelligence Agency also published a document detailing its own assessment, in October 2002.

88. There is little divergence between the substantive judgements detailed in the three reports. Dr Chipman of IISS told us that differences between his Institute's assessments and those of the Government and the CIA were “within the normal bounds of areas of judgment.”⁹⁹ The documents are based on information available in the public domain and (in the case of the Government and CIA assessments) on more recent intelligence. Though Dr Chipman told us that “there was inevitably a degree of speculation in some of our assessments, and I would dare say there was a degree of speculation also in the information provided by the governments,”¹⁰⁰ all three documents provide compelling evidence of Iraq's programmes to develop chemical, biological and nuclear capabilities, and the means to deliver them.

Nuclear weapons

89. The International Institute for Strategic Studies (IISS) states that, of the three weapons types, “nuclear weapons seem the furthest from Iraq's grasp [though] there is a nuclear wild card. If, somehow, Iraq were able to acquire sufficient nuclear material from foreign sources, it could probably produce nuclear weapons on short order, perhaps in a matter of months ... While Iraqi acquisition of fissile material is not a high probability, it has to be seen as a real risk that could dramatically and quickly shift the balance of power.”¹⁰¹ The CIA's assessment is that “Baghdad could produce a nuclear weapon within a year if it were able to procure weapons-grade fissile material abroad”; if left unchecked, Iraq “will probably have a nuclear weapon during this decade.”¹⁰² The Government argues that “if Iraq obtained fissile material and other essential components from foreign sources the

⁹⁹ Q 48.

¹⁰⁰ Q 47.

¹⁰¹ *Iraq's Weapons of Mass Destruction: A Net Assessment*, The International Institute for Strategic Studies, 9 September 2002.

¹⁰² ‘Iraq's Weapons of Mass Destruction’, *United States Central Intelligence Agency*, October 2002.

timeline for production of a nuclear weapon would be shortened and Iraq could produce a nuclear weapon in between one and two years.”¹⁰³

90. We asked Dr Samore about delivery of a possible Iraqi nuclear device. In his judgement, the nuclear device on which the Iraqis were working in 1991 “would have been far too large and heavy to deliver on the missiles that were available to them.” Dr Samore felt that “it is unlikely that [Iraq] could make [a nuclear weapon] small enough and light enough to be deliverable by the existing missile we know they have, which is the al-Hussein missile, a modified scud [with a range of] 650 km. That requires quite a small size, which would be difficult for them to achieve with the basic design they are working on.”¹⁰⁴

Chemical weapons

91. In the IISS assessment, “Iraq’s current CW capability probably comprises hundreds of tonnes of agent (presumably a mixture of mustard and nerve agent, most likely sarin and cyclosarin and perhaps VX) and perhaps a few thousand munitions.” In the Government’s assessment, Iraq has retained some chemical warfare agents, precursors, production equipment and weapons from before the Gulf War, which would “enable Iraq to produce significant quantities of mustard gas within weeks and of nerve gas within months.”¹⁰⁵ Iraq has continued to produce chemical agent, production facilities associated with Iraq’s chemical warfare programme have been rebuilt, and other dual-use facilities have been rebuilt or re-equipped.¹⁰⁶ The CIA argue that “Baghdad has begun renewed production of chemical warfare agents, probably including mustard, sarin, cyclosarin, and VX.”¹⁰⁷

92. All three documents detail potential means for delivery of Iraq’s chemical weapons. IISS states that Iraq’s “ability to deliver chemical warheads on its rocket and artillery pieces, as well as aerial bombs, would pose operational complications for opposing forces.”¹⁰⁸ The threat of CW use against military logistical or civilian targets is, in IISS view, “questionable.” Their document states that “Unless Iraq has advanced beyond the impact fusing and warhead design of its 1991-era special warheads, its ability to disseminate efficiently CW agent with missile warheads is extremely limited and unlikely to cause large casualties ... Iraq could also seek to deliver CW agent by air, but its remaining air force capabilities are very weak.” The Government states, however, that—according to its intelligence—Iraq has “attempted to modify the L-29 jet trainer to allow it to be used as an Unmanned Aerial Vehicle (UAV) which is potentially capable of delivering chemical and biological agents over a large area.”¹⁰⁹ The CIA analysts believe that this UAV “probably is intended to deliver biological warfare agents.”¹¹⁰

Biological weapons

93. The threat from Iraq’s biological weapons is perhaps most alarming. In the CIA’s view, all “key aspects—R&D, production, and weaponisation—of Iraq’s offensive BW program are active and most elements are larger and more advanced than they were during the Gulf War.”¹¹¹ The British Government states that “Iraq has continued to produce biological warfare agents”, and describes a number of facilities of concern. The Government’s dossier also argues, on the basis of evidence from Iraqi defectors, that the

¹⁰³ *Iraq’s weapons of mass destruction: The assessment of the British Government.*

¹⁰⁴ Qq 67–68.

¹⁰⁵ *Iraq’s weapons of mass destruction: The assessment of the British Government*, p18.

¹⁰⁶ *Ibid.*, pp19–20.

¹⁰⁷ ‘Iraq’s Weapons of Mass Destruction’, *United States Central Intelligence Agency*, October 2002, p 2.

¹⁰⁸ *Iraq’s Weapons of Mass Destruction: A Net Assessment*, The International Institute for Strategic Studies, 9 September 2002.

¹⁰⁹ *Iraq’s weapons of mass destruction: The assessment of the British Government*, p 23.

¹¹⁰ ‘Iraq’s Weapons of Mass Destruction’, *United States Central Intelligence Agency*, October 2002, p 2.

¹¹¹ *Ibid.*

Iraqi regime has continued to develop mobile biological agent production facilities. These would be extremely difficult for inspectors to detect.¹¹²

94. IISS argue that “As of 1998, Iraq possessed sufficient civilian facilities, equipment, and materials to produce bulk BW agent within weeks following a political decision to resume production. It is not known for certain whether Iraq has resumed production of fresh BW agents, but it seems a safe bet that it has, or will, in the face of impending attack ... In theory, Iraq could have preserved or produced enough BW capability to cause mass casualties, which, from Baghdad’s perspective, presents Iraq’s closest approximation to nuclear weapons as an instrument of deterrence or terror.”

95. IISS believe that “Unless Iraq has substantially improved its delivery capabilities, its current threat against well-equipped and well-defended forces would not be decisive.” The existing BW capabilities might well be used against civilians, however: “Assuming Iraq has retained a small force of 650km-range al-Hussein missiles,¹¹³ it could deliver BW warheads to cities in Israel, Kuwait, Saudi Arabia, Turkey, and Iran from relatively protected launch points within Iraq ... casualties in an unprotected population could run in the hundreds or even thousands. Delivery by airborne spray devices would likely be more deadly.”¹¹⁴

96. We conclude that evidence of Iraq’s retention and continued development of weapons of mass destruction is compelling, and a cause for considerable concern. We commend the Government’s decision to draw international attention to the scale of Iraq’s illegal weapons of mass destruction programme, through the publication in September 2002 of *Iraq’s Weapons of Mass Destruction: the Assessment of the British Government*.

Iraq and human rights

97. On 2 December the Government published a further document entitled *Saddam Hussein: crimes and human rights abuses*, which describes the “human cost of Saddam’s policies.”¹¹⁵ The document quotes the April 2002 resolution of the UN Commission on Human Rights, which drew attention to “the systematic, widespread and extremely grave violations of human rights and of international humanitarian law by the Government of Iraq, resulting in an all-pervasive repression and oppression sustained by broad-based discrimination and widespread terror.”

98. The Government document describes the Iraqi regime’s systematic use of torture, abuses against women, inhumane treatment of prisoners, harassment of exiled opposition leaders, and persecution of Kurdish and Shia communities—including the use of chemical weapons against Kurds in Halabja in 1988. It also cites evidence of the Iraqi regime’s use of torture during its occupation of Kuwait in 1990–91.

99. Although the document on these Iraqi abuses cites evidence collected by human rights organisations such as Amnesty International and Human Rights Watch, Amnesty International accused the Government of being “opportunistic and selective” in its publication of this material in December. Human Rights Watch also said that when it had

¹¹² *Iraq’s weapons of mass destruction: The assessment of the British Government*, p 22.

¹¹³ The Government estimates that there may be up to 20 al-Hussein missiles in Iraq, but they may not all be operational. The International Institute of Strategic Studies estimates that there are probably around a dozen. According to the CIA assessments, “Saddam retains a covert force of up to a few dozen Scud-variant SRBMs [Strategic Range Ballistic Missiles] with ranges of 650 to 900km.”

¹¹⁴ *Iraq’s Weapons of Mass Destruction: A Net Assessment*, The International Institute for Strategic Studies, 9 September 2002, p 71.

¹¹⁵ *Saddam Hussein: crimes and human rights abuses*. FCO, London, 2 December 2002, available at: <http://www.fco.gov.uk/Files/kfile/hrdossier.pdf>.

collected evidence of Iraqi human rights abuses in the past, this evidence had been ignored by the British Government.¹¹⁶

100. We accept that the Iraqi regime is not unique in its abuse of human rights and of civil and political freedoms.¹¹⁷ In the context of this Report, the regime's human rights abuses are most relevant because they indicate the ruthlessness of Saddam Hussein and other senior figures in the Iraqi government. **We conclude that, given Saddam Hussein's record of human rights abuses, he would not hesitate to use torture and weapons of mass destruction against foreign troops and civilians if he believed that this would benefit his regime.**

Does Iraq constitute an immediate threat to British security and interests?

101. Saddam Hussein has defied the United Nations for eleven years. As the Prime Minister pointed out in his speech to the House on 24 September 2002, "occasionally debate on [the question of Iraq's development of weapons of mass destruction] seems to treat it almost as if it had suddenly arisen, coming out of nowhere on a whim in the last few months of 2002. It is actually an 11-year history: a history of UN will flouted, of lies told by Saddam about the existence of his chemical, biological and nuclear weapons programmes, and of obstruction, defiance and denial."¹¹⁸

102. Failure to take action throughout this period is no reason to further postpone enforcement of Security Council Resolutions; but is the threat from Iraq sufficient to justify robust action, including the use of military force? Arguably, other international security problems are equally pressing: North Korea, for example, already has missile and nuclear technology which—as recent events have demonstrated—it is willing to export;¹¹⁹ and nuclear-armed Pakistan is highly unstable.¹²⁰ Iraq does not currently pose a military threat to the United Kingdom: the Government's view on 11 June 2002 was that "We assess that there is no immediate threat of military attack by Iraq, although Iraq threatens RAF aircraft patrolling the Iraqi no-fly zones."¹²¹

¹¹⁶ 'Anger over Straw dossier on human rights', *The Guardian*, 3 December 2002.

¹¹⁷ In our most recent Report on Human Rights, we stated that "There are too many countries which deserve criticism for their human rights record", though we drew particular attention to abuses in Zimbabwe, the Middle East and China. Foreign Affairs Committee, Fifth Report of Session 2001-2002, *Human Rights Annual Report 2001*, HC 589, especially pp10-12.

¹¹⁸ HC Deb, 24 September 2002, col 3.

¹¹⁹ In December 2002, Spanish warships intercepted a North Korean ship in the Arabian sea, which was carrying 12 Scud missiles to Yemen. Missile exports are the biggest source of foreign currency for North Korea, and experts argue that the recent export demonstrates North Korea's desperation for hard cash: "This is no surprise at all," said Takashi Inoguchi, political science professor at the University of Tokyo. "Whether it makes sense, whether their logic is consistent doesn't matter. Getting money, keeping the country going is more important" (Reuters, 11 December 2002). North Korea already possesses the Taepodong Missile, which has a range of around 2000km and a payload of 1000kg. It is believed to be working on modifications of the Taepodong, to extend its range to 8000km. See BBC news, 22 December 2002, available at: <http://news.bbc.co.uk/1/hi/world/asia-pacific/2564241.stm>. Quentin Peel points out that "North Korea is arguably the most dangerous 'rogue state' in the world. When it comes to the proliferation of weapons of mass destruction, it is the arch proliferator. It has sold its missiles to most of the lesser 'rogue states' in the Middle East, as well as to Pakistan. In exchange, it has been helped by Islamabad to acquire uranium enrichment technology and has pressed ahead with a nuclear weapons programme in spite of firm pledges and international agreements to the contrary." *Financial Times*, 20 November 2002. North Korea announced on 12 December that it might reactivate a nuclear power plant as a consequence of the US decision in November to suspend 500,000 tons of oil shipments. The US suspects that North Korea had been using the plant to develop nuclear weapons ('North Korea says it's reactivating nuclear plant', *Washington Post*, 12 December 2002).

¹²⁰ Pakistan expert Ahmed Rashid wrote recently that "Few Westerners seem to realize how grave Pakistan's situation has become. India has become increasingly bellicose. Al-Qaeda cells are firmly planted inside the country. Law and order has broken down as militant groups kill foreigners and Pakistani Christians. The country's economy is in acute recession, with widespread unemployment. Some 40 per cent of the population, or about 56 million Pakistanis, live below the poverty line; their numbers have increased by 15 million since Musharraf took power. There is a deep polarization between the secular democratic parties and the Islamic right wing. The country and army's future are now at stake, as well as Pakistan's involvement in the war against terrorism." 'Pakistan on the Edge', *New York Review of Books*, 10 October 2002.

¹²¹ HC Deb, 11 June 2002, col 1164W.

103. Furthermore, Lord Wright suggested to us that Saddam Hussein, living in a dangerous region, might arm himself with weapons of mass destruction as a deterrent.¹²² He pointed out that “Iraq has had certain weapons of mass destruction for a long time, as we all know, and we do need to ask ourselves why, if they have not used them yet, should they use them unless they are provoked by an attack from the United States?”¹²³ Sir Harold Walker argued that deterrence had prevented Saddam Hussein from using chemical weapons in the Gulf War. The same strategy had “worked in a different context with the Soviet Union, which was a much bigger enemy, and worked in the Gulf War, really ought to be able to work with Iraq now.”¹²⁴

104. One reason the Government presents for addressing the threat from Iraq now is that the Iraqi regime, “if it ever saw opportunities to develop other terrorist networks on which it could rely it would do that and it would then be used against the West.”¹²⁵ As we indicated in paragraph 85 above, the Government takes seriously the possibility that Iraq may be forging alliances with terrorist organisations, even if such links are not demonstrable now. The 11 September attacks have undoubtedly highlighted the horrifying potential of mass casualty terrorism, which could be even more devastating if terrorists were to obtain weapons of mass destruction.¹²⁶

105. A second reason to arrest the Iraqi regime’s development of weapons of mass destruction with some haste derives from awareness of the extent of WMD development combined with an understanding of the history of Saddam Hussein’s regime. As the Government points out in its dossier, “the threat from Iraq does not depend solely on the capabilities we have described. It arises also because of the violent and aggressive nature of Saddam Hussein’s regime. His record of internal repression and external aggression gives rise to unique concerns about the threat he poses.”¹²⁷ The Prime Minister, reinforcing this message, told the House on 24 September that Saddam Hussein “has used these weapons [of mass destruction] in Iraq itself—thousands dying in those chemical weapons attacks—and in the Iran-Iraq war, started by him, in which 1 million people died; and his is a regime with no moderate elements to appeal to.”¹²⁸ A nuclear armed Iraq would alter profoundly the balance of power in the Middle East and the Gulf region: deterring Iraqi aggression in the region would become extremely difficult. In the event of another Iraqi attack on Kuwait, for example, Iraq could defy the international community to respond if it possessed strategically sited nuclear weapons. Iraq’s development of weapons of mass destruction also encourages such proliferation among its regional neighbours.

106. The Government presents a third reason for addressing Iraq’s weapons of mass destruction urgently. The Foreign Secretary argues that both the Government’s pursuit of the ‘war against terrorism,’ and its policies towards Iraq, are designed to strengthen the international rule of law and the credibility of multilateral institutions, notably the United Nations. In Iraq, the Government’s objective is “to see Saddam Hussein disarmed of his weapons of mass destruction ... both because of the threat which [Iraq’s weapons of mass destruction] pose to his own people, to the region and to the wider international community and also because [Saddam Hussein] is in flagrant defiance of the international community. We have made the world relatively safer over the last 60 years because of the relative success of our international institutions based on the United Nations, and if we want to have

¹²² Q 116.

¹²³ Q 125.

¹²⁴ Q 131.

¹²⁵ Q 29 [Foreign Secretary].

¹²⁶ Osama bin Laden has described obtaining weapons of mass destruction as a ‘religious duty.’

¹²⁷ *Iraq’s weapons of mass destruction: the assessment of the British Government*, p 7. Saddam Hussein’s record of aggression can explain why the need to address Iraq’s WMD is perhaps greater than the need to address the threat from other proliferators, such as Iran.

¹²⁸ HC Deb, 24 September 2002, col 5.

a safer world still in the future that system has to be upheld and enforced.”¹²⁹ In addressing the threat from al Qaeda, the Government is also “dealing with an equally flagrant breach of international law ... by terrorist organisations”. Both the war against al Qaeda terrorism and the Government’s approach to the Iraqi regime “are part of a total comprehensive approach to ensuring that we live by international law.”¹³⁰

107. For these reasons, the Foreign Secretary does not see “the War Against Terrorism and a war against rogue states like Iraq as alternatives, I see them as part of an overall strategy to remove or reduce threats that are posed.”¹³¹

108. We conclude that failure to address the threat from Iraq’s weapons of mass destruction could pose very high risks to the security of British interests in the Middle East and the Gulf region.

109. We commend the Government’s commitment always to work within international law,¹³² although we recognise that international law must evolve to meet new challenges such as the unprecedented terrorist threat. We further commend the Foreign Secretary’s commitment to strengthen the credibility of multilateral institutions—and, in particular, the United Nations—in pursuit of international security.

110. We note with concern the words of Senator Bob Graham, chairman of the US Senate Intelligence Committee, that the US administration is “so focused on Iraq that they are not paying adequate attention to the war on terror.”¹³³ **We urge the Government to ensure that its efforts to address the threat from Iraq’s weapons of mass destruction do not detract in any way from those to eliminate al Qaeda and associated terrorist groups.**

¹²⁹ Q 171.

¹³⁰ Q 29.

¹³¹ Q 29.

¹³² HC Deb, 24 September 2002, col.9 [Prime Minister].

¹³³ Cit. *Financial Times*, 16 November 2002.

DISARMING IRAQ

Prospects for disarmament of Iraq: the UN route, and UN weapons inspections

111. President Bush and senior administration figures have stressed throughout the year that the United States' official policy towards Iraq is "regime change."¹³⁴ ¹³⁵ The US administration's robust statements have provoked much speculation about how it would attempt to remove Saddam Hussein, the risks inherent in such a venture, whether and how it would seek allies to assist it in this endeavour, and the nature of any successor regime.¹³⁶ Debate intensified in August and September, when prominent US politicians—including some known to be close to the first President Bush—expressed grave concerns about the possible consequences of war with Iraq.¹³⁷

112. After visiting Washington DC in March 2002, we concluded that few of those with whom we met there "had faith in the UN route towards control of Iraq's weapons of mass destruction."¹³⁸ On 12 September 2002, however, President Bush announced what many commentators interpreted as a shift in US policy towards Iraq. In his address to the General Assembly of the United Nations, the President reiterated his belief that "Saddam Hussein's regime is a grave and gathering danger." He then called for the enforcement of Security Council resolutions relating to Iraq, promising that the United States would "work with the UN Security Council to meet our common challenge. If Iraq's regime defies us again, the world must move deliberately, decisively to hold Iraq to account."¹³⁹

113. President Bush's UN speech initiated eight weeks of "intensive negotiations"¹⁴⁰ in the Security Council over how to disarm Iraq. Shortly after the address, US Secretary of State Colin Powell met with his counterparts from the other Permanent Members of the Security Council, to discuss how best to proceed.

114. The Government worked closely with the United States during this period. The United Kingdom and the United States began to circulate "elements of a draft resolution" to other Security Council members on 25 September.¹⁴¹ The text of this draft was leaked to the *Financial Times* on 2 October 2002.¹⁴² According to the terms specified in the leaked draft resolution, the Council would demand a statement by Iraq of all weapons programmes, followed by the granting of "immediate, unconditional, and unrestricted access to all areas" in Iraq by a considerably enhanced inspections regime. Crucially, the initial draft resolution specified that any "false statements or omissions in the declaration submitted by Iraq to the Council and failure by Iraq at any time to comply and cooperate fully in accordance with the provisions laid out in this resolution, shall constitute a further material breach of Iraq's obligations, and that such breach authorises member states to use all necessary means to restore international peace and security."

¹³⁴ See Crawford Press Conference, available at: <http://www.cnn.com/2002/US/04/06/bush.blair.transcript/>.

¹³⁵ Speaking at the West Point military academy in June, President Bush stated that "Containment is not possible when unbalanced dictators with weapons of mass destruction can deliver those weapons on missiles or secretly provide them to terrorist allies... In the world we have entered, the only path to safety is the path of action. And this nation will act." See: <http://www.whitehouse.gov/news/releases>.

¹³⁶ See for example Joseph R Biden and Richard G Lugar, 'Debating Iraq,' *New York Times*, 31 July 2002; George Schultz, 'Act now: the danger is immediate. Saddam Hussein must be removed,' *Washington Post*, 6 September 2002.

¹³⁷ For example, Brent Scowcroft 'Don't attack Saddam,' *Wall Street Journal*, 15 August 2002; James Baker, *New York Times*, 25 August 2002.

¹³⁸ HC (2001–02) 384, para 203.

¹³⁹ President Bush's remarks at the United Nations General Assembly, New York, 12 September 2002, available at: <http://www.whitehouse.gov/news/releases>.

¹⁴⁰ HC Deb, 7 November 2002, col 431.

¹⁴¹ HC Deb, 7 November 2002, col 431.

¹⁴² See 'US draft of UN resolution on Iraq,' *Financial Times*, 2 October 2002.

115. France led resistance to the adoption of these provisions by the Security Council, though Russia expressed much sympathy with the French position. In early September, French President Jacques Chirac had proposed a two stage process in the Security Council, with a first resolution setting a three week deadline, before which Iraq would have to allow UN weapons inspectors to return. According to this plan, if Iraq refused to co-operate the Security Council would reconvene to adopt a second resolution, this time authorising the use of military force. On 1 October—after the initial circulation of the UK-US draft—French foreign minister Dominique de Villepin wrote in *Le Monde* that “The two-step approach proposed by President Chirac ... is the only one capable of ensuring control at every stage of the crisis ... We do not want to give a blank cheque to military action, since we want to shoulder our responsibility to the end. This is why we cannot accept a resolution authorizing right now the recourse to force, without going back to the United Nations Security Council.”¹⁴³

116. The French conditions have been met to some extent in Security Council Resolution 1441, which was adopted unanimously on 8 November 2002.¹⁴⁴ US Ambassador John Negroponte has stated that UNSCR 1441 “contains no ‘hidden triggers’ and no ‘automaticity’ with respect to the use of force. If there is a further Iraqi breach, reported to the Security Council by UN Monitoring, Verification and Inspection Commission (UNMOVIC),¹⁴⁵ the International Atomic Energy Authority (IAEA) or a member state, the matter will return to the Council for discussion as required in paragraph 12” of Resolution 1441.¹⁴⁶ The French Ambassador Jean-David Levitte subsequently welcomed the fact that “all elements of automaticity have disappeared from the resolution.”¹⁴⁷ Syria, the Arab League non-permanent member of the Council, also voted for the adoption of Resolution 1441.

117. Security Council Resolution 1441 established an enhanced inspection regime for Iraq’s disarmament. In this Resolution, the Security Council recalls its previous Resolutions relating to Iraq’s weapons of mass destruction passed since the end of the Gulf War in 1991, and asserts its determination to ensure Iraq’s full compliance with these Resolutions. Iraq, it asserts, has been and remains “in material breach of its obligations under relevant resolutions ... in particular though [its] failure to cooperate with the United Nations inspectors and the IAEA”, and to disarm according to its obligations in UNSCR 687 (1991).¹⁴⁸ The text affords Iraq a final opportunity to comply with its disarmament obligations, sets out specific obligations which Iraq must now fulfil, and “Recalls ... that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations.” UN Security Council Resolution 1441 is discussed further in paragraphs 129-40 and 162-73 below.

118. The British Government played an extremely active role in the negotiation of Security Council Resolution 1441. The Foreign Secretary informed the House on 7 November that “Throughout these two months, my right hon. Friend the Prime Minister has spoken to President Bush and other Heads of Government at regular intervals. I have been in daily contact with the US Secretary of State, Colin Powell, and I have had detailed

¹⁴³ Dominique de Villepin, *Le Monde*, 1 October 2002.

¹⁴⁴ UN Security Council Resolution 1441 is reproduced in an Annex to this Report.

¹⁴⁵ UNMOVIC is responsible for verifying Iraqi disarmament in accordance with Security Council Resolutions adopted since 1991. Further details relating to the Commission’s work are provided at paras 121–28 below.

¹⁴⁶ Transcript of US Ambassador John Negroponte’s speech to the UN Security Council, 8 November 2002.

¹⁴⁷ Transcript of French Ambassador Jean-David Levitte’s speech to the UN Security Council, 8 November 2002.

¹⁴⁸ UNSCR 687 set out the terms of the cease-fire following Iraq’s withdrawal from Kuwait. The Resolution specifies that *inter alia* “Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of (a) All chemical and biological weapons and all stocks of agents and all related subsystems... (b) All ballistic missiles with a range greater than one hundred and fifty kilometres... Iraq shall unconditionally undertake not to use, develop, construct, or acquire [chemical and biological weapons and ballistic missiles with a range greater than 150km]... Iraq shall unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapon-usable material.”

discussions on numerous occasions with my French, Russian and Chinese counterparts and with Foreign Ministers of the elected 10 of the Security Council. Our UN ambassador, Sir Jeremy Greenstock, and his team have worked tirelessly in New York.”¹⁴⁹

119. We note the Church of England House of Bishops’ conclusion that “the very fact that Bush has sought UN authorisation is seen as a success in and of itself, and a slight redressing of the imbalance of political power within the Bush Administration in favour of the doves. If this is the case then this is in no small part due to the moderating influence exerted by the UK Prime Minister.”¹⁵⁰

120. We commend the Government’s decision to work closely with the United States, to produce a strong and unanimous Security Council Resolution establishing an unconstrained weapons inspections regime and demanding Iraq’s full disarmament of Weapons of Mass Destruction.

The enhanced UN weapons inspections regime

121. The UN Monitoring, Verification and Inspection Commission (UNMOVIC) must now find and eliminate the weapons of mass destruction programmes described in the three dossiers outlined above. The problems facing the inspectors are formidable, particularly in the sphere of biological weapons. Unlike chemical and nuclear weapons, biological weapons can be manufactured using relatively little equipment and basic facilities. In 1995, the United Nations Special Commission (UNSCOM), the earlier UN inspection regime, was ready to declare Iraq free of biological weapons until they received crucial information from a senior defector from the Iraqi regime—namely, Saddam Hussein’s son-in-law.¹⁵¹ We have heard during the course of our Inquiry that the Iraqi regime has probably developed highly mobile biological weapons manufacturing capabilities, which would make detection of the BW programme even more difficult than it was in 1995.¹⁵² The ‘cookery books’ detailing the methods for manufacture of such weapons, and the expertise of technicians, are both crucial for the development of biological weapons. These have not been destroyed or removed by the earlier UN inspections.

122. During our visit to the United States in October, we were concerned to hear from some of those with whom we met that the capability of UNMOVIC may now be less than that of the previous inspections regime, UNSCOM. Such views were also expressed by a panel of former UNSCOM inspectors, mainly from the United States, who assembled under the auspices of a Washington-based Wisconsin Project in June 2002. The Wisconsin Project panel drew a number of alarming conclusions, stating in its report that “UNMOVIC ... is not set up to use intelligence information effectively, and may therefore have difficulty receiving such information”, because—unlike UNSCOM—the new organisation’s structure precludes the receipt by individual inspectors of intelligence from national agencies. Because all UNMOVIC inspectors are required to share intelligence with their colleagues, “there will not be the same level of confidence that the information will be protected.”¹⁵³ The director of UNMOVIC, Hans Blix, has himself indicated the importance to his organisation’s effectiveness of information from satellite images and other national intelligence sources.¹⁵⁴

¹⁴⁹ HC Deb, 7 November 2002, col 431.

¹⁵⁰ Ev 88, para 33.

¹⁵¹ Q 51.

¹⁵² Q 72.

¹⁵³ Iraq Watch Roundtables, June 2002, available at: <http://www.iraqwatch.org>.

¹⁵⁴ See, for example, ‘Weapons inspector’, *BBC News*, 22 August 2002; ‘Hans Blix: Person of the week’, *Time*, 31 October 2002.

123. The Wisconsin Project panel also expressed concern that UNMOVIC may not have the personnel needed to defeat Iraqi concealment efforts. While UNSCOM became a “state-of-the-art operation at launching surprise inspections ... Most of the UNMOVIC inspectors have either limited or no experience in Iraq.” UNMOVIC are “a team of rookies going to bat against a world-class intelligence organisation highly practiced at foiling inspections.”¹⁵⁵

124. We asked Dr Samore about the likely effectiveness of UNMOVIC. He replied that the inspectors’ “greatest weakness right now is lack of expertise. That is something that they will have to develop, both in terms of drawing fresh recruits who have that expertise, from member governments that are prepared to make those people available, but also just time on the ground.” Dr Samore stated—in our view, very plausibly—that “it takes a while to learn the trade-craft necessary to carry out successful inspections against the Iraqi regime, which has a lot of practice fooling inspectors and hiding things. I think that over time they will gain that experience, but in the beginning it is likely to take them some time to learn how to handle it.”¹⁵⁶

125. Dr Chipman reminded us that UNSCOM was reliant on information provided to it by intelligence sources and from defector information. “UNMOVIC, if it were to re-enter Iraq, ... would depend essentially on the same two primary potential sources of information. The degree to which the United States and others might be willing to provide information to UNMOVIC to assist it in its work, and the degree to which there might still be available relevant and reliable defector information on which they could act, are two important points that would no doubt guide the inspectors.”¹⁵⁷ Dr Samore expressed the “hope that Western governments would provide [UNMOVIC] with the kind of intelligence information that would allow them to seek access to undeclared facilities, to individuals and to documents, which would put the Iraqis on the spot to either demonstrate co-operation or to fail to co-operate and therefore provide a clear *causus belli* for military action.”¹⁵⁸

126. Dr Samore also told us that “the principle of making it possible for the UN inspection agencies to interview Iraqi scientists in a way that will allow them to give free and accurate information is very important if we are going to ensure the best possible chances for the inspection organisations to be successful.”¹⁵⁹ He was not optimistic that the inspectors would be able rapidly to provide answers to the UN Security Council: “In terms of getting to the bottom of whatever amounts of chemical or biological weapons or missiles the Iraqi regime is hiding, I think that is very likely to take longer than thirty days.”¹⁶⁰

127. We asked the Foreign Secretary about his own perception of the problems inspectors now face. He replied that “A great deal of work here is going on to make sure that the skills and numbers of people available to the inspection regime are similar to if not greater than those available to UNSCOM, and also, in respect of the IAEA, the International Atomic Energy Agency will be conducting inspections alongside it. We are obviously aware of the need for high level human capability as well as other resources.”¹⁶¹ He also told us that he has “considerable confidence both in the IAEA and in UNMOVIC”¹⁶² The likelihood of the inspectors’ effectiveness has also been enhanced considerably by the “understanding amongst the P5 that if there are to be proper inspections they have to include the

¹⁵⁵ Iraq Watch Roundtables, June 2002, available at: <http://www.iraqwatch.org>.

¹⁵⁶ Q153–54.

¹⁵⁷ Q 51 [Dr Chipman].

¹⁵⁸ Q 59.

¹⁵⁹ Q 51 [Dr Samore].

¹⁶⁰ Q53.

¹⁶¹ Q 145.

¹⁶² Q 148.

presidential palaces”¹⁶³: under previous regimes, inspectors were excluded from Saddam Hussein’s ‘palaces’, some of which covered areas “the size of Blackpool.”¹⁶⁴

128. We conclude that the difficulties faced by UN weapons inspectors are formidable. We urge the Government to offer every assistance to facilitate the inspectors’ work, provided that such assistance does not compromise United Kingdom intelligence assets.

Possible military action to disarm Iraq

Under what circumstances would military action be legal?

129. On 7 December, Iraq submitted a declaration of its weapons programmes to UNMOVIC in Baghdad, as required by Security Council Resolution 1441.¹⁶⁵ The 12,000 page document and CD-ROMs were flown immediately to UN Headquarters in New York. The Security Council met on 8 December, and all its members except Syria agreed to grant its five permanent members (P5) full and uncensored access to the Iraqi declaration. This decision was taken because the P5 have sufficient technical expertise to assess the potential risks involved in releasing the documents to other UN member states.¹⁶⁶

130. The current President of the Security Council, Colombian Ambassador Alfonso Valdívieso, agreed to allow the unedited copy of the Iraqi declaration to be taken to Washington DC to ensure that it was copied in a secure environment.¹⁶⁷ This treatment of the Iraqi document by the United States prompted some expressions of concern by a number of non-permanent members, notably Syria.¹⁶⁸ The UN Secretary-General, Kofi Annan, said that although the decision to allow the US to take the document to Washington was ‘fine’, the US government’s ‘approach and style were wrong.’¹⁶⁹ The US subsequently forwarded full copies of the document to the other four members of the Security Council; non-permanent members will receive an edited version at a later date.

131. President Bush stated on the day of the Iraqi declaration that “We will judge the declaration’s honesty and completeness only after we have thoroughly examined it, and that will take some time. The declaration must be credible and accurate and complete, or the Iraqi dictator will have demonstrated to the world once again that he has chosen not to change his behaviour.”¹⁷⁰ On 8 December, the Foreign Secretary set out the procedures to be followed in response to the Iraqi declaration: “the initial reflections on the disclosure have to come from the [UN weapons] inspectors ... Whether there has been a material breach is ultimately a matter for members of the Security Council and indeed because the Security Council Resolution is silent on this, the international community at large ... there’s a very clear procedure set out in the Resolution 1441 that if either members of the Security Council or the inspectors believe that there has been some failure of Iraq’s obligations then

¹⁶³ Hans Blix and Mohamed al Baradei, heads of UNMOVIC and the International Atomic Energy Authority respectively, signed a memorandum of understanding with the Iraqi regime on 30 September 2002. The MOU “establishes special procedures for access to eight presidential sites” in Iraq.

¹⁶⁴ Q 140 [Foreign Secretary].

¹⁶⁵ The Resolution demands that Iraq submit, within 30 days of the adoption of the Resolution, a “currently accurate, full and complete declaration” of its programmes to develop weapons of mass destruction and the means to deliver them.

¹⁶⁶ See ‘Iraq hands over Declaration to UN’, *UN News Centre*, 7 December 2002, and ‘Iraq dossier under scrutiny’, *BBC news*, 9 December 2002, available at: http://news.bbc.co.uk/1/hi/world/middle_east.

¹⁶⁷ ‘US gives assurance on Iraq document’, *Washington Post*, 11 December 2002.

¹⁶⁸ ‘Queries over US co-operation with UN on Iraq dossier’, *Financial Times*, 11 December 2002, p 8.

¹⁶⁹ ‘Annan criticises handling of Iraq files’, *BBC news*, 11 December 2002, available at: http://news.bbc.co.uk/1/hi/world/middle_east/2564271.stm.

¹⁷⁰ ‘Radio address by the President to the Nation’, 7 December 2002, available at: <http://www.whitehouse.gov/news/releases>.

they have to make a report to the Security Council and the Security Council has to convene to consider the matter ... Dr Al-Baradei [head of the International Atomic Energy Authority] and Dr Blix [head of UNMOVIC] will themselves be making an initial report to the Security Council about their own initial findings with respect to disclosure pretty shortly.”¹⁷¹

132. UN inspectors, who are now operating inside the country, will make their first assessment of the extent of Iraq’s WMD programmes to the Security Council on 21 February. If weapons inspectors face obstruction before this date, however, the United States may well advocate military action. In November, the US administration claimed that Iraq had already committed further ‘material breaches’ of UN Security Council Resolutions including UNSCR 1441 by firing on US and British aircraft in the no-fly zones,¹⁷² through the UN Secretary General quickly refuted this assertion.¹⁷³

133. Before the adoption of UNSCR 1441, two possible legal justifications for such action were mooted. These arguments are likely to be revived if, for any reason, the United States judges that military action against Iraq is necessary.

134. The first argument relates to the disarmament of Iraq. Iraq has broken the post-Gulf War cease-fire, through its non-compliance with the terms specified in UN Security Council Resolution 687 and subsequent Resolutions. Military action could, according to this argument, be justified on the basis of Iraq’s non-compliance with these resolutions and its breach of the 1991 cease-fire.

135. The second legal argument is based on the right to self-defence against future aggressive actions by the Iraqi regime. The rationale underlying this argument is set out in the United States National Security Strategy, which states that “Given the goals of rogue states and terrorists, the United States can no longer solely rely on a reactive posture as we have in the past. The inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries choice of weapons, do not permit that option... To forestall and prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively.”¹⁷⁴ According to this argument, an attack on Iraq could be justified on the grounds of its illegal possession of weapons of mass destruction, combined with its previous use of weapons of mass destruction, and its history of enmity with the United States and its allies. These factors, it is argued, imply that the Iraqi regime represents a grave danger which must be removed *before* it commits further acts of aggression.

The disarmament argument: Iraq’s ‘material breach’ of post-Gulf War Security Council Resolutions

136. The validity of the first argument appears to have been reinforced by the unanimous adoption by the Security Council of Resolution 1441. This resolution states that—acting under Chapter VII of the UN Charter—the Security Council “Decides that Iraq has been and remains in material breach of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq’s failure to cooperate with United Nations inspectors and the IAEA, and to complete the actions required under paragraphs 8 to 13 of resolution 687 (1991).” Any “false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure by Iraq at any time to comply with, and

¹⁷¹ BBC Breakfast with Frost interview: Jack Straw MP, Foreign Secretary, 8 December 2002. Transcript available at: http://news.bbc.co.uk/1/hi/programmes/breakfast_with_frost.

¹⁷² See Whitehouse Press Briefing, 18 November 2002, available at: <http://www.whitehouse.gov/news/releases>.

¹⁷³ Kofi Annan stated that “I don’t think that the [Security] Council will say this is in contravention of the resolution of the Security Council.” See ‘Annan says Iraqi no-fly zone firing no violation’, Reuters, 19 November 2002.

¹⁷⁴ *National Security Strategy of the United States of America*, p 15.

cooperate fully in the implementation of, this resolution shall constitute a further material breach of Iraq's obligations." The Executive Chairman of UNMOVIC and the Director General of the IAEA must "report immediately to the Council any interference by Iraq with inspection activities, as well as any failure by Iraq to comply with its disarmament obligations." In the event of either of the two eventualities described above, the Security Council will reconvene "in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security." Iraq is reminded that "it will face serious consequences as a result of its continued violations of its obligations."

137. While Resolution 1441 does not authorise the automatic use of force in the event of further "material breaches" by Iraq, US Secretary of State Colin Powell has stated that "the United States retains its option to act if the Security Council doesn't act."¹⁷⁵ Secretary Powell has made clear that, although the Resolution specifies that the Security Council will reconvene in case of Iraqi non-compliance with its conditions, "if the Council is unable to agree on a second resolution, the United States believes, because of past material breaches, current material breaches, and new material breaches, there is more than enough authority for it to act with likeminded nations, if not with the entire Council supporting an all necessary means new resolution."¹⁷⁶

138. Professor Christopher Greenwood supports the United States' view. On 24 October, he argued that "the existing Security Council resolutions 678 and 687 remain in force. They require Iraq to take certain disarmament steps as a necessary means of restoring international peace and security in the area and Iraq has plainly not taken those steps. If the Security Council determines, maybe in another resolution or maybe by way of presidential statement or in some other form, that there is an on-going violation by Iraq, that that violation threatens international peace, and that peaceful means have failed to resolve the situation, then I do not think the Security Council needs to go further than that and actually adopt a new authorisation of military action. I think if those conditions are met it would be legitimate to rely on the existing authority in Resolution 678."¹⁷⁷

139. In contrast, Professor Brownlie argued on 24 October that "The situation we are dealing with now is very difficult to tuck under the umbrella of the former conflict between Iraq and Kuwait."¹⁷⁸ In his view, "if action is taken on the basis of 687 and the reimposition, if you like, of an effective cease-fire that, presumably, is limited by the needs of the case." Because it is "not clear that what is envisaged for Iraq ... it is not clear what the link would be between reimposing, as it were, demands of 687 and the long-term objectives of governing Iraq from the outside."¹⁷⁹ If, however, "there were a resolution which was more tailor-made and which had adequate contemporary support from the international community, both the law and the public relations would be better served."¹⁸⁰

140. It is not clear that the adoption of UNSCR 1441 meets all the concerns expressed by Professor Brownlie over United States policy towards Iraq. UNSCR 1441 does not legitimise "regime change." It does, however, provide a very strong endorsement of the United States' objective of Iraqi disarmament. Furthermore, the US President has stated that if Saddam Hussein were to rid Iraq of weapons of mass destruction, according to the

¹⁷⁵ Secretary Colin L. Powell, interview on *al-Jazeera* television, 8 November 2002, available at: <http://www.state.gov/secretary>.

¹⁷⁶ Secretary Colin L. Powell, interview on CNN's *Late Edition* with Wolf Blitzer, 10 November 2002, available at: <http://www.state.gov/secretary>.

¹⁷⁷ Q 89.

¹⁷⁸ Q 89.

¹⁷⁹ Q 92.

¹⁸⁰ Q 93.

demands of the United Nations, then this itself would signal that the Iraqi regime had changed.¹⁸¹

Pre-emptive self-defence

141. Though the United States now appears to be stressing that its policies towards Iraq are driven by the need for disarmament on the basis of existing Security Council resolutions, senior administration figures have also suggested that the United States has a right to change the Iraqi regime—or other threatening states—in self-defence. As we observed in paragraph 49 above, United States policy is now to “forestall or prevent ... hostile acts” by adversaries, because “in an age when the enemies of civilisation openly and actively seek the world’s most destructive technologies, the United States cannot remain idle while dangers gather.”¹⁸²

142. This assertion of the right to act pre-emptively to address *potential* rather than *imminent* security threats arguably constitutes a challenge to established international law governing the legitimate use of force by states, as set out in the Charter of the United Nations. The Charter states that “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.”¹⁸³ There are only two exceptions to this prohibition in the Charter. First, the Security Council may authorize the use of force if it does so explicitly through a resolution adopted under Chapter VII.¹⁸⁴ The second exception is the right to self-defence, which is set out in Article 51 of the Charter. Article 51 states that “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”¹⁸⁵

143. In addition to these two exceptions to the UN Charter’s prohibition on the use of force, a new principle of armed intervention for humanitarian purposes has been proposed by some international legal experts. This debate became particularly heated following NATO’s *Operation Allied Force*, which expelled the Yugoslav National Army from Kosovo in 1999.¹⁸⁶ *Operation Allied Force* was undertaken without prior authorisation by the Security Council, because the Russian Federation—a permanent member of the Security Council—opposed military action against the regime of Slobodan Milosevic.¹⁸⁷

144. We discussed the question of pre-emptive self-defence at some length during our evidence session on 24 October, first with respect to the case of Iraq, and then more generally.

¹⁸¹ See US Department of State Press Briefing, 22 October 2002, available at: <http://usinfo.state.gov/topical/pol/nato>.

¹⁸² The National Security Strategy of the United States of America, p 15.

¹⁸³ Article 2(4).

¹⁸⁴ Article 42.

¹⁸⁵ Charter of the United Nations (1945), Article 51.

¹⁸⁶ The debate over the legality of the use of force for humanitarian purposes was discussed at some length by our predecessor Foreign Affairs Committee, in its Report to the House on *Kosovo* in May 2000. See Foreign Affairs Committee, Fourth Report of Session 1999–2000, *Kosovo*, HC 28-i, paras 124–44.

¹⁸⁷ The Foreign Secretary brought up the question of the Kosovo intervention during the debate in the House on UN Security Council Resolution 1441. See para. 168 below and HC Deb, 25 November 2002, col 54.

Pre-emptive self-defence and the case of Iraq

145. In Professor Brownlie's view, the notion of defensive action—pre-emptive or otherwise—cannot usefully be applied to the case of Iraq under current circumstances. Professor Brownlie argues, on the basis of speeches and policy statements by President Bush and other “relevant statesmen,” that “What is envisaged is compulsory disarmament of Iraq, with a future reach of course, enforced by one or more member states of the United Nations, perhaps with or perhaps without the benefit of a Security Council resolution.” This is different from defensive action: “I do not see what is proposed as any form of pre-emptive attack; it is simply the imposition of a compulsory regime of disarmament. It is not only related to weapons which Iraq may now possess; it is directed to preventing Iraq producing weapons in the future.” The proposed action comprises the imposition of “a long-term regime,” rather than a defensive action. Professor Brownlie does not believe that such a regime would necessarily be illegal, but that “if you are going to consider the legality, or otherwise, of what is proposed you have to classify the situation accurately in the first place. I really do not see how the law relating to self-defence or anticipatory self-defence can be helpfully applied.”¹⁸⁸

146. Professor Greenwood agrees that “the right of anticipatory self-defence only applies where there is an imminent threat of an armed attack [so] it could not be used as the basis for some kind of longer term programme of disarmament.”¹⁸⁹ In his view, it is important to separate the question of disarmament of Iraq—as demanded by UN Security Council Resolutions—from questions of self-defence.

147. However, Professor Greenwood's views differ somewhat from those of Professor Brownlie over the interpretation of international law with respect to self-defence. Professor Greenwood argues that Article 51¹⁹⁰ “is a provision that has to be interpreted in the light not only of what went before and the intentions of the draftsman [of the United Nations Charter] but also in the way it has been interpreted by states since 1945 and in the light of common sense.”¹⁹¹ He quoted with approval the assessment of Judge Rosalyn Higgins, that “Common sense cannot require one to interpret an ambiguous provision in a text in a way that requires a state passively to accept its fate before it can defend itself.”¹⁹²

148. In assessing the limits of the right to self-defence, Professor Greenwood told us that “one has to take account of military developments since *Caroline*” (the 1837 case which is frequently cited as the classical definition of self-defence).¹⁹³ It is “necessary to take account of two factors which did not exist at the time of the *Caroline*. The first is the gravity of the threat; the threat posed by a nuclear weapon or a biological or chemical weapon used against a city is so horrific that it is in a different league from the threats posed by cross-border raids by men armed only with rifles (as in the *Caroline*). The second consideration is the method of delivery of the threat. It is far more difficult to determine the time scale within which a threat of attack by terrorist means, for example, would materialise than it is with threats posed by, for example, regular armoured forces.”¹⁹⁴

¹⁸⁸ Q 87.

¹⁸⁹ Q 88.

¹⁹⁰ See para 142 above.

¹⁹¹ Q 88.

¹⁹² Q 88

¹⁹³ The case of the *Caroline* is regarded as the classical definition of the right to self-defence in international law, and concerned action taken in 1837 by British forces in Canada against a US merchant vessel moored on the Great Lakes, which was being used by Canadian rebels and their American sympathisers as a base for attacks by the British in Canada. One of the British officers involved in the seizure was arrested by the United States, and threatened with prosecution for murder. In the subsequent negotiations, US Secretary of State, Daniel Webster, wrote to the British Government referring to its need to demonstrate that there was “a necessity of self-defence, instant, overwhelming, leaving no choice of means and no moment for deliberation.” See C Greenwood, ‘International law and the war against terrorism’, *International Affairs*, vol 78, No 2, April 2002.

¹⁹⁴ Ev 20, para 25.

149. These questions “would be material considerations in assessing whether Iraq posed an imminent threat to the United Kingdom or its allies.” In Professor Greenwood’s view, “If Iraq did pose such an immediate threat then, in my opinion, military action against Iraq for the purpose of dealing with that threat would be lawful.”¹⁹⁵ Professor Greenwood did not state, however, that Iraq currently does pose such a threat to the United States or the United Kingdom: responsibility for taking this kind of judgement lies with governments rather than lawyers.

150. In the Government’s view, the United States’ doctrine of pre-emptive self-defence has no bearing whatsoever on the legality of a possible war with Iraq. The Foreign Secretary told us on 25 September that “The issue of pre or post-emption in respect of Iraq, I do not quite see the relevance. The issue is that here you have a regime which is in clear breach of an endless number of Security Council Resolutions requiring them to do certain things under Chapter 7, the mandatory chapter of the United Nations Charter ... the question of pre-emption does not arise.”¹⁹⁶

Pre-emptive self-defence as a new development in international law

151. There is broad agreement that states have a right to act in self-defence if they perceive “a clear intention to attack ... accompanied by measures of implementation not involving crossing the boundary of the target state,”¹⁹⁷—for example, “where the aggressor state has made her intentions unequivocally clear, and its naval vessels or its missiles are on the way.”¹⁹⁸ In Professor Brownlie’s view, however, US policy on pre-emptive self-defence goes far beyond such situations. He argues that pre-emptive attacks “of the type envisioned in US policy statements would be in violation of the UN Charter” and hence illegal.¹⁹⁹

152. The United States is arguing that this area of international law must change, to enable states to address new security threats. As the National Security Strategy states, “Legal scholars and international jurists often conditioned the legitimacy of pre-emption on the existence of an imminent threat, most often and visible the mobilisation of armies, navies and air forces preparing to attack.” This is no longer adequate: “We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries.”²⁰⁰

153. The publication of the National Security Strategy elicited heated debate about the implications of this proposed change to established principles guiding the use of force. Where would the limits of such a doctrine be set? Would India cite the right of ‘pre-emptive self-defence’ in justification for military action against Pakistan? Could China use the doctrine to justify an invasion of Taiwan? After the establishment of such a doctrine, how could the United States and its allies credibly oppose a Russian invasion of Georgia? Citing such threats, the House of Bishops of the Church of England wrote to us that “Unless the US shows restraint, it will become increasingly hard to ask it of others.”²⁰¹

154. We conclude that should the US, British and other governments seek to justify military action against Iraq for example, on an expanded doctrine of ‘pre-emptive self-defence,’ there is a serious risk that this will be taken as legitimising the aggressive use of force by other, less law-abiding states.

¹⁹⁵ Ev 20, para 26.

¹⁹⁶ Q 31.

¹⁹⁷ Ev 22.

¹⁹⁸ Q 87.

¹⁹⁹ Ev 23, proposition 1.

²⁰⁰ *National Security Strategy of the United States of America*, September 2002, p 15. See www.whitehouse.gov/nsc/nss.pdf.

²⁰¹ Ev 86, para 24.

155. Professor Brownlie argues that any attempt to introduce a universal doctrine of pre-emptive self-defence should be resisted. It “would be much better not to invent some new umbrella of subjective action which would have a pseudo-legality which could be used on almost any occasion providing the acting state was powerful enough.” Instead, the United States and its allies should keep the existing legal boundaries in place, and—if military action against Iraq or other states were judged to be necessary—“be honest and say what we need to do and what we intend to do, and if that is enforcing the compulsory disarmament of a state, which has happened before—it happened after the Second World War, in some form at least—it is much better from the public order point of view to be clear about the objectives and not to disguise those objectives under some form of expanded self-defence.”²⁰²

156. In Professor Greenwood’s view, we have to “steer a course between, on the one hand, the rock of too loose a definition, which means that every state can use this as a licence for action and, on the other hand, the whirlpool of a definition which is so restrictive it does not fit the conditions of today.”²⁰³ As we point out in paragraphs 147-49 above, in Professor Greenwood’s opinion the notion of imminence does need to be reconsidered in the light of current threats, which are very different from those envisaged by those who drafted the United Nations Charter. Professor Greenwood sketched some considerations which might be brought to bear if a state were being considered a subject for ‘pre-emptive’ military action: “mere possession of a weapons capability is not sufficient; one has to have some indication of an intention to use that. Of course that indication can come in part from a state’s past record and the fact that a state has itself been involved in activity of this kind.”²⁰⁴ Furthermore, a sole state could not, in his view, legitimately take on the role of unilateral enforcer: instead, such decisions should be made collectively. In the case of Iraq, for example, “the Security Council on behalf of the international community” could authorise the use of force if it “determines that there is a continuing threat to international peace posed by Iraq’s violations.”²⁰⁵

157. Though the attacks of 11 September 2001 have prompted this recent focus on pre-emptive self-defence against attack by weapons of mass destruction, the issue is not new. The same question arose in June 1981, when Israeli armed forces attacked the Osirak nuclear plant in Iraq. This attack was condemned unanimously by the United Nations Security Council as unlawful. Sir Anthony Parsons, then British Ambassador to the UN, described the attack in the following terms: “It has been argued that the Israeli attack was an act of self-defence. But it was not a response to an armed attack on Israel by Iraq. There was no instant or overwhelming necessity for self-defence. Nor can it be justified as a forceful measure of self-protection. The Israeli intervention amounted to a use of force which cannot find a place in international law or in the Charter.”²⁰⁶ In this statement, Sir Anthony Parsons states implicitly that although the Israeli attack was not legal, states do have a right to take ‘forceful measures of self-protection.’ This appears to substantiate Professor Greenwood’s claim that, on this occasion, the Security Council—including, of course, the United Kingdom—condemned the Israeli attack on Osirak “not on the ground that there was no right of anticipatory self-defence but rather on the ground that the risk was too distant, too far in the future.”²⁰⁷

158. Australia has been hit hard by terrorist action: most of the victims of the Bali attack were Australian citizens. The Australian prime minister, John Howard, has stated that he would employ military force to pre-empt possible terrorist attacks which might be launched

²⁰² Q 95.

²⁰³ Q 96.

²⁰⁴ Q 96.

²⁰⁵ Q 101.

²⁰⁶ Ev 78.

²⁰⁷ Q 86.

from neighbouring countries. On 1 December, he said in a television interview that “It stands to reason that if you believe that somebody was going to launch an attack on your country, either of a conventional kind or a terrorist kind, and you had a capacity to stop it and there was no alternative other than to use that capacity, then of course you would have to use it.”²⁰⁸ Australia’s neighbours Indonesia, Malaysia, the Philippines and Thailand reacted angrily; Malaysia’s prime minister, Mahathir Mohammed, said that if Australia “used rockets or pilotless aircraft to carry out an assassination, then we will consider this an act of war and we will take action according to our laws to protect the sovereignty and independence of our country.”²⁰⁹

159. In our Seventh Report, we asked the Government to set out its views as to the circumstances in which a pre-emptive military strike would be legally justified.²¹⁰ The Government replied that it would regard the use of force against any state as lawful “if it had been authorised by the United Nations Security Council, or were in exercise of the inherent right of individual or collective self-defence, or, exceptionally, were carried out to avert an overwhelming humanitarian catastrophe.”²¹¹ The Foreign Secretary appears to accept the principle of pre-emption, as set out in the National Security Strategy of the United States. He told us on 25 September that “If any nation feels that it is threatened in a direct way then under Article 51 it has an inherent right to take action pre-emptively.”²¹² The Prime Minister has also asserted that “The one thing we have learned post-11 September is that to take action in respect of a threat that is coming may be more sensible than to wait for the threat to materialise and then to take action.”²¹³

160. We recommend that, in its response to this Report, the Government set out in detail the thinking behind its policy on the pre-emptive use of military force, and whether this policy has been reviewed following the publication of the United States National Security Strategy in September 2002.

161. The United States National Security Strategy states that “We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries.”²¹⁴ **We conclude that the notion of ‘imminence’ should be reconsidered in light of new threats to international peace and security—regardless of whether the doctrine of pre-emptive self-defence is a distinctively new legal development. We recommend that the Government work to establish a clear international consensus on the circumstances in which military action may be taken by states on a pre-emptive basis.**

The decision to take military action

162. We hope that the Iraqi regime now understands that its only hope of avoiding war is the removal and destruction of all its weapons of mass destruction facilities and programmes. The unanimous adoption by the UN Security Council of Resolution 1441, the US Government’s rhetoric throughout the year, and the current US military build up in the Gulf region should certainly have conveyed an unambiguous message to the Iraqi dictator of the seriousness of the international community’s intent.

163. The Foreign Secretary assured us in late October that “All the evidence is that [Saddam Hussein] does understand when there is a clear threat of force.” President Bush’s robust words at the UN on 12 September prompted a reversal of the Iraqi regime’s policy,

²⁰⁸ ‘Australia supports pre-emptive strikes’, *The Guardian*, 2 December 2002.

²⁰⁹ ‘Australia’s new “hairy chested” attitude riles its east Asian neighbours’, *The Guardian*, 4 December 2002.

²¹⁰ HC (2001–02) 384, para 224.

²¹¹ Foreign and Commonwealth Office, August 2002, p 13, and HC (2001–02) 384, Ev 99.

²¹² Q 32.

²¹³ House of Commons Liaison Committee, Session 2001–02, evidence presented by the Rt Hon Tony Blair MP, Prime Minister, HC 1095, Q 93.

²¹⁴ *National Security Strategy of the United States of America*, September 2002, p 15.

and permitted the return of UN weapons inspectors. In the Foreign Secretary's view, this policy reversal arose because the Iraqis "had suddenly digested the fact that the international community was getting extremely impatient with the excuses, lies and prevarication from the Iraqi regime and that there had to be the beginnings of compliance." The Iraqi regime does react when it is subjected to an unambiguous threat of force. In the Foreign Secretary's view, the regime also understands that that threat is now a genuine one, and they know the consequences of failing to comply with the Security Council's demands: "Have they been told about the consequences? Yes. I know that. I have had it from people who have spoken to them."²¹⁵

164. Despite this reassurance, it remains possible that Saddam Hussein will refuse to comply with the demands of the UN Security Council, set out in Resolution 1441—indeed, in a letter to the UN Secretary-General of 23 November, the Iraqi foreign minister Naji Sabri disputed the content of the resolution, arguing that paragraph 10 of the resolution "aims at destroying co-operation between Iraq and UNMOVIC and IAEA and gives some countries pretexts to interfere in their work."²¹⁶

165. Saddam Hussein has miscalculated before. The Iraqi regime is likely to prevaricate, delay, and attempt to hide documentation and facilities from the UN weapons inspectors. Some members of the Security Council may be more tolerant of such behaviour than the United States. Clearly Saddam Hussein will strive to promote divisions in the Security Council. The United States recognises this; it has already stated that "if the Council is unable to agree on a second resolution, the United States believes ... there is more than enough authority for it to act with likeminded nations, if not with the entire Council supporting an all necessary means new resolution."^{217 218}

166. In the Foreign Secretary's view, if the Iraqi government commits a further 'material breach' of relevant UN Security Council Resolutions—for example, "action ... seriously to obstruct or to impede the inspectors, to intimidate witnesses, or a pattern of behaviour ... that shows Iraq's intention not to comply"—then "action will follow." The "preference of the Government in the event of any material breach is that there should be a second Security Council Resolution authorising military action,"²¹⁹ and the Foreign Secretary has indicated that the United Kingdom would move such a resolution.²²⁰ However, the United Kingdom "must reserve [its] position in the event that [the Security Council] does not [adopt a further resolution]. That is the reason why the language of 'serious consequences' is used in paragraph 13 in the event of [Saddam Hussein's] non-compliance."^{221 222}

²¹⁵ Q 150.

²¹⁶ Letter dated 23 November 2002 from the Minister of Foreign Affairs of Iraq addressed to the Secretary-General, distributed to the UN Security Council on 25 November 2002 (document S/2002/1294), available at: <http://www.un.dk/doc/S.2002.1294.pdf>.

²¹⁷ Secretary Colin L Powell, interview on CNN's *Late Edition* with Wolf Blitzer, 10 November 2002, available at: <http://www.state.gov/secretary/rm>.

²¹⁸ We note with interest that on 19 November, the Campaign for Nuclear Disarmament wrote to the Prime Minister and the Secretary of State for Defence, Geoff Hoon warning that the Government would face a legal challenge by CND unless, within seven days, it supplied a written assurance that it would take no further military action against Iraq without a further Security Council Resolution. The legal challenge would be based on a legal opinion, obtained from Rabinder Singh QC and Charlotte Kilroy, both of Matrix Chambers. The opinion was summarised: "(1) Security Council Resolution 1441 does not authorise the use of force by member states of the UN; and (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." The full text of the legal opinion is available at: <http://www.cnduk.org/briefing/opinion.htm>.

²¹⁹ HC Deb, 25 November 2002, col 51–53.

²²⁰ HC Deb, 25 November 2002, col 54.

²²¹ HC Deb, 25 November 2002, col 51–53.

²²² On 10 December, the *Financial Times* reported comments by the Prime Minister indicating that a further UN Security Council Resolution, while desirable, would not be necessary. The United Kingdom and the United States were prepared to go down the UN route, but if Saddam Hussein did the wrong thing "we are not going to walk away from it." *Financial Times*, 10 December 2002.

167. In the debate in the House on UNSCR 1441, the Foreign Secretary pointed out that “No draft resolution proposing that there could be military action only if there were a further Security Council resolution was either tabled before the Security Council—it could easily have been—or voted on.”²²³ This suggests that, in his view, no Security Council member had attempted to prohibit the use of force to disarm Iraq without an “all necessary means” resolution.

168. In the same debate, the Foreign Secretary cited the example of *Operation Allied Force* in Kosovo, which, he argued, demonstrated that military action could legitimately be taken without prior authorisation by the Security Council, or under the other circumstances specified in the United Nations Charter.²²⁴ In the case of Kosovo, the “judgement was that international community could take action, and that has never been challenged... had we not [reserved the right to use force] in 1999, no military action against Milosevic would have been possible in respect of Kosovo, and that tyrannical dictator would still be ruining the lives of millions of people in the Balkans.”²²⁵

169. The Foreign Secretary further argued that whether or not a new Security Council resolution were obtained, enforcement of UNSCR 1441 was necessary “to sustain the authority of the United Nations.”²²⁶

170. We commend the Government’s decision, in its efforts to address the threat from the Iraqi regime, to focus on Iraq’s persistent violation of UN Security Council Resolutions. We conclude that unless new evidence emerges that Iraq poses an imminent threat to the security of the United Kingdom, any military action against Iraq should be taken on the basis of Iraq’s violation of successive Security Council Resolutions, culminating to date in UNSCR 1441.

171. We conclude that Iraq must not be permitted to continue to defy the authority of the United Nations. The unanimous adoption by the UN Security Council of Resolution 1441 has made the obligation on the Iraqi regime to disarm absolutely clear, and has given the regime a final opportunity to comply with successive UN Security Council resolutions.

172. We further conclude that UN Security Council Resolution 1441 would not provide unambiguous authorisation for military action, were Iraq to fail to comply with its provisions. We therefore recommend that, in the case of Iraq’s violation of Resolution 1441, the Government do its utmost to ensure the adoption of a further Security Council resolution authorising the use of “all necessary means” to enforce Iraqi disarmament.

173. We recommend that the Government clarify, in its response to this Report, whether it believes that a further United Nations Security Council Resolution is legally necessary before military action is taken against Iraq.

²²³ HC Deb, 25 November 2002, col 58.

²²⁴ See para. 142 above.

²²⁵ HC Deb, 25 November 2002, col 54.

²²⁶ HC Deb, 25 November 2002, col 58.

MILITARY ACTION AGAINST IRAQ

174. President Bush has argued that the United States must remove the Iraqi regime, because “The situation could hardly get worse, for world security and for the people of Iraq.”²²⁷ Vice President Cheney has asserted that “The risks of inaction are far greater than the risk of action.”²²⁸ We have some sympathy with these views: as we conclude above,²²⁹ failure to address the threat from Iraq’s weapons of mass destruction could pose very high risks to the security of British interests in the Middle East and the Gulf region.

175. The threat posed by Saddam Hussein’s regime must, however, must be weighed carefully against substantial evidence suggesting that a war against Iraq could damage international efforts to counter terrorism, and could severely destabilise the Middle East and the Gulf region. Sir Harold Walker spelled out the uncertainties: “the level of resistance in Iraq, the level of casualties we will have to take, the form of a new regime, how do you introduce a new regime, what will be the effect on oil, what will be the economic cost, what will be the effect on the world economy.” Sir Harold Walker also emphasised the importance of considering these factors, because “you are contemplating sending young men and young women to die and it is not right that they should go if the situation is very uncertain... All these uncertainties are not an ultimate reason for putting war out of the window, but they are a reason for saying it should be a last resort and not a first resort.”²³⁰ Despite the United States’ massive military capabilities, “It should not be thought that the military victory will be a walkover, although undoubtedly it can be won.”²³¹

176. Clearly there are many risks and uncertainties in military action, particularly against a regime as unpredictable and ruthless as that of Saddam Hussein. If the case has been made, however, these uncertainties should not be an excuse for refusing to take military action as a last resort.

The conduct and possible consequences of war against Iraq

Urban warfare

177. We were warned of a “real danger of street fighting in Iraqi cities and the likelihood of heavy casualties”²³² in the event of war with Iraq. As speculation intensified during August and September about possible US military action to remove Saddam Hussein, US intelligence services reportedly received evidence that the Iraqi regime was planning to concentrate troops in urban centres.²³³ Iraq would have no chance of overcoming superior US air power, and its battle tanks would be vulnerable to US air strikes. However, it has more than 400,000 active troops, and perhaps a similar number in reserve. By concentrating troops in the cities, Iraq could force the US and its allies to attack major centres of population. Such a tactic could significantly increase the risk of both civilian and US (or allied) military casualties.

178. There are doubts about the loyalty of the army to the regime. There are fewer doubts about the loyalty of the Republican Guard and the Special Republican Guard.

²²⁷ Remarks by the President on Iraq, Cincinnati Museum Center, Ohio, 7 October 2002. Available at: <http://www.whitehouse.gov/news/releases/2002>.

²²⁸ Vice President Dick Cheney addresses Veterans of Foreign Wars 103rd National Convention, 26 August 2002, available at: <http://www.whitehouse.gov/news/releases/2002/08>.

²²⁹ See para 108 above.

²³⁰ Q 116.

²³¹ Q 118.

²³² Q 116.

²³³ See, for example, ‘Iraq plans urban warfare to thwart US’, *The Guardian*, 9 August 2002, available at: <http://www.guardian.co.uk>.

Significantly, only two out of the seven divisions of the Republican Guard were committed in the Gulf War.²³⁴

Iraq's use of weapons of mass destruction

179. Lord Wright estimates that a “war with Iraq could substantially increase “the risk of Saddam at last being provoked to use the weapons of mass destruction that he is believed to possess.”²³⁵ Dr Chipman voiced similar concerns, arguing that “if the United States with some allies were intent on overthrowing Saddam Hussein’s regime, it would really be imprudent to rule out the possible use of some weapons of mass destruction. Forces operating in theatre would need to operate on the presumption that some biological or chemical weapons might be used, and that, equally, neighbouring states would need to be prepared for the possible launch of a ballistic missile on their territory.”²³⁶ The consequences of a chemical or biological attack on civilian populations in the area could be devastating.

180. Israel, the United States’ major ally in the region, is perhaps the country most likely to be subjected to Iraqi attack—although, as the Foreign Secretary pointed out, “Iraq has not only attacked Israel in the past but it has used missiles against four other of its neighbours. Saudi Arabia, Iran, Kuwait and Turkey have all had missile attacks... in the last two decades.”²³⁷ The Foreign Secretary also told us that Iraqi missiles are also able to reach British Sovereign Bases on Cyprus.²³⁸

181. Dr Chipman told us that there are “obviously contingency preparations for a possible use of a ballistic missile conventionally armed, or perhaps tipped with chemical or biological weapons” against Israel.²³⁹ Such plans include mass inoculations of Israeli civilians,²⁴⁰ and Israel’s development of a missile defence system, ‘Arrow.’ Another protective strategy mentioned to us in Washington was the United States’ public warning that any Iraqi official responsible for releasing weapons of mass destruction would be prosecuted for war crimes.²⁴¹ Dr Chipman felt that this would have some impact: “it is not necessarily the case that an order given by Saddam Hussein to launch chemical or biological weapons would be followed by commanders in the field if those same commanders felt that there would be reprisals personally against them by the inevitably victorious power once the military operation is ended. One can imagine a dialogue whereby Saddam Hussein instructs a field commander to use weapons of mass destruction and the field commander radios back after thirty minutes, saying, ‘I fear I am having some technical difficulties’.”²⁴² However, Dr Chipman “would find it strange if all risk of using WMD could be eliminated” in this way.²⁴³

182. A missile attack by Iraq on its regional neighbours could result in dangerous escalation of the conflict in the region, as well as civilian casualties. In 1991, during the Gulf War, Saddam Hussein fired thirty nine Scud missiles into Israel. Then, the Prime

²³⁴ See, for example ‘US planners see a weaker Iraqi leader’, *Boston Globe*, 31 July 2002; ‘The Iraqi Forces: large, but troubled’, Center for Defense Information, 26 April 2002, available at: <http://www.cdi.org/terrorism/iraqi-forces-pr.cfm>.

²³⁵ Q 116 [Lord Wright of Richmond].

²³⁶ Q 58.

²³⁷ Q 34.

²³⁸ Q 33.

²³⁹ Q 58.

²⁴⁰ In August 2002, the Israeli government issued smallpox vaccinations to 15,000 health and security officials, expanding an inoculation programme in case of Iraqi biological attack. See ‘Israel widens smallpox vaccinations’, *Associated Press* report, 21 August 2002.

²⁴¹ Pierre Richard Prosper, US Ambassador at Large for War Crimes, has said that Saddam Hussein would be “suspect number one brought before a court, any court.” A US State Department group is developing plans for a system of transitional justice, including criminal prosecution of members of the current Iraqi regime. See ‘US would seek to try Hussein for war crimes,’ *Washington Post*, 30 October 2002.

²⁴² Q 58.

²⁴³ Q 58.

Minister of Israel, Yitzhak Shamir, refused to retaliate. According to press reports, the current Prime Minister of Israel, Ariel Sharon, has made it clear that should Israel be attacked again during another war against Iraq, he would strike back against Iraq.²⁴⁴ If Iraqi missiles did not hit major population centres, the Israeli response might be less robust than if an Iraqi attack were to result in major civilian or military casualties.

183. We asked the Foreign Secretary whether he had discussed this possibility with his Israeli counterpart. He replied that personally he had not; but “of course” the Government was “looking at possible consequences of military action in the region.”²⁴⁵ Though he was reluctant to speculate about the appropriate Israeli response to such an attack, he reminded us that “Every country has a right to act in self-defence under Article Fifty One of the United Nations Charter.”²⁴⁶

Iraq after Saddam Hussein

184. The US administration is optimistic about the prospects for the Middle East and Gulf region following the removal of Saddam Hussein’s regime. Vice President Dick Cheney has asserted that “Regime change in Iraq would bring about a number of benefits to the region. When the gravest of threats are eliminated, the freedom-loving peoples of the region will have a chance to promote the values that can bring lasting peace ... Extremists in the region would have to rethink their strategy of Jihad. Moderates throughout the region would take heart. And our ability to advance the Israeli-Palestinian peace process would be enhanced, just as it was following the liberation of Kuwait in 1991.”²⁴⁷

185. Governing post-conflict situations is fraught with difficulties, however. The establishment of the rule of law—let alone the creation of democratic governance structures—presents major challenges.²⁴⁸ Paul Wolfowitz, US Deputy Secretary of State for Defense, pointed out recently that “No one should be under the illusions that you can create the kind of peacekeeping force for Afghanistan that has worked I would say remarkably well in Bosnia and in Kosovo. Those are very small places where once the fighting was over the remaining law and order problems were relatively minor.”²⁴⁹ The chances of the country fragmenting are, in the views of those with whom we met in Washington, quite small. Nonetheless, keeping the peace in Iraq is unlikely to be very much easier than it is in Afghanistan. A transitional authority to govern post-conflict Iraq would almost certainly require substantial international involvement for some years, to keep the peace, establish the rule of law, assist in the development of representative political structures and create the conditions under which the Iraqi people could benefit from the country’s economic recovery.

²⁴⁴ “Prime Minister Ariel Sharon has informed the Bush administration that he plans to strike back if Iraq attacks Israel, according to Israeli and Western officials. Mr. Sharon’s statements, made privately to senior American officials in recent weeks, represent a major shift in Israeli thinking since the 1991 Persian Gulf war, when 39 Iraqi Scud missiles struck without any Israeli response.” *New York Times*, 22 September 2002.

²⁴⁵ Q 172.

²⁴⁶ Q 172.

²⁴⁷ Vice President Dick Cheney addresses Veterans of Foreign Wars 103rd National Convention, 26 August 2002, available at: <http://www.whitehouse.gov/news/releases/2002>.

²⁴⁸ A number of multilateral peace operations were established during the past decade with the purpose of restoring political and economic stability and establishing democratic structures of governance in war-affected societies. While elections were held under international supervision from Cambodia and Haiti to Bosnia and Kosovo, few of these places can yet be considered genuinely democratic. In Bosnia and Herzegovina, the Office of the High Representative retains—and continues to use—significant powers over elected Bosnian authorities, although over six years have passed since the first elections were held since the Dayton Accords. In Kosovo, thousands of international staff from organisations such as the UN, the EU and the Organisation for Security and Co-operation in Europe continue to wield significant power over the administration of this small province of two million people. The resolution of issues such as property ownership and criminal justice remain deeply problematic throughout the former Yugoslavia, and international involvement in matters such as these looks likely to persist for years to come.

²⁴⁹ Paul Wolfowitz, interview with Associated Press, 10 September 2002.

186. Our witnesses were not optimistic about the effects of a war in Iraq on the country itself, nor did they appear to believe that it would benefit the wider region. Dr Charles Tripp of the School of Oriental and African Studies raised a number of concerns: "The idea that the current regime in Baghdad can only be overthrown by a US-led military invasion is a testimony to the weakness of those Iraqi forces opposed to the current regime," and, presumably, an indication of how difficult it might be to establish a cohesive government after the overthrow of Saddam Hussein. In Dr Tripp's view, bringing new values into Iraqi public life would be difficult, because of the "absence of Iraqi allies with sufficient clout and determination to carry such a project through. None of the present Iraqi opposition forces is suited to this role."²⁵⁰ Dr Tripp contends that "virtually all" of Iraq's major political players adhere to the rules of a "distinctively Iraqi political game ... hostility of those threatened by the abandonment of the old rules could lead to formidable resistance... transparency, accountability and the idea of truly public service would carry the threat that accumulated privileges would be stripped from them and their patrons."²⁵¹

187. The consequences of the prevailing political climate might be that "the occupying power may find itself with allies in Baghdad who are no more than clients. Ironically, the occupying power would have been manoeuvred into playing a role which would be functionally not far removed from that of the present regime in Iraq. It would be the patron, armed with overwhelming coercive force and financial resources, which would be relying on its subordinates to deliver social order in Iraq."²⁵² We note that a successor regime would, however, be able to build prosperity in the country on the basis of the oil resources and finance that would consequently be made available.

188. Lord Wright shares Dr Tripp's apparent scepticism about Iraq developing into a 'beacon for democracy' in the Arab world. "It may be an admirable aim; but I am blown if I know how the United States is going to achieve that by occupying Iraq."²⁵³ In Lord Wright's view, the United States has not explained how they "expect to settle Iraq, as they say, as a democratic country as a result of a military operation. I think the perception in the Middle East of what the Americans, and with Security Council authority what the Americans and the rest of us are going to do, depends very much on what the objective is and how clearly that objective is set out."²⁵⁴

189. The Government has had some limited contact with Iraqi opposition groups. The Foreign Secretary told us, however, that "To say we are working with exiled groups would give a wrong impression. There have I think been talks at official level with the Iraqi opposition groups which are based here, which received information about their views, but to suggest that we are working with them would be over-egging the situation."²⁵⁵ The FCO had no involvement in the meeting of Iraqi opposition that was held on 14–15 December in London and which, according to press reports, was preceded by "squabbling" between Iraqi groups about whom should attend.²⁵⁶

190. The Foreign Secretary has also discussed with Iraq's regional neighbours the possibility of Iraq's fragmentation. He reassured us that "There is a wide measure of agreement by most of Saddam's neighbours about what needs to be done, including, post-disarmament of Iraq, for Iraq's territorial integrity to be maintained ... I think that there is such a common interest among the states bordering Iraq that first of all it is improbable that any of Iraq's neighbours would take any action to destabilise and fragment Iraq and,

²⁵⁰ Ev 98, para 9.

²⁵¹ Ev 98, para 10.

²⁵² Ev 99, para 14.

²⁵³ Q 114.

²⁵⁴ Q 113.

²⁵⁵ Q 173.

²⁵⁶ See, for example, 'Iraqi opposition row puts London meeting in doubt', Reuters, 20 November 2002, available at: <http://www.alertnet.org/thenews/newsdesk>.

secondly, that it has developed in the last 80 years as a single entity, albeit with these three distinct groups, the Kurds, the Shi-ites and the Sunnis, that with proper support to a successor regime its territorial integrity would be enhanced.”²⁵⁷

191. We are reassured by the Foreign Secretary’s comments. Nonetheless, **we conclude that the establishment of the rule of law and functioning representative government in Iraq after a war would pose formidable challenges. We recommend that the Government examine carefully the possible models for post-conflict reconstruction in Iraq, including a United Nations transitional authority. We recommend that, in its considerations, the Government bear in mind the necessity for country-wide peacekeeping, civil policing, transitional justice, and representation of all groups in Iraqi society.**

Instability in the Arab and broader Islamic world

192. In our Seventh Report, we argued that “For the war against terrorism to succeed in the long run, many of the new allies must address internal problems affecting their economies and societies.” We cited evidence suggesting that a dangerously high level of popular discontentment in many Arab countries contributed to the growth of anti-Western groups such as al Qaeda. According to Dr Rosemary Hollis, the relative quiet of the “Arab street” in the war against terrorism was a sign of political repression: “all forms of assembly in almost every Arab country are forbidden, so to assemble and demonstrate ... is very difficult to do.”²⁵⁸ As a consequence of the absence of political liberties, dissent is focused in the mosque or through the Internet. Dr Hollis argued that al Qaeda activism and terrorism should be interpreted as “an expression that ultimately emanates from the Arab street.”²⁵⁹

193. A US-led war with Iraq could have a substantial impact on already tense and unstable societies in the Arab and Islamic world. Sir Harold Walker told us that “Arab leaders have used pretty powerful language in forecasting disaster” in the event of a war. Sir Harold had noted Egyptian President Mubarak’s comment of 27 August that “If you strike Iraq ... while Palestinians are being killed by Israel ... not one Arab leader will be able to control the angry outburst of the masses.” He also reminded us that “The Omani foreign minister talked of plunging the world into chaos. In public at least some responsible Arab leaders see a very bad situation.”²⁶⁰ In Sir Harold’s own view, the “only place I would really worry about would be Jordan, depending on what the King was perceived to have done in helping an American assault.”²⁶¹

194. Lord Wright felt that public reactions to a war with Iraq would depend substantially on the length of the campaign: “if it is a quick, clean action—and I have no idea how that can be achieved—then I believe that the regional response can probably be held under control.” However, a longer campaign could give rise to “a serious danger of real problems on the streets of the Middle East and perhaps more widely”²⁶² including, we add, Western Europe.

195. War in Iraq would make the battle against al Qaeda even more difficult. Steven Simon, who is a former Senior Director for Transnational Threats in the US National Security Council, wrote to us that any war with Iraq would “be seen by many Muslims, especially militants, as evidence of the systematic conquest of the Muslim world that al-

²⁵⁷ Q 174.

²⁵⁸ HC (2001–02) 384, Q 150[Rosemary Hollis].

²⁵⁹ HC (2001–02) 384, paras 163–166.

²⁶⁰ Q 116.

²⁶¹ Q 116.

²⁶² Q 114.

Qaeda theoreticians—and many others—allege is taking place.”²⁶³ Sir Harold Walker agreed that people in the Arab world would likely see a US-led war against Iraq as “wrongly, as one of a series of American assaults on Muslim people, forgetting that the Americans have helped Muslim people in, for example, Kosovo.”²⁶⁴

196. War could increase the likelihood of al Qaeda attacks in the short run, and might also increase the pool of al Qaeda recruits. Mr Simon judges that war with Iraq would “spur a surge in attacks against US, UK and French assets” in the Middle East and Gulf region, “as well as opportunistic attacks against Westerners elsewhere. British diplomatic missions abroad will be at risk as well as areas or sites frequented by British tourists, who are perceived by the militants as defying local mores and tempting local Muslims to transgress religious laws. Businesses that are believed to be British may also become targets of spontaneous violence as well as terrorist attack. British military personnel will also be subject to risks on par with the one they faced at the height of violence in Northern Ireland.”²⁶⁵

197. If the war were prolonged, Steven Simon estimates that—as a consequence of the perception that the United States is attacking the Islamic world—the pool of al Qaeda recruits would increase, “not only in remote areas, but within the UK and Europe.” Mr Simon points out that recruitment by al Qaeda has been quite vigorous in the 1990s. A “war against Iraq will generate an increase in conversions from either moderate to more radical Islam practice, or from Christianity to Islam in local mosques and within HM prisons.”²⁶⁶ This could lead to an increase in the threat of terrorism inside Britain.

198. The Foreign Secretary seems surprisingly unconcerned by the potential threats discussed above. He accepts that “there will be international terrorist organisations, particularly Islamic terrorist organisations who claim Islam to themselves which seek to exploit any situation where military action is taken against an Islamic country ... they sought to exploit ... military action being taken against the Taliban in Afghanistan in order to free a Muslim country, as they did military action taken to free another Muslim country, Kuwait, in 1991 and to free Muslims in Kosovo in 1998.” However, Mr Straw is confident that “If [military action] is justified, we will be able to justify it”²⁶⁷ to critics in the Islamic world.

199. To substantiate this level of confidence, Mr Straw explained that he has a “very, very large Muslim population myself in my own constituency. I remember the anxieties of people over Kosovo and even more so in respect of Afghanistan ... What I also say to my Muslim friends is look at the record of Saddam Hussein.”²⁶⁸ Mr Straw also told us about initiatives such as the FCO Islamic Media Unit, and the high level of Arabist expertise in the FCO, both of which should, in his view, help to ensure that the Government’s message in the Islamic world is communicated effectively.

200. We do not share Mr Straw’s confidence that, in the event of military action against Iraq, the United States and the United Kingdom would be able to justify such action to the satisfaction of the ‘Arab street.’ The Foreign Secretary has presented a case for robust action to enforce Iraqi disarmament which seems reasonable enough to many British citizens, but which will likely appear less so to disaffected young people in Egypt, Yemen or Saudi Arabia—especially if, as is likely, images of Iraqi civilian casualties are broadcast by the *al Jazeera* television station and other pan-Arab news services. **We recommend that the Government treat seriously the possibility that a war with Iraq could trigger**

²⁶³ Ev 10, para 5b.

²⁶⁴ Q 116.

²⁶⁵ Ev 11, para 5b.

²⁶⁶ Ev 10, para 5b.

²⁶⁷ Q 179.

²⁶⁸ Q 179.

instability in the Arab and Islamic world, and could increase the pool of recruits for al Qaeda and associated terrorist organisations there and in Western Europe.

TAKING FORWARD THE WAR AGAINST TERRORISM

Development in the Arab World

201. In our Seventh Report, we recommended that the Government “consider carefully how to help allies in the Islamic world to address the social, economic and political conditions that have led to the growth of Islamic extremism among their populations.”²⁶⁹ These conditions have been detailed recently by the authors of the United Nations Development Programme *Arab Human Development Report*, which was published earlier this year. The *Report*, which was written by prominent Arab intellectuals, is clearly being examined carefully on both sides of the Atlantic: it was recommended to us by both the Foreign Secretary and senior officials in the US administration.²⁷⁰ It was also discussed by US Secretary of State Colin Powell in his speech launching the US-Middle East Partnership Initiative—the US Government’s new effort to support peoples and governments in the Middle East to meet “challenging and pressing human needs.”²⁷¹

202. The *Arab Human Development Report* focuses substantially on the need for good governance and economic development in the Arab world. It highlights a number of alarming trends in the region, which inhibit both these goods: ten million children between the age of 6 and 15 years are currently out of school; and “if current trends persist, this number will increase by 40 per cent by 2015.”²⁷² There is a serious and growing “under-supply of knowledgeable people, a problem exacerbated by the low quality of education together with the lack of mechanisms to intellectual capital development and use.”²⁷³ Arab countries access to and use of technology—especially communications technology—is detailed in the *Report*: only 0.6 per cent of the population uses the Internet and personal computers. Investment in research and development in the region is very low.

203. The region’s economic problems are very evident: at around 15 per cent, average unemployment in Arab countries is among the highest in the developing world.²⁷⁴ People lack both the skills and the capital to enhance their economic and development opportunities. While the state sector is downsizing, formal credit is often available only to those who are better off.

204. Demographic trends in the Arab world suggest that this unemployment rate may well grow, as the region’s young people reach working age. Currently the age structure of the population is significantly younger than the global average, with 38 per cent of the population under the age of fifteen.²⁷⁵ Although fertility rates have declined recently in many Arab countries, they are still high by international standards. The populations of Mauritania, the Occupied Palestinian Territories, Oman, Saudi Arabia, Somalia and Yemen are all growing at a rate of 3 per cent or more per annum.²⁷⁶ As the rent from oil is shared

²⁶⁹ HC (2001–02) 384, para 167.

²⁷⁰ Q 180.

²⁷¹ ‘The US-Middle East Partnership Initiative: Building Hope for the Years Ahead’, Secretary of State Colin Powell, The Heritage Foundation, 12 December 2002, available at: <http://www.state.gov/secretary/rm/2002/15920pf.htm>.

²⁷² *Arab Human Development Report 2002*, United Nations Development Programme, p 3. Available at www.un.org/publications.

²⁷³ *Ibid.*

²⁷⁴ Anthony Cordesman of the Center for Strategic and International Studies in Washington, DC estimates that disguised and open unemployment affects about 45 per cent of the labour force in Iran and Iraq and just under 40 per cent in Saudi Arabia. See Martin Wolf, ‘The building pressures that threaten the world’s oil well’, *Financial Times*, 4 December 2002.

²⁷⁵ *Arab Human Development Report 2002*, p 36.

²⁷⁶ *Ibid.*, pp 36–37.

among more people, living standards are likely to continue to decline unless new sources of income and wealth are found.²⁷⁷

205. The *Arab Human Development Report*'s authors argue that, although income poverty is low in Arab countries compared with other parts of the developing world, inequality of capabilities and opportunities is high. They advocate action to secure universal, high-quality education; strengthening tertiary education; and eliminating illiteracy at one end of the education spectrum while providing opportunities for 'lifetime learning' to enable the better educated to take advantage of new economic opportunities. They also call for measures to ensure greater access to capital, because "millions of people lack the opportunity to participate in the economy by combining their innovation, skill and hard work with capital."²⁷⁸

206. Weak political participation—manifested by lack of representative government and restrictions on liberties—is also highlighted as a critical problem. "The mismatch between aspirations and their fulfilment has in some cases led to alienation and its offspring—apathy and discontent." It is this discontent, combined with the lack of opportunities described above, that foster Islamic extremism in these countries.

207. We note with interest the views of Richard Haass, director of policy planning in the US State Department. Haass argues that "No-one should confuse promoting democracy with holding parliamentary elections the next day—in which, yes, the Islamists would do well, because they're the only ones who are currently allowed to organise. Parliamentary elections are *not* the first step." Instead, Haass recommends a number of reforms, some of them similar to those recommended in the *Arab Human Development Report*, which should precede elections: educational reform, especially for girls; establishment of the rule of law; strengthening civil society; establishment of freedom of assembly and freedom of the press. "Then, against that backdrop, introduce elections—gradually. Locally first. Or nationally, but for a body with limited powers."²⁷⁹ The US administration aims to help peoples and governments in the Middle East to address development and governance issues through its new US\$29 million US-Middle East Partnership Initiative.²⁸⁰

208. We welcome the FCO's support of women's rights projects in the Middle East and North Africa, its assistance to the interfaith initiative on the Middle East Peace Process, and its decision to develop a "comprehensive strategy towards the Arab world, including policies to address the causes of extremism and violence."²⁸¹

209. **We commend the Foreign Secretary's decision to examine carefully the *Arab Human Development Report 2002*. We conclude that addressing *inter alia* the problems highlighted by its authors is important for the medium and long term success of the war against terrorism.**

210. **We recommend that, in its response to our own Report, the FCO set out its progress towards a comprehensive strategy for the Arab world, including an explanation of the extent to which it is working with the Department for International Development, the BBC World Service and the British Council on this strategy.**

²⁷⁷ Martin Wolf, 'The building pressures that threaten the world's oil well', *Financial Times*, 4 December 2002.

²⁷⁸ *Arab Human Development Report 2002*, p 11.

²⁷⁹ Richard Haass, cited by Nicholas Lemann, *The New Yorker*, 18 November 2002.

²⁸⁰ 'The US-Middle East Partnership Initiative: Building Hope for the Years Ahead', Secretary of State Colin Powell, The Heritage Foundation, 12 December 2002, available at: <http://www.state.gov/secretary/>.

²⁸¹ Ev 76.

The Importance of Addressing the Arab-Israel Problem

211. In our Seventh Report, we concluded that “a linkage between the conflict in the Middle East and the war against terrorism is widely perceived among populations and governments in the region. Both the US and British governments appear to accept that the conflict is a factor which severely complicates their conduct of the war, although it does not weaken their resolve. While the conflict in the Middle East requires swift and fair resolution on its own merits, this perceived linkage lends added urgency to the search for peace.”²⁸²

212. Since we made that Report, violence in Israel and the Palestinian territories has remained at a high level. Prospects for the resumption of a peace process look bleak, despite the drafting of a three-stage ‘road map’ by the Quartet (the EU-UN-US-Russia working group on the Middle East) in September 2002. Meanwhile, the issue of Iraq has come to dominate the international agenda to a far greater extent than it did in the first six months of the ‘war against terrorism.’

213. In Lord Wright’s view, this focus on Iraq has created resentment in the region: he perceives “an almost universal feeling in the Arab world, both on the streets and among Arab governments, that the priority is wrong. They are really asking the question... ‘Why are the Americans focusing on Iraq when in the view of the Arab world, and I am bound to say the view of the British Government, much more priority ought to be put on trying to solve the Arab-Israel problem?’”²⁸³

214. To its credit, the Government appears deeply aware of the importance of tackling the Israeli-Palestinian conflict in parallel with its efforts to address the problem of Iraq. The Prime Minister told the House that, on the basis of his discussions with “the leaders of the Arab world,” none holds “any brief for Saddam Hussein but [they] feel that we should pursue with equal vigour a just resolution in the middle east. As I point out to them, that just resolution must involve security for Israel as well as a viable Palestinian state.”²⁸⁴

215. Towards this end, the Prime Minister has called for “urgent action to build a security infrastructure that gives both Israelis and Palestinians confidence and stops the next suicide bomb closing down the prospects of progress. We need political reform for the Palestinian Authority, and we need a new conference on the middle east peace process, based on the twin principles of a secure Israel and a viable Palestinian state.” He promised that “we in Britain will play our part in that in any way we can.”²⁸⁵ The Government is “working with the Americans and others to try to put together a proper conference on the issue to get the peace process restarted.”²⁸⁶ At the Labour Party Conference, the Prime Minister announced that “By this year’s end, we must have revived final status negotiations.”²⁸⁷

216. In addition to its push for revived peace negotiations, the Government has provided substantial humanitarian assistance to the West Bank and Gaza Strip in response to the “dire humanitarian situation.” In 2002-03, the United Kingdom will spend £32 million through its bilateral programme, and through the United Nations Relief and Works Agency. The United Kingdom also supplies 20 per cent of funds for the European Commission’s Palestine Programme, and contributes 5 per cent of the World Bank’s Trust Fund for the West Bank and Gaza. The Government has also provided advisers and supported

²⁸² HC (2001–02) 384, para 161.

²⁸³ Q 114.

²⁸⁴ HC Deb, 24 September 2002, col 13.

²⁸⁵ HC Deb, 24 September 2002, cols 6–7.

²⁸⁶ HC Deb, 24 September 2002, col 13.

²⁸⁷ ‘At our best when at our boldest’, Prime Minister’s Speech to the Labour Party Conference, 1 October 2002, available at: <http://www.labour.org.uk/tbconfspeech/>.

international donor co-ordination to assist reform of the Palestinian authority, which, it believes, is necessary “to prepare for Palestinian statehood.”²⁸⁸

217. Since we last reported on this subject, the Bush administration has made it clear that the Palestinian Authority leadership is ‘against us’ in the war on terror. On 24 June, President Bush called upon the Palestinian people “to elect new leaders, leaders not compromised by terror” and stated that “when the Palestinian people have new leaders, new institutions and new security arrangements with their neighbours, the United States of America will support the creation of a Palestinian state whose borders and certain aspects of its sovereignty will be provisional until resolved as part of a final settlement in the Middle East.”²⁸⁹

218. The Foreign Secretary welcomed President Bush’s speech as “very positive.”²⁹⁰ He stated, however, that although “Many people are disappointed with President Arafat’s record, and those disappointments are shared by this Government,” the British Government would continue to “deal with the elected leadership of the Palestinian Authority. I have put my view on the record. I welcome the elections and have expressed the hope that they are free and fair; otherwise they will not be legitimate. However, we shall deal with whoever is elected, as we have in the past.”²⁹¹

219. We are deeply concerned at the continuing high level of violence in Israel and the Palestinian territories, and that little progress appears to have been made towards reviving peace negotiations in the region. We note with interest that both Palestinian and Israeli elections are scheduled to take place in January 2003. We hope that both elections will be free and fair, and that the resulting authorities will take forward negotiations towards a final settlement of the conflict. These elections should not, however, be used by the parties to the Quartet as an excuse for inaction in the interim period. It is unlikely that new and more moderate governments will emerge on either side of the conflict. The urgency of this issue demands greater action by the Quartet in the coming weeks and months.

220. We conclude that the Government is right to engage the leaders of Israel and the Palestinian Authority in an effort to revive the Middle East peace process. We are convinced that this policy must be pursued in parallel with international efforts to address threats from al Qaeda and from the Iraqi regime.

Afghanistan

221. In our Seventh Report, we recommended that “the Government consider carefully, with the United States and other coalition partners, the options for maintaining and increasing security in Afghanistan, both during and for a significant period after the June 2002 *Loya Jirga*. This should include consideration of the extension of ISAF [the International Security Assistance Force] beyond Kabul and its immediate area.”²⁹² The *Loya Jirga* to decide on the future of the country was carried out in a “generally peaceful environment” in June. If the new administration in Afghanistan were to secure substantially improved human rights and living standards for the majority of Afghans in the near future, Afghanistan could become an example of the possible benefits of ‘regime change’. However, as the Government acknowledged in its August response, the murder of Vice President Haji Kadir in July 2002 “indicates how fragile the situation remains.”²⁹³ On 5

²⁸⁸ Ev 75.

²⁸⁹ ‘President Bush calls for new Palestinian leadership’, 24 June 2002, available at: <http://www.whitehouse.gov/news/releases/2002>.

²⁹⁰ HC Deb, 25 June 2002, col 741.

²⁹¹ HC Deb, 25 June 2002, col 743.

²⁹² HC (2001–02) 384, para 117.

²⁹³ Foreign and Commonwealth Office, *Foreign Policy Aspects of the War against Terrorism*, Cm 5589, August 2002, p 9.

September, an attempt was made on President Karzai's life. This attack, and a disastrous "errant" US bombing raid on a wedding party in rural Afghanistan which killed 54 civilians, illustrate the level of violence that continues to pervade Afghanistan and the fragility of the current political settlement.

222. British armed forces handed leadership of ISAF to Turkey on 20 June, though Britain continued to support ISAF with 400 troops in Kabul. The Germans and Dutch have agreed to take over the ISAF lead from the Turks, with some NATO force generation and planning support.²⁹⁴

223. Britain has also been involved in reform of Afghanistan's security sector, for example through training the First Battalion of the Afghan National Guard. The United Kingdom has also taken the lead internationally on tackling drugs trafficking from Afghanistan, has provided substantial humanitarian assistance, and is prioritising capacity building within the Transitional Administration in the Ministry of Finance and the Central Bank.²⁹⁵

224. Despite some progress, the Government stresses that "Many vulnerable people remain reliant on food aid. Remnants of al Qaeda and the Taliban are still active and can still threaten the reconstruction of Afghanistan... There is an urgent requirement for the Transitional Administration to deliver a reconstruction dividend that is visible on the ground."²⁹⁶ The United States has cited as its "biggest single concern" donor states' failure to deliver the economic aid pledged at the Tokyo conference. US Deputy Secretary of State for Defense Paul Wolfowitz complained in September that "some of the donors are not giving their fair share. In fact, only a little more than 30 percent of the \$1.8 billion pledged for the first year has been delivered so far. Most of that money was needed for humanitarian assistance projects, with many Afghans still waiting for real reconstruction to begin."²⁹⁷

225. Our own call for the extension of ISAF²⁹⁸ has been repeated throughout the year: for example, Pakistan's representative to the UN called on 4 October for deployment of additional forces to consolidate peace and security in Afghanistan and warned that failure to take timely action there "could prove to be very costly in the future."²⁹⁹ The Government, in its August 2002 response to our Seventh Report, stated that "ISAF contributors and coalition partners have discussed the expansion of ISAF's mandate at some length and the consensus is that ISAF expansion outside Kabul is not feasible at the moment," though "the UK is working with others to spread the 'ISAF effect' outside Kabul."³⁰⁰

226. We note with interest that in September, the US was "considering the possibility that ISAF could play some useful roles beyond Kabul if ISAF could be enlarged... there are some benefits that could possibly come from using ISAF in ways outside the capital." However, the US was not offering additional resources for this purpose, although, as Paul Wolfowitz explained "We welcome and support these developments and encourage the international community to provide the leadership and resources necessary to make it

²⁹⁴ Ev 73; see also 'Committed to international support for Afghanistan', Germany Embassy press release, Washington DC, 4 December 2002, available at: <http://www.germany-info.org/relaunch/politics>.

²⁹⁵ Cabinet Office, *The United Kingdom and the Campaign Against Terrorism: Progress Report*, September 2002.

²⁹⁶ *Ibid.*

²⁹⁷ Paul Wolfowitz, 'The future does not belong to terrorists', speech delivered at the Brookings Institution, Washington DC, 5 September, 2002, available at: http://www.usembassy.it/file2002_09.

²⁹⁸ HC (2001–02) 384, para 117.

²⁹⁹ See transcript of Security Council debate, 'Security Council considers terrorists threats to international peace and security', 4 October 2002, available at: <http://www.un.org/News/Press>.

³⁰⁰ Foreign and Commonwealth Office, *Foreign Policy Aspects of the War Against Terrorism*, Cm 5589, August 2002, p 8.

happen.”³⁰¹ As the Government states, however, “There is no appetite amongst current troop contributing nations to commit large numbers of additional troops.”³⁰² In late November, the US also announced a major restructuring of its forces in Afghanistan. Under the plan, US troops would move to population centres such as Mazar-i-Sharif and Herat, to enhance security outside Kabul and to establish bases for US aid projects. This apparently indicates a shift in US activities in Afghanistan, away from ‘hard’ military activities and towards civil affairs and reconstruction work.³⁰³

227. Though progress has undoubtedly been made in Afghanistan since the fall of the Taliban, not least in the status of women, we are concerned by the continuing level of instability in the country and about reports that much of the reconstruction assistance pledged at Tokyo has not arrived. **A year after the collapse of the Taliban, the stabilisation of Afghanistan and its surrounding region continues to be a critical objective in the war against terrorism. We urge the Government to continue and, if necessary, to enhance its efforts to stabilise Afghanistan, and to ensure that the lives of ordinary Afghans continue to improve.**

Prisoners Detained at Guantánamo Bay, Cuba

228. Since the terrorist attacks of September 11th, 2001 and the subsequent military operations in Afghanistan, over six hundred individuals, including seven British nationals, have been detained by the United States government in Guantánamo Bay, Cuba and classified as “unlawful combatants”. We discussed the treatment and status of these detainees in our Seventh Report.

229. Before agreeing the Seventh Report, we asked the United States government to clarify how it intended to deal with the detainees. The US response was that the relevant authorities have made “no decisions... on the disposition of the detainees currently being held. The fate of the detainees will be determined on a case-by-case basis.”³⁰⁴ In March 2002, when we visited Washington, we were reassured to hear that if, after review, the US decides that a detainee does not pose a significant security threat, he will be repatriated.

230. We questioned in the Seventh Report for how long the US intended to detain the prisoners it holds at Guantánamo Bay.³⁰⁵ The US Secretary of State for Defense, Donald Rumsfeld, had stated that the US claims “every right” to detain certain individuals “for the duration of the conflict,” even if they are acquitted of specific crimes.³⁰⁶ This poses the question of whether the ‘war against terrorism’, unlike a conventional conflict, can ever have an end. The only detainees released from Guantánamo so far are a mentally ill inmate who was returned to Afghanistan on May 1, 2002, and four detainees (two of whom were over 80 years old) who were returned to Afghanistan and Pakistan on October 28, 2002.³⁰⁷

231. The President of the New York-based Center for Constitutional Rights, Michael Ratner, wrote to us that the prisoners at Guantánamo Bay “have not been charged, tried or given access to lawyers.”³⁰⁸ Citing US Department of Defense press transcripts, Mr Ratner, reminds us that “The United States has itself acknowledged that at least ‘some [of the

³⁰¹ Paul Wolfowitz, ‘Building a better world: one path from crisis to opportunity’, speech at the Brookings Institution, Washington, 5 September, 2002.

³⁰² Ev 73.

³⁰³ See ‘Pentagon plans a redirection in Afghanistan,’ *Washington Post*, 20 November 2002, available at: <http://www.washingtonpost.com/wp-dyn/articles>.

³⁰⁴ HC (2001–02) 384, Ev 104, para 32.

³⁰⁵ HC (2001–02) 384, para 140.

³⁰⁶ US Secretary of State for Defense Donald Rumsfeld, Department of Defense press release, Washington, 28 March 2002.

³⁰⁷ Ev 102, para 13.

³⁰⁸ Ev 100, para 1.

detainees] were ‘victims of circumstance’ and probably innocent.” Nonetheless, “Since gaining control of the detainees, the United States military has held them virtually *incommunicado*. They have been or will be interrogated repeatedly by agents of the United States Departments of Defense and Justice, though they have not been charged with an offense, nor have they been notified of any pending or contemplated charges. They have made no appearance before either a military or civilian tribunal of any sort, nor have they been provided with counsel or the means to contact counsel.”³⁰⁹

232. In a Written Statement on 11 December 2002, the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs, Mr Mike O’Brien, wrote: “British officials paid a fourth visit to Guantánamo Bay between 11–15 November... The official passed to the camp authorities some personal letters for some of the detainees and was able to give oral messages to others. We have passed on to the families oral messages which were received and have briefed them on details of the detainees’ circumstances. For reasons of privacy these details are not disclosed in this statement. Detainees continue to be able to send and receive letters through the camp authorities and through the ICRC, although there is some concern about delays.”³¹⁰

233. Citing the cases of Messrs. Rasul and Iqbal, two of the British citizens detained at Guantánamo, Mr Ratner informs us that the detainees’ “ability to contact their families has been severely restricted ... Attempts by their Members of Parliament to secure greater access to them by their families have failed.”³¹¹ The Center for Constitutional Rights, having examined the cases, has concluded that: “(i) the detentions are unlawful, arbitrary and indefinite contrary to the Fifth and Fourteenth Amendments of the United States Constitution and customary international law, specifically Articles 9 and 14 of the International Covenant on Civil and Political Rights, and Articles 18, 25 and 26 of the American Declaration on the Rights and Duties of Man³¹²; and (ii) that the detainees’ rights as persons seized in times of armed conflict, as established under, *inter alia*, the regulations of the United States Military, Articles 4 and 5 of Geneva Convention III, Geneva Convention IV, and customary international law have been violated. We also believe that the ancient writ of *habeas corpus* should be available to the detainees to challenge their detention.”³¹³

234. We further note with interest the Abbasi case, which was “an attempt by judicial review proceedings to pressure the Foreign Secretary to intervene more forcefully on behalf of [Mr Abbasi, A British citizen held at Guantánamo Bay] and the other detainees ... on the basis that the Foreign Office was not reacting appropriately to the fact that [a British citizen was] being arbitrarily detained in violation of his fundamental human rights.”³¹⁴

235. In the Abbasi case, the Court of Appeal “made a clear finding that ‘...in apparent contradiction of fundamental principles recognised by both jurisdictions and by international law, Mr Abbasi is at present detained in a ‘legal black hole’...and [w]hat appears to us to be objectionable is that Mr Abbasi should be subject to indefinite detention in territory over which the United States has exclusive control with no opportunity to challenge the legitimacy of his detention before any court or tribunal’. This was a matter of “deep concern” to the Court, which it appeared to hope would be conveyed to the appellate courts of the United States.”³¹⁵ However, the Court felt it could not order the Foreign Secretary

³⁰⁹ Ev 101, para 8.

³¹⁰ HC Deb, 11 December 2002, col. 18WS.

³¹¹ Ev 101, para 8.

³¹² The same principle can be found in Article 9 of the United Nations Declaration of Human Rights and Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

³¹³ Ev 103, para 14.

³¹⁴ Ev 105, para 27.

³¹⁵ *Abbasi* Court of Appeal judgment, paras 64, 66 and 107.

to do more than consider Mr Abbasi representations for assistance, which had been done.”³¹⁶

236. The US government maintains that the detainees at Guantánamo Bay are being treated humanely. Delegates of the International Committee of the Red Cross (ICRC) have visited the detainees, at the invitation of the US Government. The American Red Cross explains that the US government issued this invitation to the ICRC, because “Along with 188 other nations across the globe, the United States is committed to meeting the standards of humanitarian treatment described in the Geneva Conventions.”³¹⁷ During our visits to Washington in March and October this year, US officials have also made it clear to us that some of the Guantánamo detainees have provided the administration with valuable intelligence, which may help to prevent further civilian casualties in the ‘war against terrorism.’

237. In the Seventh Report, we concluded that “in relation to the detention of Taliban and al Qaeda suspects, as we do in relation to other matters, that the Government must strive to uphold standards of international law, and, to the greatest extent possible, to ensure that prisoners are tried in full accordance with internationally accepted norms of justice.”³¹⁸ In August, the Government replied to this conclusion that “It is for the US, as the detaining power, to decide whether, and if so how, they will prosecute the detainees. However, we have made our view clear to the US, and will continue to do so, that if any of the detainees are prosecuted they should receive a fair trial in accordance with international law.”³¹⁹ We are pleased that the Foreign Secretary was able to raise the cases with the US Secretary of State, Colin Powell, at the Prague NATO summit on 20 November 2002.³²⁰

238. While we understand that the US government has obtained valuable intelligence from prisoners detained at Guantánamo Bay, Cuba, we are nonetheless concerned that the US government continues to detain many of these prisoners without trial. We recommend that the Government continue to press the US government to move rapidly towards the trial of these alleged terrorists, in accordance with international law.

239. We recommend that the Government supply us with further information about the seven British citizens currently being held, including details about when and how they can expect to be tried, and whether, if found guilty, they will be liable to the death penalty.

Challenges to the United Kingdom Government

240. The scope of this Report reflects the complexity of issues that the Government must address in parallel, in fighting the war against terrorism. It is not a conventional war; indeed the very use of the word ‘war’ can lead to profound misunderstanding. Conventional military and diplomatic tools in this campaign are therefore complemented by resources from other government departments and services. We note that in its reply to our *Seventh Report*, the FCO refers to the “government-wide response” to the terrorist threat to the United Kingdom, which is led by the Home Office and “co-ordinated through the Cabinet Office mechanisms (relevant Ministerial and official committees, and in the case of a serious

³¹⁶ Ev 105, para 29.

³¹⁷ American Red Cross document, ‘Why the Red Cross is visiting detainees in Guantanamo Bay’, available at: <http://www.redcross.org/news/in/intllaw/guantanamol.html>.

³¹⁸ HC (2001–02) 384, para 144.

³¹⁹ Foreign and Commonwealth Office, *Foreign Policy Aspects of the War Against Terrorism*, Cm 5589, August 2002, p 9.

³²⁰ We note that lawyers representing some Kuwaiti, British and Australian detainees are attempting a further legal challenge to compel the US government to grant detainees access to lawyers and to their families. See *Financial Times*, 4 December 2002.

incident, the Cabinet Office Briefing Room facility).” The FCO has lead responsibility where the threat is to United Kingdom interests overseas, “again, as part of an integrated Whitehall-wide response.”³²¹

241. The co-ordination of this multidimensional approach poses significant challenges to the Government. **We recommend that, in its response to the Report, the Government set out in detail the Cabinet Office mechanisms for co-ordinating the “government-wide response” to the threat from international terrorism.**

242. The terrorist attacks in Bali and Kenya have raised serious questions about the Government’s Travel Advice system. No specific warning was issued by the FCO in advance of the Bali attack, nor were British citizens warned of a potential attack in Kenya—despite the fact that the German and Australian governments issued public warnings in mid-November that militants were planning to attack Western targets specifically in Mombasa.³²² On 5 December, a few days after the attacks in Mombasa, the British High Commission in Nairobi was closed for four days in response to a “specific threat” to the High Commission.³²³ On 9 December, the FCO advised that “Kenya is one of a number of countries in East Africa where there may be an increased terrorist threat. UK nationals in Kenya should be vigilant, particularly in public places frequented by foreigners such as hotels, restaurants and shopping malls. In particular there is a potential threat against Western interests in Nairobi.”³²⁴ Nonetheless, British citizens have not been advised to cancel trips to Kenya.

243. The Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs, Mike O’Brien, pointed out on 31 October that the Government’s “First and foremost ... priority is to protect the United Kingdom, its overseas territories and its citizens overseas”³²⁵; providing accurate and timely travel advice is central to the FCO’s responsibility in this area.

244. The FCO has already supplied, at our request, an updated memorandum on the FCO’s travel advice system.³²⁶ The memorandum describes the FCO’s Travel Advice Unit, which is based in the Consular Division of the FCO and which updates travel advice in response to requests from Posts overseas and Departments in London. The FCO memorandum claims that travel advice has recently improved significantly, and “is now considerably more comprehensive” than in was in 1999.³²⁷ Mr O’Brien nonetheless felt, in light of the Bali experience, that “there are lessons to be learned” in this important area.³²⁸

245. On 21 October, in his statement to the House on the Bali attacks, the Foreign Secretary ‘asked the intelligence co-ordinator in the Cabinet Office to ensure that all intelligence [relating to the Bali attacks] was made available to [the Intelligence and Security] Committee. The ISC will of course consider that [intelligence] and then reach its own conclusions on it.’³²⁹

³²¹ Foreign and Commonwealth Office, *Foreign Policy Aspects of the War Against Terrorism*, Cm 5589, August 2002, p 12.

³²² See ‘Israel “knew Kenya was target”’, BBC news, 3 December 2002, available at: <http://news.bbc.co.uk>. In July, the US State Department had also issued a warning of possible terrorist attacks in Kenya (see *Sunday Telegraph*, 1 December 2002).

³²³ See FCO Travel Advice, available at: <http://www.fco.gov.uk>.

³²⁴ See FCO Travel Advice, available at: <http://www.fco.gov.uk>.

³²⁵ HC Deb, 31 October 2002, col 363 [Westminster Hall].

³²⁶ Ev 70–71.

³²⁷ Ev 70, para 5.

³²⁸ HC Deb, 31 October 2002, col 364 [Westminster Hall].

³²⁹ HC Deb, 21 October 2001, col. 23.

246. On 11 December 2002, the Intelligence and Security Committee made its Report to the House on *Intelligence, Assessments and Advice prior to the Terrorist Bombings on Bali 12 October 2002*.³³⁰ The ISC Report discusses in some detail the FCO Travel Advice system in relation to the Bali terrorist attack, and concludes that ‘the FCO Travel Advice did not accurately reflect the threat or recent developments, although it was proportional to the then current Security Service assessment.’ The ISC also argue that ‘the FCO Travel Advice is not well formatted and consequently it does not highlight the key points, particularly risks—they get lost in the complexity of the document. Routine language is recycled from edition to edition and contains elements of reassurance that produce a confused effect. The terrorist threat to British citizens is not clearly identified, nor are the sensible precautions that could be taken by them clearly described.’³³¹ The ISC conclude that the ‘whole issue of FCO Travel Advice, its purpose, target audience and presentation needs to be examined by the FCO as a matter of urgency.’³³²

247. The Foreign Secretary informed the House on 11 December that ‘In the wake of the Bali bombing, I have put in hand a comprehensive review of the way in which our travel advice is both prepared and presented. We have already made some improvements, but we will be making further changes, drawing on the Committee’s helpful recommendations.’³³³

248. We welcome the Foreign Secretary’s announcement of a comprehensive review of the FCO’s travel advice system. We will certainly wish to consider the results of this review once it is complete, and will hold hearings in the New Year on the travel advice system. **We recommend that the Government publish and implement the results of its review of the travel advice system at the earliest opportunity.**

249. **We recommend that, at the earliest possible date, the Government supply us with a full description of the process according to which travel advice is agreed among Government departments. Specifically, we seek details of the process of collating information in this area; of the relationship between the FCO and the Joint Intelligence Committee in deciding travel advice; and full details of the organisational structure and decision-making process within the Foreign Office, at both official and ministerial level, for the taking of travel advice decisions and issuing them to the public.**

The Parliamentary Dimension

250. In our Seventh Report, we argued that ‘While nothing should be published which might compromise sources or methods of intelligence, the Government must try to secure the widest possible support in Parliament and among the British people if it is proposing to risk the lives of British servicemen and women as part of a further phase of the war against terrorism.’³³⁴ Further military deployments in the war against terrorism appear likely: on 20 November, the United States asked the Government formally for assistance in any forthcoming military operation it might undertake to disarm Iraq. Understandably, public concern about the next phase of the war is very high.

251. The Government recalled Parliament on 24 September, to debate the threat from Iraq and its assessment of *Iraq’s Weapons of Mass Destruction*. The Government also decided to hold a debate on UN Security Council 1441 on 25 November 2002.

³³⁰ Intelligence and Security Committee, *Inquiry into Intelligence, Assessments and Advice prior to the Terrorist Bombings on Bali 12 October 2002*, Cm 5724, December 2002.

³³¹ *Ibid.* para. 35.

³³² *Ibid.* para 40.

³³³ HC Deb, 11 December 2002, col 258.

³³⁴ HC (2001–02) 384, para 233.

252. We conclude that the Government must continue to address with the utmost seriousness its obligation to keep the British public informed of developments in the war against terrorism. This, we believe, is essential to ensure the widest possible public support for Government actions.

253. We commend the Government's stated commitment³³⁵ to keep Parliament fully informed of developments in the war against terrorism, through statements to the House, through regular Ministerial meetings with Select Committees, and also through further meetings between the Prime Minister and Select Committees. We look forward to receiving the specific dates of these proposed meetings.

Conclusion

254. The Government will face hard decisions in the coming months. Intelligence suggests that the threat from al Qaeda remains acute, both within Britain and to British interests overseas. Current assessments of Iraq's weapons of mass destruction programmes, detailed in this Report, indicate that the threat from Saddam Hussein's regime must also be addressed with determination and some urgency.

255. The international community's approach to both these challenges will have implications for Britain's security in years to come. As Stephen Pullinger argues, "If and when we achieve a world in which the possession of all weapons of mass destruction is banned, ensuring strict compliance with that international norm will be paramount. Intrusive inspections and UN Security resolutions backed, if necessary, by force will become vital components of a world free from the scourge of WMD. How we deal with Iraq today may signal how likely we are to reach such a world."³³⁶

256. We commend the Government for its firm and committed leadership in the war against terrorism. We conclude that Britain has contributed substantially to ensuring that the "international coalition" remains a reality, more than a year after the devastating terrorist attacks on the United States.

³³⁵ Q 4. The Prime Minister also gave his assurance, when meeting the Liaison Committee on 16 July 2002, that the Government would "keep the House very, very closely involved indeed" in the war on terrorism and developments relating to Iraq. HC (2001–02) 1095, Q 92.

³³⁶ Ev 80, para 26.

ANNEX

The Security Council

Recalling all its previous relevant resolutions, in particular its resolutions 661 (1990) of 6 August 1990, 678 (1990) of 29 November 1990, 686 (1991) of 2 March 1991, 687 (1991) of 3 April 1991, 688 (1991) of 5 April 1991, 707 (1991) of 15 August 1991, 715 (1991) of 11 October 1991, 986 (1995) of 14 April 1995, and 1284 (1999) of 17 December 1999, and all the relevant statements of its President,

Recalling also its resolution 1382 (2001) of 29 November 2001 and its intention to implement it fully,

Recognizing the threat Iraq's noncompliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles poses to international peace and security,

Recalling that its resolution 678 (1990) authorized Member States to use all necessary means to uphold and implement its resolution 660 (1990) of 2 August 1990 and all relevant resolutions subsequent to Resolution 660 (1990) and to restore international peace and security in the area,

Further recalling that its resolution 687 (1991) imposed obligations on Iraq as a necessary step for achievement of its stated objective of restoring international peace and security in the area,

Deploing the fact that Iraq has not provided an accurate, full, final, and complete disclosure, as required by resolution 687 (1991), of all aspects of its programmes to develop weapons of mass destruction and ballistic missiles with a range greater than one hundred and fifty kilometres, and of all holdings of such weapons, their components and production facilities and locations, as well as all other nuclear programmes, including any which it claims are for purposes not related to nuclear-weapons-usable material,

Deploing further that Iraq repeatedly obstructed immediate, unconditional, and unrestricted access to sites designated by the United Nations Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA), failed to cooperate fully and unconditionally with UNSCOM and IAEA weapons inspectors, as required by resolution 687 (1991), and ultimately ceased all cooperation with UNSCOM and the IAEA in 1998,

Deploing the absence, since December 1998, in Iraq of international monitoring, inspection, and verification, as required by relevant resolutions, of weapons of mass destruction and ballistic missiles, in spite of the Council's repeated demands that Iraq provide immediate, unconditional, and unrestricted access to the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), established in resolution 1284 (1999) as the successor organization to UNSCOM, and the IAEA, and regretting the consequent prolonging of the crisis in the region and the suffering of the Iraqi people,

Deploing also that the Government of Iraq has failed to comply with its commitments pursuant to resolution 687 (1991) with regard to terrorism, pursuant to resolution 688 (1991) to end repression of its civilian population and to provide access by international humanitarian organizations to all those in need of assistance in Iraq, and pursuant to resolutions 686 (1991), 687 (1991), and 1284 (1999) to return or cooperate in accounting for Kuwaiti and third country nationals wrongfully detained by Iraq, or to return Kuwaiti property wrongfully seized by Iraq,

Recalling that in its resolution 687 (1991) the Council declared that a ceasefire would be based on acceptance by Iraq of the provisions of that resolution, including the obligations on Iraq contained therein,

Determined to ensure full and immediate compliance by Iraq without conditions or restrictions with its obligations under resolution 687 (1991) and other relevant resolutions and recalling that the resolutions of the Council constitute the governing standard of Iraqi compliance,

Recalling that the effective operation of UNMOVIC, as the successor organization to the Special Commission, and the IAEA is essential for the implementation of resolution 687 (1991) and other relevant resolutions,

Noting the letter dated 16 September 2002 from the Minister for Foreign Affairs of Iraq addressed to the Secretary General is a necessary first step toward rectifying Iraq's continued failure to comply with relevant Council resolutions,

Noting further the letter dated 8 October 2002 from the Executive Chairman of UNMOVIC and the Director General of the IAEA to General Al-Saadi of the Government of Iraq laying out the practical arrangements, as a follow-up to their meeting in Vienna, that are prerequisites for the resumption of inspections in Iraq by UNMOVIC and the IAEA, and expressing the gravest concern at the continued failure by the Government of Iraq to provide confirmation of the arrangements as laid out in that letter,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of Iraq, Kuwait, and the neighbouring States,

Commending the Secretary General and members of the League of Arab States and its Secretary General for their efforts in this regard,

Determined to secure full compliance with its decisions,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that Iraq has been and remains in material breach of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq's failure to cooperate with United Nations inspectors and the IAEA, and to complete the actions required under paragraphs 8 to 13 of resolution 687 (1991);
2. Decides, while acknowledging paragraph 1 above, to afford Iraq, by this resolution, a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council; and accordingly decides to set up an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687 (1991) and subsequent resolutions of the Council;
3. Decides that, in order to begin to comply with its disarmament obligations, in addition to submitting the required biannual declarations, the Government of Iraq shall provide to UNMOVIC, the IAEA, and the Council, not later than 30 days from the date of this resolution, a currently accurate, full, and complete declaration of all aspects of its programmes to develop chemical, biological, and nuclear weapons, ballistic missiles, and other delivery systems such as unmanned aerial vehicles and dispersal systems designed for use on aircraft, including any holdings and precise locations of such weapons, components, sub-components, stocks of agents, and related material and equipment, the locations and work of its research, development and production facilities, as well as all other chemical, biological, and nuclear programmes, including any which it claims are for purposes not related to weapon production or material;

4. Decides that false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure by Iraq at any time to comply with, and cooperate fully in the implementation of, this resolution shall constitute a further material breach of Iraq's obligations and will be reported to the Council for assessment in accordance with paragraphs 11 and 12 below;

5. Decides that Iraq shall provide UNMOVIC and the IAEA immediate, unimpeded, unconditional, and unrestricted access to any and all, including underground, areas, facilities, buildings, equipment, records, and means of transport which they wish to inspect, as well as immediate, unimpeded, unrestricted, and private access to all officials and other persons whom UNMOVIC or the IAEA wish to interview in the mode or location of UNMOVIC's or the IAEA's choice pursuant to any aspect of their mandates; further decides that UNMOVIC and the IAEA may at their discretion conduct interviews inside or outside of Iraq, may facilitate the travel of those interviewed and family members outside of Iraq, and that, at the sole discretion of UNMOVIC and the IAEA, such interviews may occur without the presence of observers from the Iraqi government; and instructs UNMOVIC and requests the IAEA to resume inspections no later than 45 days following adoption of this resolution and to update the Council 60 days thereafter;

6. Endorses the 8 October 2002 letter from the Executive Chairman of UNMOVIC and the Director General of the IAEA to General Al-Saadi of the Government of Iraq, which is annexed hereto, and decides that the contents of the letter shall be binding upon Iraq;

7. Decides further that, in view of the prolonged interruption by Iraq of the presence of UNMOVIC and the IAEA and in order for them to accomplish the tasks set forth in this resolution and all previous relevant resolutions and notwithstanding prior understandings, the Council hereby establishes the following revised or additional authorities, which shall be binding upon Iraq, to facilitate their work in Iraq:

- UNMOVIC and the IAEA shall determine the composition of their inspection teams and ensure that these teams are composed of the most qualified and experienced experts available;
- All UNMOVIC and IAEA personnel shall enjoy the privileges and immunities, corresponding to those of experts on mission, provided in the Convention on Privileges and Immunities of the United Nations and the Agreement on the Privileges and Immunities of the IAEA;
- UNMOVIC and the IAEA shall have unrestricted rights of entry into and out of Iraq, the right to free, unrestricted, and immediate movement to and from inspection sites, and the right to inspect any sites and buildings, including immediate, unimpeded, unconditional, and unrestricted access to Presidential Sites equal to that at other sites, notwithstanding the provisions of resolution 1154 (1998);
- UNMOVIC and the IAEA shall have the right to be provided by Iraq the names of all personnel currently and formerly associated with Iraq's chemical, biological, nuclear, and ballistic missile programmes and the associated research, development, and production facilities;
- Security of UNMOVIC and IAEA facilities shall be ensured by sufficient UN security guards;
- UNMOVIC and the IAEA shall have the right to declare, for the purposes of freezing a site to be inspected, exclusion zones, including surrounding areas and transit corridors, in which Iraq will suspend ground and aerial movement so that nothing is changed in or taken out of a site being inspected;

- UNMOVIC and the IAEA shall have the free and unrestricted use and landing of fixed- and rotary-winged aircraft, including manned and unmanned reconnaissance vehicles;
- UNMOVIC and the IAEA shall have the right at their sole discretion verifiably to remove, destroy, or render harmless all prohibited weapons, subsystems, components, records, materials, and other related items, and the right to impound or close any facilities or equipment for the production thereof; and
- UNMOVIC and the IAEA shall have the right to free import and use of equipment or materials for inspections and to seize and export any equipment, materials, or documents taken during inspections, without search of UNMOVIC or IAEA personnel or official or personal baggage;

8. Decides further that Iraq shall not take or threaten hostile acts directed against any representative or personnel of the United Nations or the IAEA or of any Member State taking action to uphold any Council resolution;

9. Requests the Secretary General immediately to notify Iraq of this resolution, which is binding on Iraq; demands that Iraq confirm within seven days of that notification its intention to comply fully with this resolution; and demands further that Iraq cooperate immediately, unconditionally, and actively with UNMOVIC and the IAEA;

10. Requests all Member States to give full support to UNMOVIC and the IAEA in the discharge of their mandates, including by providing any information related to prohibited programmes or other aspects of their mandates, including on Iraqi attempts since 1998 to acquire prohibited items, and by *recommending* sites to be inspected, persons to be interviewed, conditions of such interviews, and data to be collected, the results of which shall be reported to the Council by UNMOVIC and the IAEA;

11. Directs the Executive Chairman of UNMOVIC and the Director General of the IAEA to report immediately to the Council any interference by Iraq with inspection activities, as well as any failure by Iraq to comply with its disarmament obligations, including its obligations regarding inspections under this resolution;

12. Decides to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security;

13. Recalls, in that context, that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations;

14. Decides to remain seized of the matter.

ANNEX A**Text Of Blix/el-baradei Letter**

**United Nations Monitoring, Verification And Inspection Commission
The Executive Chairman**

**International Atomic Energy Agency
The Director General**

8 October 2002

Dear General Al-Saadi,

During our recent meeting in Vienna, we discussed practical arrangements that are prerequisites for the resumption of inspections in Iraq by UNMOVIC and the IAEA. As you recall, at the end of our meeting in Vienna we agreed on a statement which listed some of the principal results achieved, particularly Iraq's acceptance of all the rights of inspection provided for in all of the relevant Security Council resolutions. This acceptance was stated to be without any conditions attached.

During our 3 October 2002 briefing to the Security Council, members of the Council suggested that we prepare a written document on all of the conclusions we reached in Vienna. This letter lists those conclusions and seeks your confirmation thereof. We shall report accordingly to the Security Council.

In the statement at the end of the meeting, it was clarified that UNMOVIC and the IAEA will be granted immediate, unconditional and unrestricted access to sites, including what was termed "sensitive sites" in the past. As we noted, however, eight presidential sites have been the subject of special procedures under a Memorandum of Understanding of 1998. Should these sites be subject, as all other sites, to immediate, unconditional and unrestricted access, UNMOVIC and the IAEA would conduct inspections there with the same professionalism.

**H.E. General Amir H. Al-Saadi
Advisor
Presidential Office
Baghdad
Iraq**

We confirm our understanding that UNMOVIC and the IAEA have the right to determine the number of inspectors required for access to any particular site. This determination will be made on the basis of the size and complexity of the site being inspected. We also confirm that Iraq will be informed of the designation of additional sites, i.e. sites not declared by Iraq or previously inspected by either UNSCOM or the IAEA, through a Notification of Inspection (NIS) provided upon arrival of the inspectors at such sites.

Iraq will ensure that no proscribed material, equipment, records or other relevant items will be destroyed except in the presence of UNMOVIC and/or IAEA inspectors, as appropriate, and at their request.

UNMOVIC and the IAEA may conduct interviews with any person in Iraq whom they believe may have information relevant to their mandate. Iraq will facilitate such interviews. It is for UNMOVIC and the IAEA to choose the mode and location for interviews.

The National Monitoring Directorate (NMD) will, as in the past, serve as the Iraqi counterpart for the inspectors. The Baghdad Ongoing Monitoring and Verification Centre (BOMVIC) will be maintained on the same premises and under the same conditions as was the former Baghdad Monitoring and Verification Centre. The NMD will make available services as before, cost free, for the refurbishment of the premises.

The NMD will provide free of cost:

- (a) escorts to facilitate access to sites to be inspected and communication with personnel to be interviewed;
- (b) a hotline for BOMVIC which will be staffed by an English speaking person on a 24 hour a day/seven days a week basis;
- (c) support in terms of personnel and ground transportation within the country, as requested; and
- (d) assistance in the movement of materials and equipment at Inspectors' request (construction, excavation equipment, etc.).

NMD will also ensure that escorts are available in the event of inspections outside normal working hours, including at night and on holidays.

Regional UNMOVIC/IAEA offices may be established, for example, in Basra and Mosul, for the use of their inspectors. For this purpose, Iraq will provide, without cost, adequate office buildings, staff accommodation, and appropriate escort personnel.

UNMOVIC and the IAEA may use any type of voice or data transmission, including satellite and/or inland networks, with or without encryption capability. UNMOVIC and the IAEA may also install equipment in the field with the capability for transmission of data directly to the BOMVIC, New York and Vienna (e.g. sensors, surveillance cameras). This will be facilitated by Iraq and there will be no interference by Iraq with UNMOVIC or IAEA communications.

Iraq will provide, without cost, physical protection of all surveillance equipment, and construct antennae for remote transmission of data, at the request of UNMOVIC and the IAEA. Upon request by UNMOVIC through the NMD, Iraq will allocate frequencies for communications equipment.

Iraq will provide security for all UNMOVIC and IAEA personnel. Secure and suitable accommodations will be designated at normal rates by Iraq for these personnel. For their part, UNMOVIC and the IAEA will require that their staff not stay at any accommodation other than those identified in consultation with Iraq.

On the use of fixed-wing aircraft for transport of personnel and equipment and for inspection purposes, it was clarified that aircraft used by UNMOVIC and IAEA staff arriving in Baghdad may land at Saddam International Airport. The points of departure of incoming aircraft will be decided by UNMOVIC. The Rasheed airbase will continue to be used for UNMOVIC and IAEA helicopter operations. UNMOVIC and Iraq will establish air liaison offices at the airbase. At both Saddam International Airport and Rasheed airbase, Iraq will provide the necessary support premises and facilities. Aircraft fuel will be provided by Iraq, as before, free of charge.

On the wider issue of air operations in Iraq, both fixed-wing and rotary, Iraq will guarantee the safety of air operations in its air space outside the no-fly zones. With regard to air operations in the no-fly zones, Iraq will take all steps within its control to ensure the safety of such operations.

Helicopter flights may be used, as needed, during inspections and for technical activities, such as gamma detection, without limitation in all parts of Iraq and without any area excluded. Helicopters may also be used for medical evacuation.

On the question of aerial imagery, UNMOVIC may wish to resume the use of U-2 or Mirage overflights. The relevant practical arrangements would be similar to those implemented in the past.

As before, visas for all arriving staff will be issued at the point of entry on the basis of the UN Laissez-Passer or UN Certificate; no other entry or exit formalities will be required. The aircraft passenger manifest will be provided one hour in advance of the arrival of the aircraft in Baghdad. There will be no searching of UNMOVIC or IAEA personnel or of official or personal baggage. UNMOVIC and the IAEA will ensure that their personnel respect the laws of Iraq restricting the export of certain items, for example, those related to Iraq's national cultural heritage. UNMOVIC and the IAEA may bring into, and remove from, Iraq all of the items and materials they require, including satellite phones and other equipment. With respect to samples, UNMOVIC and IAEA will, where feasible, split samples so that Iraq may receive a portion while another portion is kept for reference purposes. Where appropriate, the organizations will send the samples to more than one laboratory for analysis.

We would appreciate your confirmation of the above as a correct reflection of our talks in Vienna.

Naturally, we may need other practical arrangements when proceeding with inspections. We would expect in such matters, as with the above, Iraq's co-operation in all respect.

Yours sincerely,

Hans Blix
Executive Chairman
United Nations Monitoring,
Verification and Inspection Commission

Mohamed El Baradei
Director General
International Atomic Energy Agency

PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT

TUESDAY 17 DECEMBER

Members present:

Mr Donald Anderson, in the Chair

Mr David Chidgey
Sir Patrick Cormack
Mr Eric Ilsley

Mr John Maples
Mr Greg Pope
Sir John Stanley

Draft Report (*Foreign Policy Aspects of the War against Terrorism*), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 51 read and agreed to.

Paragraph 52 postponed.

Paragraphs 53 and 54 read and agreed to.

Paragraphs—(*The Chairman*)—brought up, read the first and second time and inserted (now paragraphs 55 to 58).

Paragraphs 55 to 81 (now paragraphs 59 to 85) read and agreed to.

Paragraph 82 (now paragraph 86) read, amended and agreed to.

Paragraphs 83 to 97 (now paragraphs 87 to 101) read and agreed to.

Paragraph 98 (now paragraph 102) read, amended and agreed to.

Paragraphs 99 to 103 (now paragraphs 103 to 107) read and agreed to.

Paragraph 104 (now paragraph 108) read, amended and agreed to.

Paragraphs 105 to 124 (now paragraphs 109 to 128) read and agreed to.

Paragraph 125 (now paragraph 129) read, amended and agreed to.

Another paragraph—(*The Chairman*)—brought up, read the first and second time, amended and inserted (now paragraph 130).

Paragraphs 126 to 148 (now paragraphs 131 to 153) read and agreed to.

Paragraph 149 (now paragraph 154) read, amended and agreed to.

Paragraphs 150 to 155 (now paragraphs 155 to 160) read and agreed to.

Paragraph 156 (now paragraph 161) read, amended and agreed to.

Paragraphs 157 to 195 (now paragraphs 162 to 200) read and agreed to.

Paragraph 196 (now paragraph 201) read, amended and agreed to.

Paragraphs 197 to 201 (now paragraphs 202 to 206) read and agreed to.

Paragraph 202 (now paragraph 207) read, amended and agreed to.

Paragraphs 203 to 226 (now paragraphs 208 to 231) read and agreed to.

Another paragraph—(*The Chairman*)—brought up, read the first and second time and inserted (now paragraph 232).

Paragraphs 227 to 238 (now paragraphs 233 to 244) read and agreed to.

More paragraphs—(*The Chairman*)—brought up, read the first and second time and inserted (now paragraphs 245 to 248).

Paragraph 239 (now paragraph 249) read, amended and agreed to.

Paragraphs 240 to 246 (now paragraphs 250 to 256) read and agreed to.

Postponed paragraph 52 read, amended and agreed to.

Annex agreed to.

Resolved, That the Report, as amended, be the Second Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select committees (reports)) be applied to the Report.

Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.—(*The Chairman.*)

[Adjourned until Tuesday 7 January at half-past Four o'clock.]

LIST OF WITNESSES

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Wednesday 25 September 2002

Rt Hon Jack Straw, a Member of the House, Secretary of State, Mr Edward Chaplin, Director, Middle East/North Africa, Mr William Ehrman, Director, International Security, and Dr David Kelly, Adviser to Non-Proliferation Department, Foreign and Commonwealth Office Ev 1

Thursday 24 October 2002

Dr John Chipman, Director, Mr Steven Simon, Assistant Director, and Dr Gary Samore, Senior Fellow for Non-Proliferation, International Institute for Strategic Studies Ev 11

Professor Christopher Greenwood, Professor of International Laws, LSE, and Professor Ian Brownlie, Chichele Professor Emeritus of Public International Law, University of Oxford Ev 23

Lord Wright of Richmond and Sir Harold Walker Ev 29

Monday 28 October 2002

Rt Hon Jack Straw, a Member of the House, Secretary of State, Mr Tim Dowse, Head, Non-Proliferation Department, and Mr Peter Ricketts CMG, Political Director, Foreign and Commonwealth Office Ev 37

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Memorandum by Professor Christopher Greenwood CMG, QC Ev 17

Memorandum from Professor Ian Brownlie QC Ev 21

Memorandum from Sir Harold Walker Ev 35

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Letter from Sir John Stanley to Denis MacShane, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, 8 May 2002 Ev 49

Letter from Mike O'Brien, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, to Sir John Stanley, 5 July 2002 Ev 49

Letter from the Counter Terrorism Policy Department, Foreign and Commonwealth Office to the Rt Hon Sir John Stanley MP: Signature and Ratification of UN Conventions	Ev 50
Memorandum from the Foreign and Commonwealth Office: Co-operative Threat Reduction and Non-Proliferation Assistance Programmes	Ev 50
Memorandum from the Foreign and Commonwealth Office: Activities at the Atomic Weapons Establishment, Aldermaston	Ev 66
Further memorandum from the Foreign and Commonwealth Office: International Code of Conduct against Missile Proliferation	Ev 67
Correspondence between the Chairman of the Committee and the Secretary of State, Foreign and Commonwealth Office: Travel Advice	Ev 69
<i>Letter from the Chairman of the Committee to the Foreign Secretary, 22 October 2002</i>	Ev 69
<i>Letter from the Foreign Secretary to the Chairman of the Committee, 28 October 2002</i>	Ev 69
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Correspondence between the Chairman of the Committee and the Secretary of State, Foreign and Commonwealth Office: Pre-emptive Self-Defence	Ev 77
<i>Letter from the Chairman to the Foreign Secretary, 25 November 2002</i>	Ev 77
<i>Letter from the Foreign Secretary to the Chairman, 2 December 2002</i>	Ev 78
Memorandum from Dr Stephen Pullinger, Executive Director, International Security Information Service (ISIS)	Ev 78
Memorandum from the House of Bishops, The Church of England	Ev 80
Memorandum from Charles Tripp, Reader in the Politics of the Middle East, School of Oriental and African Studies, University of London	Ev 97
Memorandum from the Center for Constitutional Rights, New York	Ev 100
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Memorandum from Mr Brian Dawes, Montrose, Angus	Ev 106

MINUTES OF EVIDENCE

TAKEN BEFORE THE FOREIGN AFFAIRS COMMITTEE

WEDNESDAY 25 SEPTEMBER 2002

Members present:

Donald Anderson, in the Chair

Mr David Chidgey
Mr Fabian Hamilton
Mr Eric Illsley
Andrew Mackinlay

Mr John Maples
Mr Bill Olnier
Mr Greg Pope
Sir John Stanley

Examination of Witnesses

RT HON JACK STRAW, a Member of the House, Secretary of State, MR EDWARD CHAPLIN, Director, Middle East/North Africa, MR WILLIAM EHRLMAN, Director, International Security, and DR DAVID KELLY, Adviser to Non-Proliferation Department, Foreign and Commonwealth Office, examined.

Chairman

1. Foreign Secretary, may I welcome you again on behalf of the Committee. This is part of our continuing inquiry into the War Against Terrorism. Indeed we are going to give, the Committee has just decided, a new focus obviously on Iraq and the regional implications under the umbrella of this continuing inquiry. Would you firstly please introduce your colleagues before we start?

(*Mr Straw*) William Ehrman, who is the Director of the International Security Department at the Foreign Office, Edward Chaplin, who is Director of the Middle East/North Africa Department, and Dr David Kelly, who is an adviser to the Foreign Office now, which is why he is on the team, but he is a microbiologist and he spent seven years, 37 inspections as one of the UNSCOM inspectors in Iraq.

Mr Chidgey

2. Foreign Secretary, on behalf of the Committee, can I just say we are very grateful that you have found the time to see us today to discuss an issue of very great importance not just to this Committee, but to Parliament and people as a whole. Clearly it is an area which is going to unfold. We do not know how quickly and we do not know in which direction, but clearly it is a key issue in foreign policy at the moment. In that light, Foreign Secretary, we would be very grateful if you could tell us how you see you in your role keeping Parliament informed as the crisis with Iraq unfolds and, in particular, how you will be able to respond to the voice of Parliament. What channels will you be making available for the voice of Parliament to be heard? In short, what does the expression used by the Prime Minister yesterday, "keeping in touch", mean to you?

(*Mr Straw*) Well, it has a very wide meaning indeed. It is for Ministers to propose and for Parliament to dispose and Ministers have powers under our Constitution and some of those powers are derived from the Royal Prerogative. That is the nature of our Constitution, that executive powers in

other systems apply not least to decisions about putting our military into action, but none of these decisions can continue to be made without the consent of Parliament, and we are aware of that, so let's be quite clear about that. I do not think there has been certainly in the last 100 years any Prime Minister who has been rash enough to put troops in the field without being clear that he or she has the consent—

3. But what specific—

(*Mr Straw*) Well, that is the first one. I just want to make this clear.

4. So you do not see the Royal Prerogative being used to put British troops in?

(*Mr Straw*) I do not want to go into a long exegesis about the derivation of powers under the Crown, but if there is a power which preceded the Bill of Rights in 1688, it derives from a prerogative and obviously a key power before that was not centred around civil service departments which did not exist, which are statutory, but was that of war and peace and disposition of the military, so that does derive from that and that is our Constitution. It may change, but that is where it is at the moment. However, do our decisions have to be the subject of consent by Parliament, by the House of Commons particularly? Of course and the Prime Minister is fully seized of that and he supports it, but even if he did not, that is the nature of our Constitution. How do we keep in touch, to answer your direct question? By evidence like this and if, as I hope it does not, but if military action were to proceed, I know that you would wish to see me frequently and no doubt the Defence Select Committee would wish to see the Defence Secretary. Secondly, by statements in Parliament to keep Parliament, both Houses, up to date as quickly as possible about changing events and circumstances. Thirdly, by debates and if you want me to deal with the issue of substantive motions, I am very happy to.

5. I think we would like to hear that.

(*Mr Straw*) Fine. Well, the background to this is that practice in terms of substantive motions has varied. In the Second World War, substantive motions were rarely used and never used on key

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events. The motion which despatched Chamberlain and installed Churchill in 1940 was on the adjournment, so they can actually have a very important effect. That said, during the 1990s there were two occasions when we were engaged in military action, one at the beginning of 1990 in the Gulf War, then in 1998 for Operation Desert Fox. There were substantive motions in respect of both of those. In 1991 the substantive motion was taken and debated in the Commons four days after military action began and Gerald Kaufman yesterday gave an explanation of the debates on the adjournment which had preceded that. In 1998 there was a substantive motion which was debated and agreed by the House ten months before military action took place. That was in February and the military action was in the December. We, in government, have no difficulty at all about the idea of a substantive motion at the appropriate time, I make that clear, with one condition about the exact timing and that is that we, and no one would expect us to, we cannot undertake to put down a motion immediately, shortly before military action commenced if the effect of that would be to give the enemy advance notice of our military activities and that was why in 1991 the motion was taken four days after. If it is possible to have a motion significantly in advance, and those questions do not arise, then that is fine.

Chairman

6. Foreign Secretary, yesterday when you spoke to the House you mentioned that there were ongoing discussions in the Security Council relating to a new resolution. Would you please update us on that?

(Mr Straw) Yes, the ongoing discussions, the most intensive discussions at the moment are between ourselves and the United States Administration and where we hope to be at an appropriate moment will be that there will be a sharing of private, but formal texts with the other members of the Permanent 5.

7. When would that come?

(Mr Straw) Well, shortly, but because of the nature of negotiations, you cannot give exact time lines until they are completed. Obviously there has been a great deal of informal discussion by our Ambassador, Sir Jeremy Greenstock, in New York and interlocutors there. I have just come away from speaking to him a moment ago and I will be talking to him again later this afternoon. Then there has also been a good deal of discussion between the British Government and the United States Government in Washington.

8. So far as the representatives of the other three are concerned, France, Russia and China, do they, each one, accept the need for a new resolution?

(Mr Straw) I believe so, is the answer. What I, with respect, cannot do or certainly it would be unwise for me to do is to lift the veil at this stage on the negotiations because these negotiations are ones which have to be conducted in private if they are to have any chance of public success. We are not at the moment of having these discussions taking place in the plenary of the Security Council. They are private discussions at the moment. I think if you looked at the reactions to President Bush's speech, you will see

that each Foreign Minister certainly from the P5 acknowledged the strength of the argument that President Bush had made to the General Assembly on the 12 September and acknowledged very powerfully the need for inspectors to go back into Iraq. There is an issue about the exact circumstances and remit for the inspectors.

Andrew Mackinlay: Can I just say for myself that I think that many of us, certainly myself, think the British Government have pursued this matter with some skill and courage and bearing in mind there were a lot of people who reminded me of Bottom yesterday, neither one thing nor the other, I thought it was probably a good idea if I and I imagine this Committee, who have been live to the threats of terrorism generally for some time, would like to flag it up formally. I think I speak for everybody here and we did draw attention to this in our own report and some people would not see it if it was painted on their eyelids, so we are a bit frustrated. I wanted to make that clear.

Chairman

9. You do not disagree with that?

(Mr Straw) I agree with it 100 per cent. It is delightful to agree with my good friend Andrew Mackinlay.

Andrew Mackinlay

10. I noticed that both yourself and the Prime Minister yesterday stressed, "We will always act in accordance with international law". The Prime Minister also made that point in column 34. It was put to me yesterday that somebody thought there was a sort of nuance of difference between yourself and the Prime Minister or No 10. I do not think there is, but you might want to reaffirm the position if it is not painted on people's eyelids. That was A. B was the question where you made the point about the UN resolution which we are seeking, but will that resolution or resolutions include the method of enforcement because surely that is the nub of it, is it not? You get resolutions passed, but there does not seem to be a specific mandate as to if there is non-compliance, how, by whom and when they should be enforced and I wonder if you have some aspirations to pin the UN down on that because it does relate to international law. The final point was, yes, you made the distinction where you emphasised Chapter 7 resolutions and it does seem to me that this was something where if I was handling the Foreign Office's publicity, I would have emphasised much more that it is mandatory, and I just wondered if you wanted to amplify on that.

(Mr Straw) There is no difference between the Prime Minister and myself. Have I stopped beating my wife? No. It may come as no particular surprise to discover that I looked at the Prime Minister's statement in draft and he looked at my speech in draft because it is rather important that we are in the same place and it is rather important that we say the same things on international law, but I cannot for the life of me imagine that anybody could have thought that we were in different places on the issue. On B, on resolution enforcement, first of all, methods of

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enforcement are these: one, by the powers given to the inspectors and one of the reasons why we think there should be a new resolution is because we do not think that the powers provided under 1284 and other resolutions are sufficient. For example, they do not cover so-called presidential palaces. That is direct enforcement. The second is by the threat of military action, and I know you share this view, Mr Mackinlay. Let's be absolutely clear about this, that we have only got to the stage we have with the Iraqi Government where they are saying that they will allow inspectors in, query whether they will, but we have only got to that point because there is a clear threat of force and that is the reality. One of the points I keep making is that there is a powerful paradox here which is that the very best chance of peace and a peaceful resolution to the disarmament of Iraq is by preparing for war and making it clear that you are willing to go for military action if Iraq does not accept a peaceful resolution of this issue.

11. But UN resolutions specify that there can be enforcement by military action by whom?

(Mr Straw) That is obviously the subject of negotiation at the moment. Now, on Chapter 7, I am glad you mentioned this if just to let you know that we are not all ventriloquist dummies in the Foreign Office. This was a point that I thought was a powerful one about Chapter 5 and Chapter 6 and one that, I agree with you, has not been brought out sufficiently in the past. There is, as I made clear in answer to Mr Galloway, those resolutions on the Middle East. Yes, they ought to be implemented and we have a special responsibility about the implementation of every Security Council resolution because, by definition, we have at least not vetoed any Security Council resolution, we are permanent members of the Security Council, so we have consented to those, but those were made under Chapter 6 which is about the pacific resolution of disputes. Normally they lack authority, but it means that the United Nations have recognised that force by the international community would not then be a method of solving the dispute, and typically they are bilateral or trilateral disputes between states. There is a difference between that and Chapter 7 which is actually, with respect, the threats-to-peace question which is the chapter dealing with the use of force, but is directly authorised by the Security Council or provided otherwise by international law and that is laid down, as it happens, under Article 51. That is a big, big distinction. When people come out with this nonsense, "Well, you can't enforce the resolutions against Iraq until you have enforced the resolutions against everybody else", which is the—

Chairman

12. Not to mention Israel.

(Mr Straw) Yes. It is the excuse of criminals down the ages, and I am sure it has happened to you, Mr Anderson, where your client, who was palpably guilty, complained that he had been badly treated because his colleague, who was equally guilty, had not been caught. It is no answer at all. These are mandatory obligations. They are clear and they are unique and they have got to abide by them.

Sir John Stanley

13. Foreign Secretary, in the House on 12 March, column 744, you said, "It is more important than ever that inspectors from the United Nations Monitoring and Verification Inspection Commission and the International Atomic Energy Agency be given access to all relevant sites and be allowed to inspect freely wherever they want to and at whatever time they wish to". Can you assure the Committee that the British Government will only support any Security Council resolution that clearly incorporates the principle of UN weapons inspectors being able to inspect on an any-place-at-any-time basis?

(Mr Straw) That is our very clear intention, Sir John. We have stated it often enough, so has the Prime Minister. Can I give you details of the final text of the resolution which was agreed before the Security Council? No, and I apologise for that, I am not going to do that, but that is our very, very clear intention.

14. Would you not agree that if you fail to get a resolution based on inspections anywhere at any time, then almost certainly the inspection regime which starts is not going to be able to establish whether or not weapons of mass destruction exist, their whereabouts and how they can swiftly be disarmed?

(Mr Straw) That would be a very unsatisfactory position of course, but, as I say, I do not want to go there. What we are aiming for is what I described on the 12 March and it is what I am happy to repeat now.

15. So it is simply your intention?

(Mr Straw) I am sorry, I am not, with respect, going to get into a position here of saying what our tactics are going to be on the Security Council. I cannot and you would not if you were in my position, but I said that on the 12 March and the Prime Minister, for example, repeated it in bolder terms still on the 6 April at the press conference he did with President Bush at Crawford where he said that inspectors had to be back any time, any place with no conditions, or words to that effect, and we have repeated it since and that is what we seek.

16. Is it also your intention that in the same resolution there will be incorporated a clear time limit within which Saddam Hussein has to deliver on an any-place-any-time basis?

(Mr Straw) Again what we are seeking from the resolution is a tough resolution. There are some fine issues about how far you lay down particular time lines in the resolution and how far you give wider powers to the inspectors. They are important details, but they are details. Are we seeking a resolution by which Iraq either has to comply or face the consequences? Yes.

17. With a time limit?

(Mr Straw) Obviously, by definition, that means that they cannot string it out for ever or for a long time. They have got to act quickly. They have got to act within a reasonable time. Now, that is absolutely clear. Are we seeking a resolution which stops Saddam playing games and he either complies or he is in clear breach? Yes, too.

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18. From what you have said, is the Committee right to conclude that the wording of the resolution, as far as you are wishing to achieve, will be such that when the end of the time limit is reached, there will be in place UN resolution cover for military action if the Government so decides?

(*Mr Straw*) You ask me to anticipate the outcome of the negotiations and that is never possible, but I have already made it clear before in evidence to this Committee that what we seek is a clear, tough resolution.

19. Given the history of previous weapons inspectors inside Iraq and the obstruction and intimidation of those inspectors, have you received any requests from either UNSCOM or from the IAEA that on this occasion the inspectors should be accompanied by armed force to enable them to ensure that they can achieve their any-place-any-time inspections?

(*Mr Straw*) I have not because it would not be appropriate for Hans Blix and his colleagues to start negotiating those issues with one member of the P5. I am aware of there being discussions between him and Kofi Annan, the United Nations Secretary General, and the issue of the precise protection to be provided to the inspectors is obviously one that is exercising him considerably and on which there are a number of different views. Your other point, Sir John, was about the way in which the inspectors were messed around in the 1990s. What I think is interesting about the way the environment and the inspectors work, and if I am wrong, I invite Dr Kelly to correct me because he was there and I was not, but what I am told by other people who were inspectors at the time was that when the international community were clear and resolute, the environment for the inspectors was a very different one from the moment it became fairly obvious that it was possible for Saddam to play one member of the international community off against another.

(*Dr Kelly*) You are absolutely right in that analysis.

20. What are your grounds for optimism that on this occasion the Saddam Hussein regime is going to allow any-place-any-time inspections whereas hitherto they have set their faces totally against it?

(*Mr Straw*) I am not optimistic or pessimistic here; I am realistic. What I know is that the tougher the international community is and the more resolute it is, the more probable it is that the Saddam Hussein regime will recognise that the game is up and they have got to let the inspectors back and they have got to be able to do their job, and the consequence of that job has to be the disarmament of Saddam Hussein's weapons of mass destruction. So that is the realistic view I take and obviously where we are is that we wish to see other members of the international community accept our analysis which, as far as I am concerned, is very obvious.

Mr Maples

21. Foreign Secretary, I think I am broadly supportive of what the Government is doing, but I just want to explore with you a couple of questions about the legal basis. If you do not get the United

Nations Security Council resolution, is it the Foreign Office's view that the existing resolutions provide a sufficient legal basis for military intervention?

(*Mr Straw*) Well, the first point is that I spelled this out in some detail in my speech yesterday, that any decisions we make will be fully consistent with our obligations in international law. It is one of those things which although it goes without saying, is also worth restating where I spelled out yesterday our view of international law and the value of international law in enforcement. It has never been the case that the only basis of international law is an immediate extant resolution. Sometimes some people think it is and it is actually clear from within the United Nations Charter itself that that is not the case.

22. Yes, I understand that.

(*Mr Straw*) But I just want to explain this, that there are various points in the Charter, which is one of the key bases of international law, where the Charter itself refers to the inherent right of individual members. So as far as this is concerned, the direct answer to your question is no, we do not regard it as absolutely essential that there should be another Security Council resolution. We do regard it as desirable. As to what legal advice we receive if there is not a Security Council resolution, that frankly depends on the circumstances at the time and neither I nor our legal advisers could speculate on that.

23. You have not quite answered my question which is: do you regard the existing United Nations Security Council resolution as an adequate legal basis for military action?

(*Mr Straw*) That will—

24. You must have a view.

(*Mr Straw*) I think I have made it clear that we do not regard it as an inadequate basis. We think it is desirable not least politically to have a clear, new resolution, but if you go through the existing resolutions, there is ample power there and also ample evidence of a material breach, but if you are asking me to give the legal advice which we received, I am not going to, with great respect, and if you ask me to go more into the realms of speculation about "What is this?" and "What is that?", again, with respect, I would not go there.

25. I am not asking you to speculate. I take it, as you say, that you would regard the existing resolutions as being grounds for military action—

(*Mr Straw*) They might be. The answer is that we do not regard a new resolution as absolutely critical to any circumstances in which military action could take place. We do consider that any decisions which are made have to be fully consistent with international law and there is no question about that. Have we received legal advice on this scenario or that scenario? No, because when the Prime Minister says that we have not got to the point of making decisions about military action, that happens to be the case.

26. I am thinking of the other grounds which might justify military action, the concept of preemptive self-defence. Do you think that might exist and, if so, how strong do you think the threat has to be?

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(*Mr Straw*) Well, I was discussing this with the Foreign Office lawyers this morning and here is a note which I have not yet had a chance to read, but it all goes back to the *Caroline* dispute which contained a classic description of the right to self-defence in international law, and the dispute concerned action taken in 1837 by British forces in Canada against a United States merchant vessel bordering on the Great Lakes which had been used by Canadian rebels as a basis for attack. British forces attacked the *Caroline* in US waters. One of the British officers was arrested in the United States and threatened with prosecution, but released after United Kingdom representations. A letter by Daniel Webster, the US Secretary of State, to the UK Minister during the negotiations is still referred to today. In that letter, Webster referred to the need in the UK to show that it was in self-defence, instant, overwhelming leaving no choice and no moment for deliberation. So this says no question arises that action may be taken not only when there is an actual attack, but also when an attack is imminent and the United Kingdom relied upon this doctrine as a basis for its military operations in Afghanistan post-11 September. Of course since then, since action can be much more instantaneous than it was in 1837, the doctrine has been developed. I actually had part of the national security strategy read out to me yesterday and I in turn read out some extracts which put it in what I thought was a more balanced context, the fact that the President was eschewing any idea of acting for unilateral interests in the United States and there is a very strong commitment to international organisations, above all, the United Nations. What September 11 has done has made us much more alive to possibilities of attacks against the civilised world coming from surprising sources in a surprising way and it raises the determination, above all, from the United States because they were the direct victim of the 11 September, to think about where these surprises may come from and to preempt them. I think that is eminently rational and again I refer colleagues here to what the Prime Minister said to the TUC a couple of weeks ago, that if he had made the speech which he made on September 11 2001 on September 10, he would not believe it, but preemption against the al-Qaeda would have been a very successful thing.

27. But what happened in Afghanistan, one could argue after the event, after the act of aggression had taken place on September 11, was a reaction to that. If we were to use the doctrine of pre-emptive self-defence or Article 51 of the Charter to justify military action in Iraq, it would be clear that so far no action actually has taken place, and it is that—

(*Mr Straw*) I am not going down that track, with great respect, back to where you would like to take me and I am reluctantly declining, which is to discuss a range of scenarios and legal advice. I am not going there. Let me just repeat the point that September 11 changed people's consciousness about the nature of threats and, therefore, any need for preemption. Should we have taken action against al-Qaeda if on September 10 we had discovered that there was even a 1 per cent chance of them doing that? Yes, for sure, and it would have been irresponsible of any government not to do so. Now, of course at the

moment you do go for preemptive action, then people say there is only a zero per cent chance. You try not to latch on to zero chances, but I think that document needs to be read carefully and needs to be seen in the world of post-September 11.

Mr Olnier

28. Foreign Secretary, last December you told us that you had seen no evidence to link the Iraqi regime with Osama bin Laden, al-Qaeda or the Taliban. The Dossier which was published yesterday¹ and debated in Parliament is really silent on this point. Is there any linkage, do you think, between the War Against Terrorism and action against Iraq?

(*Mr Straw*) Well, as I said this morning on the radio and I have not changed my mind since, no one has ever suggested that Saddam Hussein is directly behind the al-Qaeda organisation and I have never seen that suggested. Now, others may have seen that suggested, but I have not. I would then go on to say that given the fact that Saddam Hussein's regime has unquestionably been supportive of terrorist organisations in the Middle East, which it has, and given his hatred for the United States, which is visceral, it is reasonable to see that he has some sympathy with the al-Qaeda regime and, therefore, for us to look for evidence. Then I made other points about post-September 11 and then I say that nothing at least we have seen so far suggests that Iraq was involved in the September attacks, but we are investigating all reports of links and there may be some evidence which we are still investigating about whether there were post-September 11.

29. Given, as I say, that the situation then is not as clear-cut as we would like it, is there a danger that the West is really going to lose focus on the War Against Terrorism. Al-Qaeda is still out there, still putting out the threat and yet—

(*Mr Straw*) I do not see, Mr Olnier, the War Against Terrorism and a war against rogue states like Iraq as alternatives, I see them as part of an overall strategy to remove or reduce threats that are posed. Be aware that although Iraq in some respects is the opposite of a failing state like Afghanistan because it has a very strong self-reliant authority structure, it also displays many of the characteristics common with failing states and one of those characteristics is its support for terrorism if it thinks it is in its interests. As I think colleagues here will know, Iraq is up to its neck in supporting terrorism against Israel without any question at all. Given the nature of the regime, if it ever saw opportunities to develop other terrorist networks on which it could rely it would do that and it would then be used against the West and for certain it would do so. I would have thought that was very straightforward and obvious. Dealing with the flagrant breach of international law by Iraq and then dealing with an equally flagrant breach of international law endorsed by terrorist organisations are part of a total comprehensive approach to ensuring that we live by international law.

¹ *Iraq's Weapons of Mass Destruction. The Assessment of the British Government.* Available from www.pm.gov.uk

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Sir John Stanley

30. Foreign Secretary, you will have heard in the House yesterday my request to the Prime Minister for his assurance that the Government is continuing to give utmost priority to the detection and elimination of al-Qaeda and the Prime Minister replied "Yes indeed, we do". Can you give this Committee the opportunity here today to update us on what the British Government is doing, particularly from the Foreign Office standpoint, in the continuing efforts to detect and demolish the al-Qaeda organisation? We, of course, have seen the press reports of the elite United Nations document indicating that a substantial amount of the al-Qaeda fund raising network is still in tact. We are aware, again from press reports, of the number of leading al-Qaeda figures reported still at large and reports to indicate that outside Afghanistan the al-Qaeda network is still very much in being. Against that background it would be helpful, and obviously this is a public session at the moment, if you can in public terms update us on what you are doing to assist on the war against al-Qaeda.

(*Mr Straw*) A great deal. I am going to ask Mr Ehrman to come in in a moment. Just to say that another way in which the international environment against terrorism has changed is by the passage of Security Council Resolution 13/73 and the establishment by that of the Committee Against Terrorism which is chaired by Sir Jeremy Greenstock, the United Kingdom's Ambassador to the United Nations. The Greenstock Committee has done a huge amount of very effective work in going through every Member State of the United Nations to check and cross-check on whether they have taken the action required of them under UNSCR 13/73 to counter terrorism. There is a range of actions which are laid down and this includes dealing with their funds. There is obviously continuing very active intra-intelligence agency, security agency co-operation. I will ask Mr Ehrman to come in.

(*Mr Ehrman*) Thank you very much. There is continuing work obviously on the police side and the intelligence side and you will have seen reports recently of a number of arrests in Pakistan, in the United States, elsewhere, in Sweden, so there are continuing arrests, including of some important al-Qaeda members. The one in Pakistan recently was an important one. There is a lot of work going on on the cutting off of funds and within the EU we have been regularly meeting to put on a list those organisations which are banned, adding to it, adding individuals, so that all of the EU act against those organisations and individuals. There is also, as the Foreign Secretary has mentioned, flowing from the work in the United Nations a lot of work going on to assist states that need assisting to prevent terrorism, whether it be through aviation security, whether it be helping them with their financial controls, with their export controls, with their border controls. There is a lot of work going on and the United Kingdom is putting a lot of money into it to increase the safety of nuclear material around the world, particularly in Russia and the former Soviet Union states. It was announced at Kananaskis that up to \$20 billion over ten years would be contributed to that and we

announced that we will contribute \$750 million over the ten years, so in all of these areas a great deal of work is going on.

Mr Pope

31. Can I first of all ask a quick question which follows on from the point that Mr Maples made about pre-emptive strikes. I am happy to accept the point that you made about the legality of such a situation, I have no problem with that, but it strikes me though if we and the US took pre-emptive action against Iraq on the ground that we felt our interests were threatened, that may be legal but would it not leave the credibility of the United Nations in tatters? Would that not be an extraordinary situation for the US and UK, founding forces behind the UN, to be in because essentially then we would have just ignored the international community?

(*Mr Straw*) Can I say I was a bit bemused by the question from Mr Maples. I thought Mr Maples' question was prompted by the National Security Strategy published last week. The issue of pre or post-emption in respect of Iraq, I do not quite see the relevance. The issue is that here you have a regime which is in clear breach of an endless number of Security Council Resolutions requiring them to do certain things under Chapter 7, the mandatory chapter of the United Nations Charter, so it is not, it seems to me, in the categories of which you speak. The case for the world community saying "you are in material breach", which they are, and then saying "if you do not repair these material breaches military action will have to be taken in order to enforce the law of the international community" seems to be an overwhelming one and the question of pre-emption does not arise. I do not understand the nub of it.

32. My point was I got the view from the American administration that if they felt that they were threatened they would act with or without the consent of the United Nations. The danger is that we would follow in behind that and that would in itself leave the authority of the United Nations damaged beyond repair and that would not be in our interests.

(*Mr Straw*) If any nation feels that it is threatened in a direct way then under Article 51 it has an inherent right to take action pre-emptively. The United States has always acted in a manner which is consistent with international law, it just has. I just repeat the point that I made yesterday about President Bush's speech. I was there, I heard it. It was very warmly received by a very broad cross-section of the international community represented in the General Assembly and it was a very pro United Nations speech. Amongst other things the President announced that the United States would rejoin UNESCO. That has not received a great deal of coverage in this country but it is a very welcome move and quite unexpected. I think he was very positive about the United Nations but making the point that the United Nations has responsibilities and he wanted to see them take those responsibilities. I think that is a reasonable position to take.

33. If I can just move on to talk about the nature of the threat that is posed by Iraq. In the Dossier that was published yesterday there is a helpful map showing the ranges of Iraq's current missile

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capability on page 31 and also its planned or potential missile capability. I noticed that with its al-Hussein missiles, of which it probably still has around 20, they are capable of reaching our Sovereign Military Bases in Cyprus.

(Mr Straw) Yes.

34. I thought that was a very interesting piece of evidence. What the Dossier does not show though is any intent to use those missiles. I just wondered what assessment you had made of Iraqi intent. Is it in your opinion specific to just, say, Israel, which I think is widely accepted, or is there a wider threat to British interests, including possibly our Sovereign Bases on Cyprus?

(Mr Straw) The basic evidence of intent is what is in the book and it is that Iraq has not only attacked Israel in the past but it has used missiles against four other of its neighbours. Saudi Arabia, Iran, Kuwait and Turkey have all had missile attacks. This is not in the distant past but in the last two decades. Iraq has invaded two of its neighbours, Kuwait and Iran, in the last 20 years. This is why one can use the word "unique" advisedly, because no other country in the world has acted in this way. It is by the same very bad man at the head of this regime. As I said to one of my colleagues behind yesterday, one has no need to look in the crystal, it is there in the book. I will give a wider hearing to this excellent note. Saddam attacked our own forces in 1991. I think you have to work on the reasonable basis, which is our basis, that he has this material and indeed this is made clear in the course of the Dossier and all the intelligence underlines this, that he sees his arsenal and his military capability overall not just as for use in extremis as serving some deterrent capability in a passive way but they are much more actively to be used as part of his overall strategy for dominance in the region. That is why over 20 years he has acted so aggressively. Just look at the history of the Iran-Iraq war, why they ended up in that way. Look at what happened over Kuwait. The short story, and again it is brought out in the Dossier, is that he was tied up with the Shah, there was then the rebellion in Iran and, whatever one's views about it, a certainly more representative government was established in Tehran and he then realised he had backed the wrong horse and acted extremely aggressively towards them and then invaded their territory. There was this long, drawn out war in which over one million people died. He got nowhere except he had spent an awful lot of money and then he was concerned about the oil price and his own economy so then decided to invade Kuwait inventing some entirely spurious arguments about ancient maps showing Kuwait as part of Iraq. It is clear that this man is very aggressive, very evil and will not subscribe to the norms of behaviour nor the boundaries of how normal civilised states behave.

35. Just one final follow-on question if I may. You mentioned the unique nature of the threat posed by Iraq and I just wonder how unique it is and whether it is unique at all. President Bush in the past has referred to an axis of evil. There are other countries in the world which have weapons of mass destruction and are developing missile capabilities, who do repress their own populations and are a threat to regional and possibly global stability. Do we intend

to take action against those other countries in the axis of evil or are we just dealing with an isolated case of Iraq?

(Mr Straw) I tried to deal with this yesterday in my speech but it necessarily had to be fairly brief. There are other countries which are proliferators mainly of nuclear weapons but some of chemical and biological weapons. What I said in the House was that our approach to Iraq is no different from our approach to them, our overall strategy, which is to wish to see them brought within the international pale where they sign up to treaties but we do not think they are enforcing them, to get them to enforce them in practice as well as just by the letter. How do you do that? Well, you start off by the diplomatic process and with every other country that is exactly where we are. We do have discussions, most active discussions, with India and Pakistan about the nature of their nuclear capability and the need for it to be safely held while it is passive and what could happen if it were used. As it were part of that discussion became public at the end of May when the United States and we were involved in very active diplomacy to assist both parties there to scale down the confrontation across the line of control and thankfully, touch wood, with some degree of success, I hope not temporarily. If you take the case of North Korea, North Korea is a proliferator, it is a manufacturer of ballistic missile systems that it will pass to anybody who is available with their ready cash, we wish to see their role as a proliferator ended. What is happening with North Korea is that there is a dialogue in place and other things happening as well. The Japanese Prime Minister has played a very important role in that dialogue, has been very courageous, a point that I was making to Mrs Yoriko Kawaguchi, the Foreign Minister of Japan, in a telephone conversation I had with her this morning. We have backed the role of the Japanese Prime Minister. I have agreed to upgrade our diplomatic representation in the North Korean capital, we have got a new ambassador who will be there next month, and we hope that this will lead to a change in the attitude of North Korea. People sometimes mention Iran. I am someone who has taken active steps to strengthen our diplomatic relations with Iran. Twice in the last year I have visited Iran. I had a very good meeting with my opposite number, Kamal Kharrazi, at the United Nations General Assembly. These are issues that are discussed with them. As long as you make progress through diplomatic channels, even slow progress, you should go down that route. The difficulty, indeed the impossibility with Iraq is that they refuse to do that.

Mr Hamilton

36. My concern is this, Foreign Secretary, that in order to back up any resolutions on Iraq to try and get rid of their weapons of mass destruction we have to have an international coalition and the Prime Minister and yourself yesterday in the House made that absolutely clear. My first question is what are we doing actively to get other countries on board for this international coalition because it looks to many people as if it is just the United States and the United Kingdom?

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[Continued

[Mr Hamilton Cont]

(*Mr Straw*) Let me assure you that it is not. What are we doing? We are occasioning extremely active debates with other colleagues in the P5. The Prime Minister has spoken very recently to President Putin, to President Chirac and I have spoken at very considerable length to Igor Ivanov, to Dominique de Villepin and to Mr Tang, who are respectively the Russian, French and Chinese Foreign Ministers, and this dialogue continues as well as very active dialogue with other members of the Security Council. For example, I gave a lunch last Friday to the Mexican Foreign Minister—Mexico is a member of the Security Council—and a large part of that discussion was to do with Iraq and the position that the Mexican Government would take on various propositions before the Security Council. I saw the Australian Prime Minister, Mr John Howard, at lunch today and again Australia has an almost identical approach to this issue as us and, as you know, Australia, the United States and ourselves are intelligence partners as well. We do discuss this and we are discussing it all the time with every possible interlocutor.

37. Can I have a follow-on, Chairman? We have discussed the possibilities, the basis for pre-emptive action and you have answered that very clearly but what if the United States decides that diplomacy is not working fast enough, that the coalition is not building quickly enough and that it feels it needs to take unilateral action? Would the United Kingdom support the US in that unilateral action?

(*Mr Straw*) I am not going to get into that realm of speculation. Why not? Because President Bush made it crystal clear to the United Nations that he wants this issue dealt with by the United Nations Security Council, the principal organ of the United Nations. That is where it is at the moment. Everybody in the international community, I think, recognises that that is the best place for it. Let us hope that we can achieve an effective Security Council Resolution from it.

38. I know you do not want to speculate but do you believe—you may not want to answer this—if the United States is not satisfied that the UN is going to back up its Resolution with a coalition of potential military force that it would go it alone?

(*Mr Straw*) That is a question you have to put to the President of the United States rather than the Foreign Secretary of the United Kingdom. What I know for certain is that the United States Government wishes to see this resolved by peaceful means. Alongside that of the United Kingdom and every other government in the world it wants to see the disarmament of Iraq's weapons of mass destruction. I said yesterday, and I am happy to repeat it again, this is the position of the United Kingdom Government and it is also the position of the United States Administration. To repeat the point I made earlier, we are also of the view that the best way and most certain way of achieving that disarmament of Iraq's weapons of mass destruction by peaceful means is by preparing to use military action and if necessary using it. I think it is very important that Iraq gets that message, that that is what will happen if it does not comply with the will of the United Nations, the already stated will in all those Resolutions which have already been passed.

39. Do you believe that preparedness for war in order to achieve peace is going to be effective in this case?

(*Mr Straw*) You have to make no predictions about the behaviour of a dictator like Saddam Hussein. As somebody in the Chamber was pointing out yesterday, dictators are not always as rational as others but Saddam does seem to have quite an acute instinct for his own survival and that is why—

40. Why he is still there.

(*Mr Straw*) I was going to say why he goes in for pre-emptory execution of political and personal rivals, sometimes doing it himself. The evidence up to now, and it was also the evidence in the early 1990s, is when he knows what the alternative is and clearly he has to stop playing games, he stops playing games. The early evidence from this process with his statement saying, and I do not believe but I quote, that he was ready to have the inspectors back unconditionally indicates that he has started to get worried. I think we may need to worry him quite a lot more. We want it resolved peacefully. I have made clear how I think we will get there, by clear resolution of the international community and by then presenting Saddam with a choice, a very clear choice, one he has to make.

Chairman

41. Foreign Secretary, in 1981 you will recall Israel bombed a nuclear reactor in Iraq. In the light of the development of the doctrine of pre-emptive self-defence would we still be joining in the chorus of disapproval of Israel?

(*Mr Straw*) I am afraid I am not sufficiently familiar with the history of that. If you want me to offer you a definitive view I will write to you².

Mr Maples

42. I just wanted to explore with you in the three minutes we have got a little bit further the context in which this Iraq action has taken place because I am sure you will agree it is not the only security issue the West faces in the Gulf or the Middle East for that matter, particularly in the context of al-Qaeda and terrorism which seems to be at least financed and has grown largely out of Saudi Arabia and you yourself have talked about what you are doing with Iran on the other side of the Gulf. What I am interested in is very briefly—we have not got long to explore this—what Britain is doing in other countries in the Gulf to make sure that the action we might or might not take in Iraq—

(*Mr Straw*) Other countries in?

43. In the Gulf.

(*Mr Straw*) We are working actively with the other countries in that region. I may ask Mr Chaplin to come in on this. There is a profound difference between the other countries in the Middle East and Iraq which is that it is possible to have proper diplomatic relations. I do not just mean by having ambassadors there but by having intensive diplomatic dialogue. Mr Chaplin?

² See Ev 78.

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[Mr Maples Cont]

(*Mr Chaplin*) I think all the countries in the Gulf do regard Saddam Hussein, given the history of 1991, as a threat. Of course they may differ in how they think we should deal with it. Whenever you talk to them about it they will also remind us that there is another dispute going on in the Middle East which they think should receive equal attention and I think the Prime Minister and the Foreign Secretary dealt with those points yesterday in the debate. Yes, there is an ongoing dialogue and always has been, for example, about sanctions enforcement in all the countries surrounding Iraq to try to make sure that the sanctions regime is as effective as possible.

Chairman: We have one minute, Foreign Secretary. Mr Mackinlay is going to ask one very crisp question.

Andrew Mackinlay

44. It seems to me listening to the replies to myself, John Maples and Greg that Iraq is definitely in breach of international law and in breach of these Chapter 7 Resolutions. It seems to me the wider point is with your colleagues around the world big players now both in respect of this and other potential areas where there might be Chapter 7 Resolutions as well as agreeing the wording about what must be done in a Chapter 7 Resolution are you saying that we need to have the extra bit giving constabulary powers, if you like, to whoever? It seems that is the void. The danger is that over the past 50 years people have passed Chapter 7 Resolutions without going to the next bit saying how we are going to enforce. That is the nub now. We are all satisfied that he is in breach of international law but what we are dancing on is how, whom and when is there a specific mandate to come along as the sheriff, the marshal or the police officer?

(*Mr Straw*) It is quite a long question and I will make the answer very short. It is an important point to come back to. There have not been that many Chapter 7 Resolutions because we would not have had consensus within the Security Council for them. Of course there is an issue about enforcement which comes because the enforcement of the will of the international community depends by definition, given the current structure of the international community, on the armed forces of individual nation states working either individually or in a coalition. That is the conundrum. As long as the international community is not made up of one government but a series of sovereign states (for euro-sceptics around, long may that continue) that is a circle we are going to have to square. Producing a greater degree of authority into the international system and ensuring, if you like, there is more effective what you call constabulary powers and that consequences flow more quickly is a very important challenge for the international community.

Chairman

45. Foreign Secretary, the Prime Minister talked of keeping in touch and as a Committee we aim to keep in touch. There may be one or two questions arising from this that we will put by way of letter to you³. May I, on behalf of the Committee, thank you and your colleagues for coming today.

(*Mr Straw*) Thank you very much. Anyway, it is your call as to whether I come but it goes without saying that I am always very happy to come back as often as you wish.

Chairman: We will call often. Thank you.

³ See Evidence, Ev 69-78.

THURSDAY 24 OCTOBER 2002

Present:

Donald Anderson, in the Chair

Mr David Chidgey
Mr Eric Illsley
Andrew MackinlayMr John Maples
Mr Bill Olnier
Sir John Stanley

Memorandum from Mr Steven Simon, Assistant Director, International Institute for Strategic Studies (IISS)**THE CAMPAIGN AGAINST TERRORISM AND THE POTENTIAL WAR AGAINST IRAQ.**

1. Since the battle against al-Qaeda involves intelligence, law enforcement and immigration agencies rather than military forces, a campaign against Iraq should not impede the so-called “war on terrorism.”

2. U.S. forces now or recently deployed on counter-terrorism missions include less than 1000 troops in the Philippines, a handful of rotary wing flight instructors in Georgia, and a naval patrol off Somali waters. (Military forces administering Camp X-Ray at Guantanamo Bay in Cuba, for example, are drawn from Army reserve, rather than active duty units.) Personnel allocated to the counter-terrorism mission are primarily special operations forces (SOF). These are in fact in short supply and combat operations in Iraq will require most of them, or so the current concept of operations would suggest. Nevertheless, their utility in the war on terrorism at this point is quite limited. The U.S. has yet to conduct probes of militant camps in contested areas, such as Yemen or Somalia—operations that would require SOF—or arrest terrorist suspects, a function for which SOF are trained, but not yet authorized to carry out.

3. Combat operations in Iraq will require intensive intelligence support. This theater of operations is already fully covered by national technical collection assets as well as fixed wing high and low altitude platforms, including U-2 aircraft. During wartime, these assets would be augmented by a variety of unmanned aerial vehicles (UAVs), including long range high endurance models such as Predator. The data collected by these systems can be integrated and interpreted at USCINCENT in near real time by teams separate from those that collect against the Sunni terrorist target.

4. To the extent that terrorism related intelligence is collected by tactical assets during combat operations in Iraq, or in the post-conflict period, it will likely be shared quickly with CT analysts because (a) operators have become sensitized to the need for rapid dissemination of threat information and (b) the force protection implications of such information are immediate and potentially severe.

5. A campaign against Iraq will nonetheless affect the war on terrorism in two important ways:

(a) Depending on the pace and scope of allied occupation of Iraqi territory and seizure of WMD stocks, some of these weapons or materials might be “privatized” by enterprising renegade military personnel for transfer or sale to Islamic militants. Al-Qaeda veterans are numerous in northern Iraq and would be receptive to such deals. The movement has pursued a WMD capability since the mid-1990s and possibly earlier. If it acquired these weapons, al-Qaeda or like-minded militants would almost certainly use them against Western targets. The group’s spokesman has stated that millions of Americans must die and senior figures within al-Qaeda are known to have spoken about creating a “Hiroshima” for the U.S. An alternative scenario, according to US intelligence, would be the transfer of weapons or material by the regime itself to militants as allied forces closed in. In either case, swift identification of WMD sites and isolation of military units that have weapons or material would be absolutely essential.

(b) The war will be seen by many Muslims, especially militants, as evidence of the systematic conquest of the Muslim world that al-Qaeda theoreticians—and many others—allege is taking place. This perception will complicate the war on terrorism over the longer term by increasing the pool of recruits not only in remote areas, but within the UK and Europe. Recruitment in the UK has been quite vigorous through the 90s, judging by the Security Service estimate of 3,000 Britons passing through Afghanistan and Kashmir in the 1990s for “study” or military training. A war against Iraq will generate an increase in conversions from either moderate to more radical Islam practice, or from Christianity to Islam in local mosques and within HM prisons. If the war is prolonged, radicalization could lead to attacks on British soil. A parallel process of radicalization has also been unfolding in France, Germany and the Netherlands and Belgium. In the short run, the war will no doubt spur a surge in attacks against US, UK and French assets in the region as well as opportunistic attacks against Westerners elsewhere. British diplomatic missions abroad will be at risk as well as areas or sites frequented by British tourists, who are perceived by the militants as

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defying local mores and tempting local Muslims to transgress religious laws. Businesses that are believed to be British may also become targets of spontaneous violence as well as terrorist attack. British military personnel will also be subject to risks on par with the one they faced at the height of violence in Northern Ireland.

Mr Steven Simon
International Institute for Strategic Studies (IISS)
October 2002

Examination of Witnesses

DR JOHN CHIPMAN, Director, MR STEVEN SIMON, Assistant Director, and DR GARY SAMORE, Senior Fellow for Non-Proliferation, International Institute for Strategic Studies, examined.

Chairman

46. Dr Chipman, we welcome you and your colleagues to this afternoon's study, which is a continuing study by the Foreign Affairs Committee on the war against terrorism. You will be followed by two experts on international law, and then two former ambassadors relating to the regional problems. Perhaps you could introduce your two colleagues before we proceed.

(Dr Chipman) On my right is Dr Gary Samore, who is Senior Fellow for Non-Proliferation at the International Institute for Strategic Studies. He is an American national and was formerly, for some six years, a senior director for non-proliferation in the US National Security Council, and President Clinton's principal advisor on issues of proliferation. It is worth noting that in addition to his many general responsibilities in that position, he was one of the chief negotiators of the agreed framework between the United States and North Korea. To my left is Mr Steven Simon, Assistant Director at the IISS. He was also in the US National Security Council, as Senior Director for Global Issues, and took charge of much of the inter-agency discussions at that time on counter-terrorism questions.

47. The IISS produced this valuable document, *Iraq's Weapons of Mass Destruction: Net Assessment* on 9 September, well prior to the government's dossier of 24 September. There was also a document by the CIA, with their own assessment of the current state of their weapons of mass destruction. Can you say to what extent your assessment differs from that of the other two, the British Government and the CIA? Is it essentially that you carried the position largely up until the departure of the weapons inspectors and relied on public sources, since their own assessment obviously draws on intelligence sources? What are the key differences in the background, but more particularly in terms of the conclusions?

(Dr Chipman) I will begin answering that question, and then hand over for a little bit more detail to my colleague to the right, who was the editor of the dossier. We certainly relied on every available source to us to relate the story from the early 1970s, through to 1998, but we did not stop at 1998. We took the view that in 1998 the UN inspectors left Iraq and stopped working, but that there was a safe presumption that since Saddam Hussein was staying in Iraq, he himself would continue working. What we therefore did in our piece from 1998 to 2002 was first rely on some of the publicly-available information

that did exist for the period after the inspectors left—and there are reports from the Pentagon, the CIA and other agencies that do relate to assessments that were current in 1999–2000–2001, and we draw on those open sources. We equally drew on sources available to us from interviews that we conducted with people who had access to current information, but there was inevitably a degree of speculation in some of our assessments, and I would dare say there was a degree of speculation also in the information provided by the governments.

48. Where are the key differences in the assessments?

(Dr Chipman) The net assessment of us and the government and the CIA are pretty close, in fact. Where there are differences, I think they are within the normal bounds of areas of judgment. The first difference is that we make a bolder prediction about how soon Iraq might be able to construct a nuclear device if it had access to fissile material: we say within a matter of months; the government says between one and two years, and others say within a year. I think we are pretty much in the same ballpark on chemical and biological weapons. On ballistic missiles, in the body of our report we say the worst case analysis is that the Iraqis might have retained several dozen al-Husseins with a range of 650 km, but our sense is that they probably have a small force of about a dozen. The government report says there may be up to 20 al-Husseins, but perhaps not all are operational. To my mind, that sounds like about a dozen potentially, so I do not think there is a big difference there. However, the government report confirms what we speculated on, that the Iraqis will have extended the range of their al-Samoud missiles beyond 150 km to 200 km. They also talk about more ambitious ballistic missile production facilities that may be being created in order to develop ballistic missiles with a range of up to 900 km. Perhaps Gary might want to add a few words on that.

49. Will you add on UAVs as well and the extent to which you believe they have developed that capacity?

(Dr Samore) We certainly mention the UAVs as a possible delivery vehicle for chemical and biological weapons, and that is carried forward in both the British Government and the CIA dossier, in terms of mentioning that as a possibility. I do not think anyone knows for sure what the capabilities are and, if so, what the numbers are. The main thing I would point out is that the Institute's dossier speculates that since 1998, since the end of the inspections, Iraq has probably moved to reconstitute its capabilities, and

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[Continued

[Chairman Cont]

both the British Government dossier and the CIA dossier provide some details to confirm that assessment on our part. Both the British and the CIA dossiers assert that Iraq has begun fresh production of chemical and biological weapons agents, and both provide information, obviously based on classified information, to indicate that Iraq has put in place plans to revive their nuclear weapons programme, to produce fissile material through the gas centrifuge method, and to ultimately try to achieve a longer-range missile delivery capability, with ranges up to 900 km.

50. Essentially, you agree with Dr Chipman that there were no fundamental differences.

(Dr Samore) Yes, I agree with that.

Mr Bill Olnier

51. Dr Chipman, given that most of the previous sites were found by information given by defectors, how successful do you think the United Nations inspectors will be in being able to locate these sites?

(Dr Chipman) UNSCOM always benefited partly from information provided to it by intelligence sources and partly, as you say, from defector information. As they always remind people, it was only when they received crucial defector information in 1995 that they were able to discover the extent of the biological weapons programme that up until that date the Iraqis had denied existed. For UNMOVIC, if it were to re-enter Iraq, it would depend essentially on the same two primary potential sources of information. The degree to which the United States and others might be willing to provide information to UNMOVIC to assist it in its work, and the degree to which there might still be available relevant and reliable defector information on which they could act, are two important points that would no doubt guide the inspectors.

(Dr Samore) I think that is exactly right. I think one of the key provisions in the draft resolution that is currently being discussed in New York would allow the inspection organisations the option of giving Iraqi scientists a safe opportunity to talk about information without fear of retaliation by the Iraqi authorities. How that is exercised in practice will require a lot of detailed work that will have to be handled by the inspection agencies, but the concept, the principle of making it possible for the UN inspection agencies to interview Iraqi scientists in a way that will allow them to give free and accurate information is very important if we are going to ensure the best possible chances for the inspection organisations to be successful.

52. We are all struggling to come to terms with how quickly UNMOVIC will be able to assess the Iraqi compliance with the Security Council resolutions. Is thirty days to find everything a realistic option?

(Dr Samore) It depends fundamentally on how prepared the Iraqis are to co-operate. I am assuming—

53. Given the track record, that co-operation has not been forthcoming in the past.

(Dr Samore) I am assuming that they will not in fact be prepared to fully co-operate. I think it will be unlikely, or the inspectors will find it very difficult to

discover small amounts of chemical and biological weapons, or small numbers of missile and missile components that have been hidden in Iraq. What the inspectors can do within thirty days is begin to establish a strong baseline for known facilities, to make sure that those known facilities are not used for producing weapons of mass destruction. But in terms of getting to the bottom of whatever amounts of chemical or biological weapons or missiles the Iraqi regime is hiding, I think that is very likely to take longer than thirty days.

54. How competent do you think the new inspection teams will be compared to the expertise that was within the previous inspection teams?

(Dr Samore) In my judgment, their greatest weakness right now is lack of expertise. That is something that they will have to develop, both in terms of drawing fresh recruits who have that expertise, from member governments that are prepared to make those people available, but also just time on the ground. With any inspection organisation—and this was true with UNSCOM at the beginning—it takes a while to learn the trade-craft necessary to carry out successful inspections against the Iraqi regime, which has a lot of practice fooling inspectors and hiding things. I think that over time they will gain that experience, but in the beginning it is likely to take them some time to learn how to handle it.

55. It makes thirty days seem even more of a figment of somebody's imagination.

(Dr Samore) My understanding is that the way the resolution is structured now is that the Iraqis have to make a declaration within thirty days of passage; then the inspections start within 45 days of passage, and then Hans Blix, Head of UNMOVIC, Mohamed El Baradei, the head of IAEA, will give a status report to the Security Council within 60 days of starting the inspections. It is not my understanding they have to declare that they have been finished in those sixty days; they just have to tell the Security Council what the status is of their efforts.

Sir John Stanley

56. Will you take us inside the mind of Saddam Hussein as best you can, and give us your view as to what are the factors which drive and have driven Saddam Hussein over many years to acquire weapons of mass destruction?

(Dr Chipman) The mind of Saddam Hussein is a very crowded place, but I will do my best. Saddam Hussein's programme for weapons of mass destruction, like that of other leaders, has been motivated by a desire for prestige that is thought to be conferred on states that hold weapons of mass destruction, and particularly the greatest prize of all, the nuclear weapon. Secondly, I believe that he feels that in holding WMD he would be able more effectively to secure his regional ambitions, and at least to re-vivify some of his intentions with regard to his regional ambitions, behind the cover of a secure WMD capacity that might make it more difficult for friends and allies of those in the region who he might attack to come to their defence, if they could credibly

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[Continued]

[Sir John Stanley Cont]

be deterred by weapons of mass destruction and particularly a nuclear weapon. I think those are the two core motivations.

57. Do you seriously contemplate that Saddam Hussein might use weapons of mass destruction offensively, knowing that if he does he would almost certainly obliterate his regime as a result of almost certain American retaliation?

(Dr Chipman) There are two points there. The first is that if there were hostilities in the Gulf and if the United States with some allies were intent on overthrowing Saddam Hussein's regime, it would really be imprudent to rule out the possible use of some weapons of mass destruction. Forces operating in theatre would need to operate on the presumption that some biological or chemical weapons might be used, and that, equally, neighbouring states would need to be prepared for the possible launch of a ballistic missile on their territory. I think it would be absolutely necessary to plan for that contingency, and it would be imprudent not to do so. Secondly, while I think one conventional wisdom is that Saddam Hussein would certainly use weapons of mass destruction if the purpose of a military operation was regime overthrow, it is not necessarily the case that an order given by Saddam Hussein to launch chemical or biological weapons would be followed by commanders in the field if those same commanders felt that there would be reprisals personally against them by the inevitably victorious power once the military operation is ended. One can imagine a dialogue whereby Saddam Hussein instructs a field commander to use weapons of mass destruction and the field commander radios back after thirty minutes, saying, "I fear I am having some technical difficulties". I would not be absolutely certain that all commanders would necessarily follow that order, but I would find it strange if all risk of using WMD could be eliminated.

Mr Eric Illsley

58. Is it not the case that perhaps Saddam Hussein would not need to launch a weapon of mass destruction against the West but simply to hold one of his neighbours to ransom to prevent an attack upon him, saying, "you attack me, and I am going to fire this missile at Israel, Iran or anybody else"?

(Dr Chipman) That has also been one of the reasons why, in the eyes of the Bush administration there is a need to take a robust approach now to Saddam Hussein's regime. It is not that the Bush administration does not think that deterrence is today a credible policy; it is that they do not want to be deterred by Saddam Hussein. They would worry that a mature WMD capacity might make it more difficult for the United States to defend its friends and allies in the region if they were threatened. Certainly today, in the event of a possible attack against Iraq, there are obviously contingency preparations for a possible use of a ballistic missile conventionally armed, or perhaps tipped with chemical or biological weapons, against the US's major ally in the region, Israel.

59. In some discussions with your successors in the State Department and around Washington last week, we were discussing the idea of a trip-wire resolution; the idea that Iraq has to comply within a short space of time with some declaration on weapons or whatever, basically in order to meet the timescale of any military action, which would need to be between January and March 2003 if it was to take place. Given what you have said, that the inspectors may not be as competent as the inspectors in the past, and given Iraq's prevarications of the past, and given the fact that we were told last week that inspections could take months, is it likely that America's patience is likely to give in before we get some sort of real examination of the weapons that Saddam Hussein has, if we get the resolution and the inspections back in?

(Dr Samore) Saddam's game is clearly to delay, at least past the current fighting season. In order to do that he is going to have to demonstrate sufficient co-operation with the inspectors so that he does not provide a clear case of non-compliance, which would be a clear *casus belli* for the United States and its allies. So whether or not he is capable of doing that remains to be seen. I think that Blix and El Baradei will be prepared to report to the Security Council that they are not getting co-operation or compliance if in fact they feel that their efforts to gain access to facilities or access to individuals for interviews are not being met. Therefore, they have a very strong bargaining position with the Iraqis in terms of demanding co-operation, or else they will report to the Security Council, which the current resolution allows them to do. It remains to be seen whether or not both Blix and El Baradei are given the kind of information necessary for them to take a very aggressive approach. I would hope that Western governments would provide them with the kind of intelligence information that would allow them to seek access to undeclared facilities, to individuals and to documents, which would put the Iraqis on the spot to either demonstrate co-operation or to fail to co-operate and therefore provide a clear *casus belli* for military action. For the United States, the Bush administration has put itself in a position where, whatever its preferences are, it is difficult for it not to allow the UN inspection process to be given some decent opportunity to succeed or fail.

Mr David Chidgey

60. To carry on from the questions put by Sir John Stanley on deterrence and WMD in Iraq, anecdotally it has been said that Saddam Hussein believes the only mistake he made in the Gulf War was not to wait until he had nuclear weapons. That seems to support the comments he was making. To take it a stage further in regard to the news that North Korea has in the last ten days announced that they are rapidly advancing with their nuclear weapons capability, what linkage do you see with Iraq, assuming that Iraq would be a willing buyer of nuclear weapons from North Korea and that North Korea was a willing seller? We know the record of the North Koreans on civil liberties. What scenario would you

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predict in the event that there was a serious belief that Iraq was negotiating to buy nuclear weapons from North Korea?

(Dr Samore) North Korea certainly has been willing to sell its missiles; that is one of its main sources of hard currency. It has shown no reservation about selling missiles. As far as I know, there is no indication of the North being willing to sell or export nuclear technology or nuclear materials. At least for the time being I think the nuclear material available to North Korea will be so scarce and valuable that it is unlikely to be willing to share it, for practical reasons alone. I would be concerned over time if the North Koreans can accumulate larger amounts of nuclear material—and we may see that happening if the agreed framework falls apart, which I fear is very likely. At that point, I would become much more worried about North Korea possibly being willing to sell nuclear material to other countries, although the problem may by then be resolved—talking about a couple of years from now.

61. The worst-case scenario given to us was that in a willing seller/willing buyer situation, Iraq would have nuclear warheads within six months. In that scenario, what do you believe America's chosen strategy and policy might be?

(Dr Samore) If Saddam Hussein had nuclear weapons within six months, I do not think we would be talking about invasion. If Iraq had nuclear weapons, I think it would make the invasion option extremely costly and very difficult to contemplate.

Mr John Maples

62. I want to explore with you how far Iraq has got with its nuclear technology. My understanding is that it is pursuing a weapons-grade uranium bomb and has given up on plutonium since the Osiraq reactor was destroyed, and that there are several elements to this. One is the technology of actually making the bomb, which a lot of people have found extraordinarily difficult. My understanding is that Iraq can do that, or is thought to be able to do it. To acquire the weapons-grade uranium, it either has to manufacture it itself in centrifuges, which it appears to be trying to acquire, and that is what would take the six to ten years or seven to eight years; but to do it quicker you have to acquire weapons-grade uranium fissile material from somewhere else. Can you take us through the physics and the weapons-grade uranium and what sources it might acquire that from, and then what technological barriers would stand in its way for putting that into a bomb?

(Dr Chipman) First of all, your assertions are correct, but Gary Samore used to work for the Lawrence Livermore National Laboratory, so he is better placed to give a technical answer to some of your questions.

(Dr Samore) I agree with everything you have said. The key choke point for the Iraqi nuclear weapons programme is access to fissile material. We know that they were working on a design in 1991 that would have required about 20 kg or so of highly enriched uranium, which is a fairly small amount, but quite difficult to produce. All of the assessments that have been made assert that it would most likely take them several years to be able to build a facility that could

produce that amount of highly enriched uranium; and only if they can get access to foreign equipment and materials. In terms of getting access to foreign supplies of fissile material, all of the dossiers mention this as a wild-card, as a possibility. As far as we know, no group or country has been able to obtain any large amount of weapons-grade material from the black market from foreign sources; but it is important to mention it as a possibility, and in particular people have been concerned about the security of stockpiles in Russia and some of the former states of the Soviet Union, where it is known that there are fairly large amounts of weapons-grade material, and where the accounting and security of that material is in some cases lower than Western standards.

63. If he could get his hands on some, he would need 20 kg for each nuclear weapon that he wanted to make.

(Dr Samore) That is correct.

64. Would we know, or would we have a good chance of knowing, if he had acquired that?

(Dr Samore) I think it is very unlikely we would know.

65. So he might have it, conceivably.

(Dr Samore) Yes. I assume that if Iraq did have a nuclear weapon, it would make that known in a way to try and deter an attack when the time came.

66. At some point before an attack came.

(Dr Samore) Presumably.

67. So if it were able to acquire enough weapons-grade uranium, that is the only thing that is missing from its ability to construct nuclear weapons.

(Dr Samore) Yes. In 1991 they were very close to being able to design a device. It would have been far too large and heavy to deliver on the missiles that were available to them, but they were close enough to having something that would produce a nuclear yield, so we assume that if they continued to do that kind of work over the last decade, which they could probably do without high risk of discovery—by now, ten years later, we assume they have been able to finish the last bits and pieces, and they would be able to construct something that would be deliverable at least by an aeroplane.

68. I was going to ask you about delivery by missile because I understand that Iraq does not have much of an air force left, and anyway there would presumably be complete air supremacy over the battlefield. Can Iraq make something that is small enough to deliver on a missile, and what is the technology gap there? Do we think they have the technological ability to do that?

(Dr Samore) This is very speculative, but I would say with the basic kind of design that they were working on, it is unlikely that they could make it small enough and light enough to be deliverable by the existing missile we know they have, which is the al-Hussein missile, a modified scud, 650 km. That requires quite a small size, which would be difficult for them to achieve with the basic design they are working on.

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69. That is more difficult than making the bomb. Once they have acquired the material, the making of the bomb would be relatively easier, but they would have to find some other method of delivery.

(Dr Samore) It depends on how big the bomb is. Making a bomb deliverable by aircraft is much easier than a bomb deliverable by a missile of the type they have, because it has a rather small diameter and it would be difficult for them to squeeze the design into that.

70. You said in answer to Mr Chidgey—and we can all see the scenario—that if Iraq had a nuclear weapon, certainly one of the things it would do would be to deter Western allies of Gulf countries from intervening in conflicts there because it would have raised the stakes against them enormously. What we are looking at, if they were able to acquire material, is somewhere up to a year from acquiring it to being able to turn it into a weapon. We do not know if they have got it, though we suspect they have not, and we would not know if they were to acquire it, or we might not know if they were to acquire it. We could find ourselves faced with that scenario at relatively short notice.

(Dr Samore) Sure, it is conceivable. Presumably, Iraq would want to demonstrate its capabilities through some kind of test, and that would be the most convincing way of demonstrating to the world that they have nuclear weapons.

Chairman

71. In terms of the amount of material needed, say, for a dirty bomb, what are the fears about that?

(Dr Samore) The dirty bomb is a very different sort of proposition because there is a much wider range of materials that can be used, with varying degrees of radioactivity, and Iraq has some radiological materials in-country that are used for civilian purposes—for medical purposes or food irradiation and so forth. In principle, I do not think you can stop Iraq from having a crude radiological weapon, but I also think that the kind of damage such a weapon can do is very, very limited. It depends a great deal on the type of material, how much there is of it and how effective the dispersal is, but in general it is many magnitudes of order less than a nuclear explosive.

72. On biological weapons, given the means of hiding these weapons and the mobility of transport that the Iraqis now have, the fact that the scientists are there in any event, problems of dual use and small packets, what prospects are there available to counter the threat of such weapons, and the fact that the cookery books are there?

(Dr Chipman) I agree that this falls into the “how long is a piece of string?” category. As all of our dossiers state, Iraq has now mobile biological weapons production facilities that move around the country, which are very difficult to detect. Any one of dozens of civilian industrial bases could be used for the production of biological agents, and accounting down to the last litre of biological agent would be extremely difficult.

(Dr Samore) I agree with that. It is extremely unlikely that any inspection system, no matter how rigorous, can give you high confidence of accounting for small quantities of biological weapons.

73. Given those difficulties, how do you counter the concealment strategies which are presumably now very sophisticated?

(Dr Samore) As I say, I think you have to understand what inspections can do for you and what inspections cannot do for you. Inspections can give you a high confidence in some areas, but if you expect them to account for every drop of biological and chemical weapons in Iraq, I do not think they can succeed.

74. Not every drop, but can a substantial amount of such weapons, given the speed of production possibility—

(Dr Samore) The problem in the biological area is that a substantial amount could be a thousand litres of anthrax, and I do not think inspections can reliably detect production of a thousand litres of anthrax.

75. For biological weapons, I guess the major fear is that these will be passed clandestinely through to terrorist networks. Is there any evidence of that happening?

(Mr Simon) Not that I know of.

Sir John Stanley

76. On biological weapons, I think you would agree that massive, massive mortality could be created by quantities of anthrax—absolutely fractional compared to the thousand litres that you have just referred to. Given the fact that it is in open sources well known that Saddam Hussein has engaged in a systematic programme of concealment of his BW programme, do you think it is a real possibility that if the UN weapons inspectors could go back it is conceivable that they could produce a clean bill of health for Saddam Hussein, almost a clean bill of health on biological weapons, in terms of what they have been able to uncover; when in reality he has a substantial, concealed BW programme that would have vast mortality implications?

(Dr Chipman) It is worthwhile going back to what the premise of inspections was in April 1991 and what the premise of inspections should again be. The inspections were never originally conceived as a detective operation; the inspectors were forced to become detectives because of the denial and concealment strategy used by the Iraqis. Indeed, on April 3, 1991, the Security Council called on the Iraqis to give within 15 days a full account of their WMD, and presumed that within 120 days after that UNSCOM would have verified simply those declarations and then moved the Security Council towards a lifting of sanctions and the bringing of Iraq back into the international community. This time around, the United States will be ever more vigilant to any sign of non-compliance. Indeed, there is talk now about their potential declaration being used as a kind of perjury clause, whereby if they declare an amount that is clearly not true, that that already would be an act of non-compliance with the new Security Council resolution. The issue is, who judges

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that act of non-compliance. I know that that is a question this Committee has often asked, amongst others to the Foreign Secretary. The debate now is whether the United States alone, on the basis of its own national technical means, could assert that this declaration is not true, then find Iraq in non-compliance and pursue the serious consequences that the current resolution contemplates.

Mr Bill Olnier

77. How would a US attack on Iraq affect al-Qaeda's membership, its organisation and its objectives?

(Mr Simon) I think that an American attack against Iraq would confirm the belief of many in al-Qaeda, and many potential recruits, that the US and its friends were engaged in a systematic war against Islam, with the aim of conquering the Muslim world. To the extent that that is true, recruitment will probably see an upsurge. The answer is that the war against terrorism will be complicated to some degree by military operations against Iraq.

78. What if those actions against Iraq are multilateral, if there was complete UN support, not for regime change but for disarming Saddam?

(Mr Simon) The texts that are very influential among al-Qaeda types and recruits to the organisation, texts that can be found on the Internet or in broadsheets or in bookstores in the Middle East, already postulate a world-wide infidel conspiracy against Islam. The United States may bear the brunt of responsibility, but it is seen as part of a larger challenge, consisting of, depending on what you read, the UN, the EU, NATO and the Freemasons for that matter. As odd as that sounds, they have a prominent role in much of this conspiracy thinking. I do not think that the United States would be the sole target of the additional resentment that might be felt in the Muslim world.

(Dr Chipman) While there is no question that likely al-Qaeda recruits are not interested in the niceties of multilateral diplomacy, the moderate Muslim community in some important countries would feel more capable of explaining the reason why the United States might be engaged in this and gain more credibility within their own societies if any action against Iraq was seen to have a multilateral colouration to it.

(Mr Simon) It must be said, though, that these very governments have no credibility with the people we are worried about.

79. How does that fit in with Osama bin Laden's view that the Saudi Government must be overthrown?

(Mr Simon) They do believe that.

Mr David Chidgey

80. Mr Simon, I have read your article that was produced in spring 2000. I note the chilling accuracy of your comments then, some time before the events of September 11, and it is on this issue that you have been debating here now. You mentioned in your paper the added complication of a bulge in population of Arab youth, and in a general sense

Muslim youth, which adds to the problems we might face in terms of potential recruits to the terrorist cause. That brings me to the heart of the question. How much do you believe the economic and social conditions in Muslim and Arab countries has an impact in terms of poverty on the creating of frustration amongst those peoples with their forms of government and that being directed against the West; or is it totally motivated by a particular form of religious fanaticism?

(Mr Simon) Let me weasel out of this one, if I may, by saying that the underlying concerns are indeed socio-economic in nature. They are also political, in the sense that the socio-economic complaints are aggravated by what we might call a very low grade of popular political participation in the systems that might be in a position to do something about these socio-economic conditions. The problem is that these concerns, for reasons having to do with the political systems in these countries, find expression in religious terms. Once that happens, the issues become transformed into religious issues and are therefore not subject to negotiation or bargaining. Once this process takes place, the result biases outcomes in the direction of violence.

81. It is a pretty grim prospect, then.

(Mr Simon) It is a very bleak prospect actually.

Sir John Stanley

82. Can I turn to the issue of the linkage or not between al-Qaeda and the Saddam Hussein regime. As you are aware, British ministers, including the Foreign Secretary, in front of this Committee have so far been very cautious about indicating any firm evidence of linkage between al-Qaeda and Saddam Hussein. However, the Director of the Central Intelligence Agency, George Tenet, in his open public letter of 7 October to Senator Bob Graham, Chairman of the Senate Intelligence Committee, went far further than British ministers have been willing to do so far in public. I will give you four key bullet points from Mr Tenet's letter to Senator Graham: "We have solid reporting of senior level contacts between Iraq and al-Qaeda going back a decade; credible information indicates that Iraq and al-Qaeda have discussed safe haven and reciprocal non-aggression; since operation *Enduring Freedom* we have solid evidence of the presence of Iraq of al-Qaeda members, including some that have been in Baghdad; we have credible reporting that al-Qaeda leaders sought contacts in Iraq who could help them acquire WMD capabilities; and the reporting also stated that Iraq has provided training to al-Qaeda members in the areas of poisons and gases and making conventional bombs." From your position, would you endorse the comments made by George Tenet, or would you take the much more cautious position so far adopted by the British Government?

(Mr Simon) There is no question that there are many al-Qaeda personnel in Iraq. Many Iraqis went to Afghanistan and many Iraqis returned. These have mostly settled in the north, in the areas under Kurdish control. They have established or strengthened links with the regime in Baghdad that seeks to use them to destabilise anti-regime Kurdish parties in Kurdistan; so there is a bit of a marriage of

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convenience. I have no doubt that al-Qaeda representatives have tried to get chemical and biological weapons out of the Iraqis. This group, al-Qaeda, has been all over the world trying to find material like this. They have not been very successful over the past decade, but they have been very assiduous in their efforts. I also do not have a hard time believing that there have been various—as the DCI was saying—senior al-Qaeda people circulating through Baghdad over the years. Baghdad is an *entrepot* of many nasty characters of many different stripes. I will stop there.

(Dr Chipman) Certainly, IISS publications have analysed the presence of people with known connections to al-Qaeda in northern Iraq in the Kurdish areas, to which Steve Simon referred. This is pure speculation, but I expect the reticence of the British Government on this point derives from questions they have about the degree of collaboration that might sometimes be asserted between al-Qaeda and Iraq, as opposed to the intensity or otherwise of occasional contact between al-Qaeda individuals and the government of Iraq.

Chairman

83. In short, you therefore incline to the more cautious interpretation.

(Dr Samore) I agree with my colleagues; the more conservative view makes sense to me. I would also add that it seems to me that if Saddam wanted to deliver chemical or biological weapons through unconventional means, he might very well choose his own intelligence apparatus, rather than run the risk of giving it to some group that he does not have complete control over.

Chairman: Time is up, alas, but if there are matters that you would like to comment on further, it would be of great assistance to the Committee if you were to write. Thank you very much indeed.

Memorandum by Professor Christopher Greenwood, CMG, QC

THE LEGALITY OF USING FORCE AGAINST IRAQ

I. INTRODUCTION AND SUMMARY

1. This memorandum reviews, in summary form, the international law arguments regarding possible military action against Iraq. It does not deal with considerations of United Kingdom domestic law. While I am aware that a draft Security Council resolution is currently under discussion in New York, this memorandum was prepared without my having seen that draft.

2. For the reasons set out in this memorandum, I believe that military action against Iraq might be justified (depending on the evidence of Iraq's weaponry and intentions) on the following grounds:—

- (1) if the UN Security Council adopts a fresh resolution authorizing military action against Iraq and any conditions set out in that resolution are met; or
- (2) under existing Security Council resolutions on the basis that the Security Council considered that (a) Iraq is in material breach of those resolutions and (b) that breach constitutes a threat to international peace and security in the Gulf area. This would not require a fresh Security Council authorization of military action; or
- (3) under the right of self-defence if an armed attack by Iraq against the United Kingdom or one of its allies was reasonably believed to be imminent. This would not require any action by the Security Council.

In my opinion, international law would not permit recourse to force against Iraq on the basis that the United Kingdom and its allies were still engaged in a “war” dating back to 1990–91 (a different argument from (2) above), on the basis of any theory based on the notion of a “war against terrorism” or on the basis of a “doctrine of pre-emption”. I have set out my reasoning on all of these points below.

II. BACKGROUND

3. The possibility of military action in 2002 has to be seen in the context of the actions taken by the UN Security Council and by a number of States, including the United Kingdom in the aftermath of the Iraqi invasion of Kuwait in 1990. That invasion, which was a flagrant violation of international law, was condemned by the Security Council in Resolution 660 (1990), which required Iraq to withdraw from Kuwait. In common with most of the subsequent resolutions on Iraq, this resolution was adopted under Chapter VII of the UN Charter and its provisions were therefore legally binding on Iraq.

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4. When Iraq ignored the requirement that it withdraw, the Security Council adopted a series of further resolutions, including Resolution 678 (1990) by which the Council—

“Authorizes Member States co-operating with the Govt of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in para 1 above, the above-mentioned resolutions, to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions *and to restore international peace and security in the area.*” (Emphasis added)

The reference to “all necessary means” was clearly understood to be an authorization of military action. The passage emphasised shows that that authorization was not limited to the liberation of Kuwait but included an authority to use all necessary means for the purpose of restoring peace and security in the area.

5. Following the end of the fighting in March 1991, the Council adopted Resolution 687 (1991). That resolution referred to all of the earlier resolutions on Iraq, including 678. In paragraph 1 the Council—

“Affirms all thirteen resolutions noted above, *except as expressly changed below* to achieve the goals of the present resolution, including a formal ceasefire.” (Emphasis added)

Resolution 687 did not repeal Resolution 678. That resolution remained in force to the extent that one of its objectives, namely the restoration of international peace and security in the area had not yet been achieved.

6. Resolution 687 then laid down what the Council considered Iraq had to do in order to ensure the restoration of international peace and security in the area. The Council required that Iraq—

“unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of:

- (a) all chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities related thereto;
- (b) all ballistic missiles with a range greater than one hundred and fifty kilometres, and related major parts and repair and production facilities.” (Paragraph 8)

7. In addition, paragraph 12 required Iraq—

“not to acquire or develop nuclear weapons or nuclear weapon usable material or any subsystems or components or any research, development, support or manufacturing facilities related to the above.”

8. As a means to achieving this partial disarmament, Resolution 687 also required Iraq to submit to intrusive weapons inspection initially by UNSCOM and the IAEA. The details of this requirement were set out in Resolution 715 (1991). Other provisions of Resolution 687 required Iraq not to commit or support any act of terrorism and not to permit any terrorist organization to operate from its territory (paragraph 32).

9. Iraq formally accepted these requirements but Resolution 687 is legally binding because of Chapter VII of the UN Charter, not because of Iraq’s acceptance of it; it is not the equivalent of an agreement.

10. Iraq has never complied with these ceasefire conditions and has repeatedly been found to be in breach of the requirements of Resolution 687 regarding international peace and security. See, for example, Resolutions 949 (1994), 1060 (1996), 1115 (1997) and 1137 (1997). In 1998 the UN Secretary-General drew up a Memorandum of Understanding with Iraq regarding weapons inspections. The Security Council then, in Resolution 1154—

“stresses that compliance by the Government of Iraq with its obligations, repeated again in the Memorandum of Understanding, to accord immediate, unconditional and unrestricted access to the Special Commission and the IAEA in conformity with the relevant resolutions is necessary for the implementation of Resolution 687 (1991), but that any violation would have the severest consequences for Iraq.”

11. In fact, Iraq continued to violate its obligations; see, eg, Resolution 1205 (1998). After yet another attempt to resume inspections, UNSCOM reported to the Security Council on 15 December 1998 that—

“As is evident from this report, Iraq did not provide the full co-operation it promised on 14th November 1998.

“In addition, during the period under review, Iraq initiated new forms of restrictions upon the Commission’s work. Amongst the Commission’s many concerns about this retrograde step is what such further restrictions might mean for the effectiveness of long-term monitoring activities.

“In spite of the opportunity presented by the circumstances of the last month, including the prospect of a comprehensive review, Iraq’s conduct ensured that no progress was able to be made in either the fields of disarmament or accounting for its prohibited weapons programmes.

“Finally, in the light of this experience, that is, the absence of full cooperation by Iraq, it must regrettably be recorded against [sic] that the Commission is not able to conduct the substantive disarmament work mandated to it by the Security Council and, thus, to give the assurances it requires with respect to Iraq’s prohibited weapons programmes.” (UN Doc. S/1998/1172, pp. 7–8)

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12. This report was followed by the withdrawal of the UNSCOM inspectors and US/UK military action (Operation Desert Fox).

13. SCR 1284 (1999) replaced UNSCOM with UNMOVIC and required that Iraq allow UNMOVIC unrestricted access. Iraq, however, has refused—until September 2002—to permit UNMOVIC to operate within Iraq.

III. ACTION UNDER A NEW UN SECURITY COUNCIL MANDATE

14. There is no doubt that the Security Council has the authority under Chapter VII of the UN Charter to adopt a fresh resolution authorizing military action against Iraq. Chapter VII gives the Security Council that power if it determines that there is a threat to international peace and security (Article 39) and that military action is necessary to deal with that threat (Article 42). The Council has already determined, in Resolution 687 (1991), that the removal of certain types of weapon from Iraq is necessary for the restoration of peace and security and that, to date, Iraq has not complied with its obligations in that regard.

15. In my opinion, it is clear that military action taken in accordance with a fresh mandate from the Security Council would be lawful. Like all military operations, it would, of course, have to be conducted in accordance with the Geneva Conventions, 1949, and other applicable rules of international humanitarian law.

IV. ACTION UNDER THE EXISTING SECURITY COUNCIL RESOLUTIONS

16. Nevertheless, I do not believe that a new resolution expressly authorizing military action is necessary as a matter of international law. In my opinion, the authorization to use “all necessary means” contained in Resolution 678 (1990) (quoted in paragraph 4, above) has not been terminated by the Security Council. The imposition of a ceasefire by Resolution 687 (1991) suspended hostilities and thus suspended the authority to use force but Resolution 687 reaffirmed Resolution 678 (see paragraph 5, above) and thus left open the possibility of further military action to achieve the objectives of Resolution 678 in the event of Iraqi violation of the ceasefire terms.

17. Contrary to what is frequently suggested, Resolution 678 was not solely about the liberation of Kuwait and the authorization to the coalition to use force went beyond the goal of liberating Kuwait and authorized military action for the purpose of restoring international peace and security in the area. Resolution 687 (1991) then determined that the restoration of international peace and security required the partial disarmament of Iraq and (separately) its renunciation of any involvement in or support for terrorism. Resolution 687, paragraph 1 affirmed Resolution 678 except to the extent that the other provisions of Resolution 687 expressly changed Resolution 678. The text of Resolution 687 contains nothing which expressly (or impliedly) indicates that the Council either considered that the mandate contained in Resolution 678 had been discharged or that it could not be relied upon in the event of Iraq continuing to pose a threat to international peace and security.

18. It is, of course, true that Resolution 678 is now nearly twelve years old and was almost certainly not intended to remain in force indefinitely. But the fact that it is still relevant today is due solely to Iraq’s persistent violation of its obligations under Resolution 687. The effect of some of those violations (primarily those in respect of disarmament) is that the threat to international peace and security which Iraq posed in 1990–91 has continued until the present day.

19. On that basis, it is open to the Security Council to determine that Iraq continues to be in breach of the ceasefire conditions in Resolution 687 and that that breach involves a threat to international peace and security which peaceful means have failed to resolve. The effect of such a determination would be that the authorization of military action in Resolution 678 would again be rendered active. That would not necessarily require a Security Council resolution. It could be done by means of a Presidential Statement (which would require a consensus in the Council). Moreover, a resolution stipulating that Iraq must take certain steps by a prescribed date could (depending on its wording) mean that the Council was determining that failure by Iraq to take such steps was a breach threatening international peace and security.

V. MILITARY ACTION IN SELF-DEFENCE

20. Article 51 of the UN Charter provides that—

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary to maintain or restore international peace and security.”

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It was in the exercise of this right that the United Kingdom took military action in Afghanistan in October 2001.

21. The question is whether the right of self-defence under customary international law which is preserved by Article 51 of the Charter would justify military action against Iraq on the basis of a threat of armed attack. In my opinion, it would do so if the threat was of an imminent armed attack but not otherwise.

22. Although Article 51 refers to the right of self-defence “if an armed attack occurs”, the United Kingdom has consistently maintained that the right of self-defence also applies where an armed attack has not yet taken place but is imminent. A large number of other governments (including those of the USA, France, other NATO States and the former USSR) have espoused this view. It also has strong support from commentators. Thus, Judge Rosalyn Higgins (writing before her election to the International Court of Justice) has said that—

“... in a nuclear age, common sense cannot require one to interpret an ambiguous provision in a text in a way that requires a state passively to accept its fate before it can defend itself. And, even in the face of conventional warfare, this would also seem the only realistic interpretation of the contemporary right of self-defence. It is the potentially devastating consequences of prohibiting self-defence unless an armed attack has already occurred that leads one to prefer this interpretation—although it has to be said that, as a matter of simple construction of the words alone, another conclusion might be reached.” (*Problems and Process* (1994), p. 242)

The same view has been taken by Sir Humphrey Waldock (81 RC (1952–II) 496–8), Judge Schwebel (136 RC (1972–II) 478–83), Sir Gerald Fitzmaurice (92 RC (1957–II) 171), Sir Robert Jennings and Sir Arthur Watts (*Oppenheim’s International Law*, 9th ed., 1992, vol. I, p. 421) and Sir Derek Bowett (*Self-Defence in International Law* (1958) 187–92). Waldock, Schwebel and Jennings are all past Presidents of the International Court of Justice.

23. I accept that other writers, notably Professor Ian Brownlie (*International Law and the Use of Force by States* (1963) 257–61), have taken the contrary view but, with great respect to them, I believe that the view expressed by Judge Higgins and the other writers quoted above accords better with State practice and with the realities of modern military conditions.

24. Nevertheless, the right of anticipatory self-defence is quite narrowly defined. Ever since the United Kingdom-US exchange in what has become known as the *Caroline* case in 1837–38, the right has been confined to instances where the threat of armed attack was imminent. In my opinion, that still reflects international law and, in so far as talk of a doctrine of “pre-emption” is intended to refer to a broader right to respond to threats which might materialise some time in the future, I believe that such a doctrine has no basis in law.

25. In assessing what constitutes an imminent threat, however, I believe that it is necessary to take account of two factors which did not exist at the time of the *Caroline*. The first is the gravity of the threat; the threat posed by a nuclear weapon or a biological or chemical weapon used against a city is so horrific that it is in a different league from the threats posed by cross-border raids by men armed only with rifles (as in the *Caroline*). The second consideration is the method of delivery of the threat. It is far more difficult to determine the time scale within which a threat of attack by terrorist means, for example, would materialise than it is with threats posed by, for example, regular armoured forces. These would be material considerations in assessing whether Iraq posed an imminent threat to the United Kingdom or its allies.

26. If Iraq did pose such an immediate threat then, in my opinion, military action against Iraq for the purpose of dealing with that threat would be lawful. The degree of force used would have to be proportionate to the threat and no more than necessary to deal with that threat (including preventing a recurrence of the threat). In addition, the use of force would have to comply with the separate requirements of the Geneva Conventions and other applicable rules of international humanitarian law.

V. MILITARY ACTION ON OTHER GROUNDS

27. In my opinion, the other legal grounds which have sometimes been advanced in discussion as a basis for military action against Iraq are unconvincing.

28. The suggestion that, because Iraq has violated the terms of the ceasefire embodied in Resolution 687 (1991), any of the coalition States which were engaged in the hostilities of 1990–91 would be justified in resuming hostilities seems to me to be based on a pre-1945 view of international law which cannot prevail against the clear language of the UN Charter. Violation of a ceasefire does not in itself justify reversion to military action today unless the original legal basis for the use of force remains in place. Accordingly, the United Kingdom might be entitled to resort to military action on the basis of Resolution 678 (1990), under the conditions set out above. It does not have an automatic right to resume belligerency simply because it was a party to the 1990–91 hostilities and Iraq has violated the ceasefire.

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29. Nor, in my opinion, do references to a “war against terrorism” provide a basis for renewed military action against Iraq. If there were evidence of close Iraqi involvement in terrorism and a threat of imminent terrorist attack supported by Iraq, then that would justify military action by way of self-defence and, in certain circumstances, under Resolutions 678 (1990) and 687 (1991) (see paragraph 8, above). But the concept of a “war against terrorism”, even if it has any international legal content at all, is, in my view, far too vague to serve as a basis for legal action where the criteria for self-defence are not met.

30. Finally, references to “regime change” do not, in my opinion, furnish a free-standing justification for military action. It is possible that the only way of achieving international peace and security might be to change the government of Iraq. Likewise, if action were taken in self-defence, there are circumstances in which self-defence might justify imposing a change of government (if that were the only way of removing the threat of armed attack from Iraq). However, the nature of the Iraqi regime does not, in my opinion, furnish a legal justification for military action in and of itself.

VI. CONCLUSIONS

31. Accordingly, my conclusion is that military action against Iraq would be justified if:—

- (1) The Security Council gave a fresh authorization to use force and military action was taken in accordance with that resolution; or
- (2) The Security Council indicated that Iraq was in material breach of Resolution 687 (1991) and that breach entailed a threat to international peace and security, in which case action would be justified within the framework of Resolution 678 (1990); or
- (3) Iraq posed a threat of an imminent armed attack against the United Kingdom or its allies and military action could therefore be taken under the right of self-defence.

Christopher Greenwood, CMG, QC

24 October 2002

Memorandum from Professor Ian Brownlie QC

IRAQ AND WEAPONS OF MASS DESTRUCTION AND THE POLICY OF PRE-EMPTIVE ACTION

A. THE NATURE OF THE THREAT CONCERNED

Reply from the U.S. Embassy to the Committee’s questions:

21. Saddam Hussein’s regime remains a threat to the Iraqi people, to Iraq’s neighbours, and to international peace and stability. As the President and Secretary of State Powell have many times underscored, Iraq is a country that not only pursues weapons of mass destruction (WMD), but has shown no reluctance to use them—even against its own people.

22. Because of the vigilance of the international community, this regime is no longer the conventional threat that it was 10 years ago. That said, we remain concerned about Iraq’s efforts to develop weapons of mass destruction, and we continue to work closely with our allies and the international community to secure Iraq’s compliance with its UN Security Council Resolution obligations to declare and destroy fully its WMD.

23. We are not able to discuss what we know from sensitive intelligence. We note, however, that Iraq has long been on our State Sponsors of Terrorism List, and we continue to be focused on Iraq’s support for international terrorism. (Ev.103)

B. THE PROVISIONS OF THE UN CHARTER IN RELATION TO PRE-EMPTIVE ACTION

Article 2

The Organisation and its Members, in pursuit of the Purposes stated in Article I, shall act in accordance with the following Principles:

[...]

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.

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Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.'

This language effectively excludes the legality of pre-emptive action.

There is, however, a margin of situations in which a clear intention to attack is accompanied by measures of implementation not involving crossing the boundary of the target State. Thus a naval force of a State which has stated its intention to attack, approaching territorial waters, might be regarded as offensive and intercepted on the high seas.

These issues will not be pursued because the U.S. concept of pre-emptive action is qualitatively different.

As President Bush observes in a statement on 1 June this year:

'We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. Rogue states and terrorists do not seek to attack us using conventional means. They know such attacks would fail. Instead, they rely on acts of terror and, potentially, the use of weapons of mass destruction—weapons that can be easily concealed, delivered covertly, and used without warning.

'The targets of these attacks are our military forces and our civilian population, in direct violation of one of the principal norms of the law of warfare. As was demonstrated by the losses on September 11, 2001, mass civilian casualties is the specific objective of terrorists and these losses would be exponentially more severe if terrorists acquired and used weapons of mass destruction.

'The United States has long maintained the option of pre-emptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively.

'The United States will not use force in all cases to pre-empt emerging threats, nor should nations use pre-emption as a pretext for aggression. Yet in an age where the enemies of civilisation openly and actively seek the world's most destructive technologies, the United States cannot remain idle while dangers gather.'

(The National Security Strategy of the United States of America, p.15)

C. SECURITY COUNCIL RESOLUTIONS AS A COLLATERAL SOURCE OF LEGALITY

Refer to the FCO Memo. Quoted in the Seventh Report of Session 2001-02, at page 53.

FCO Thesis: a violation by Iraq of obligations which undermine the basis of the ceasefire contained in S.C. Resolution 687 (1991) can revive the authorisation to use force in Resolution 678 (1990).

Two points by way of commentary:

- (a) The interpretation of the Resolutions is problematical in legal terms, not least because the Resolutions relate to threats to Kuwait. There is no evidence available of a threat to Kuwait by Iraq.
- (b) Relevant evidence on the general issue includes the attitudes of Kuwait and other interested States in the region. Kuwait does not support pre-emptive action. Nor do any other of Iraq's neighbours. The strong implication is that Kuwait does not support the interpretation referred to above.

D. THE NEED FOR AN EFFICIENT CHARACTERISATION OF THE ACTION PROPOSED

A major necessity is to classify the action proposed. The purposes of the action, as advertised, are the compulsory disarmament of Iraq on a permanent basis and, perhaps as a part of the enterprise, forcible regime change.

These purposes do not conform to any known concept of pre-emptive action. Iraq has not threatened to attack any other State. In respect of the WMD it is far from clear which weapons are possessed and, in any event, Iraq is to be occupied in order to prevent the *possible development* of weapons *in the future*.

It would be more appropriate to characterise the proposed action as compulsory disarmament enforced by one or more States (perhaps with the authorisation of the Security Council).

Pre-emptive action in the normal mode would involve a response to some initiative and a temporary purpose. It would not involve regime change.

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E. ACTION OF THE TYPE AND WITH THE PURPOSES ENVISAGED WOULD STILL BE SUBJECT TO CERTAIN LEGAL CONSTRAINTS

In particular, the following constraints would apply:

- (a) The action should relate to the specific purpose of disarmament and the emplacement of an inspection regime.
- (b) The action should not take the form of regime change.
- (c) The action should not take the form of intervention in a civil war.
- (d) The action should not involve *ultra vires* acts such as the expropriation or exploitation of natural resources.
- (e) The action should not include armed action in support of ethnic minorities or indigenous peoples.
- (f) The action should not involve the destruction of the infrastructure of the State.
- (g) The measures taken should not involve military occupation beyond the purpose of disarmament.

These constraints would also apply as a matter of ordinary logic: in other words they simply reflect the outlines of an enterprise confined to the purpose of disarmament. On the assumption that any action against Iraq was authorised by a Security Council Resolution, the constraints chronicled above would apply as they also reflect applicable principles of general international law. Even the political organs of the United Nations are subject to the principles of the Charter: see Article 2 thereof, quoted above.

PROPOSITIONS

1. A pre-emptive attack of the type envisaged in U.S. policy statements would be in violation of the U.N. Charter.
2. Compulsory disarmament of the type envisaged could only be lawful if based upon a SC Resolution.
3. Any such regime of disarmament, including one based upon a SC Resolution, would only be lawful if certain constraints were observed (see above).

Professor Ian Brownlie QC

October 2002

Examination of Witnesses

PROFESSOR CHRISTOPHER GREENWOOD, Professor of International Law, LSE, and PROFESSOR IAN BROWNIE, Chichele Professor Emeritus of Public International Law, University of Oxford, examined.

Chairman: We welcome you both to the Committee and look forward to hearing your weighty opinions in respect of the international law aspects of the war against terrorism.

Mr John Maples

84. I would like to explore with both of you—particularly if you disagree—the two main bases on which it is suggested that international law might permit military intervention by the United States and its allies. Looking at the right of anticipatory self-defence, it seems that military technology has moved on a lot since the *Caroline* case. Can you tell us if there has been any international law case that has come before a court? The *Caroline* case did not come before a court, as I understand it. I think there was some passing reference in the case to Nicaragua. Have there been any cases in which either in an international court or a national court, this issue has been judged relatively recently? We hear people saying that if troops are amassing on your border, maybe you would do something about it and do not have to wait for them to attack. If we look at that in the light of modern military technology, troops are not going to amass on borders; people are going to start aiming missiles and getting ready to fire them.

Therefore, there must be some anticipatory right of self-defence, and I wonder where you see it beginning and stopping.

(*Professor Brownlie*) It is a great honour to be asked to give evidence to this Committee. I am now Chichele Professor Emeritus and my main public role in international law is as a member of the International Law Commission of the United Nations. There are at least two cases of some relevance, which have been heard in fairly recent times in the International Courts. The famous one is the *Nicaragua v. United States* case. That, I do not think is of enormous assistance. The complaints by Nicaragua concerned the mining of Nicaraguan harbours at a time when there was no state of war between the two states, and also the question of United States covert assistance to Nicaraguan rebels, some of them working from outside Nicaragua, from Honduras, and others within Nicaragua. I have to say that I was counsel for Nicaragua, and Nicaragua did obtain quite a strong judgment in its favour. I do not feel the need to pursue that case because I do not think it provides material assistance on issues of self-defence. There is another case currently before the court, brought by the Congo against Uganda, in which the pleadings are quite well advanced. I have to confess that again I am counsel for Uganda—this

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[Mr John Maples Cont]

is the sort of world I work in. Uganda has advanced some quite developed legal justifications precisely on the basis that over a period of many years, but particularly in the recent past, the Congo harboured armed bands which raided regularly into Uganda. Again, there will not be a judgment for some time—the pleadings are not yet closed. For that reason, and because of my involvement, I do not think I need pursue that either. I leave it to Chris to add anything on relevant cases.

(Professor Greenwood) I am also honoured to be asked to give evidence before you again. The short answer to Mr Maples's question is that there are no cases in recent times that have considered this. The *Nicaragua* case has a lot to say about self-defence, but the court expressly stated that it was leaving open the question of anticipatory self-defence because it simply did not arise on the facts of that case. As far as the underlying issues are concerned, I entirely agree with the suggestion that was put to us that there must be a right of anticipatory self-defence and that in assessing its limits one has to take account of military developments since *Caroline*. That involved the risk of a group of men with rifles crossing the great lakes and shooting people in parts of British Canada. What we are looking at at the moment is the prospect of a nuclear weapon being dropped somewhere, or a chemical or biological weapon being detonated, perhaps by terrorist means. It is much more difficult to detect, much more difficult to determine the timescale, and much more damaging if the threat is allowed to materialise.

85. Would the right of anticipatory self-defence be stronger if it were Kuwait that were trying to exercise it rather than the US or the United Kingdom?

(Professor Greenwood) I do not think it would on these facts because what is at issue here is not the conventional cross-border invasion that you saw in 1990, when Iraq invaded Kuwait, but more the possibility of a missile attack and more states than just Kuwait are within range of missiles that Iraq has retained; or there is the possibility of an attack using terrorist means, which would be just as likely to materialise in New York as it would in Kuwait city.

Chairman

86. Israel's bombing of the nuclear reactor in 1981 presumably anticipated that that nuclear reactor would lead to nuclear weaponry against Israel. Where would that stand?

(Professor Greenwood) That was condemned unanimously by the Security Council as unlawful, not on the ground that there was no right of anticipatory self-defence but rather on the ground that the risk was too distant, too far in the future. Of course, that was an attack on a reactor which might have been used to produce a nuclear weapon at some stage in the future, which weapon might at some stage beyond that have been used against Israel. It is a lot further down the road than the sort of risks we are talking about at the moment.

Mr John Maples

87. If I could move you on to the other basis, which is the United Nations Security Council resolutions; it seems clear that Iraq is in breach of resolution 687 in various ways, and that resolution 687 did revive and leave extant—as it says, it affirms all 13 resolutions “noted above”, and Iraq is in breach of many of those too. It is clear that if there is a new Security Council resolution, that could provide a legal basis for action, but do the existing Security Council resolutions provide a basis for action, and does it make a difference that resolution 687 was effectively the terms of a cease-fire in a war or an armed conflict that had been going on up to that point? One could argue that not only was Iraq in breach of UN Security Council resolutions before and after the event, but it is also in breach of the cease-fire agreement; and that as a result of it being in breach of that cease-fire agreement, various air bombardment operations have continued, particularly Desert Fox, which relied on these resolutions as part of their legal justification for doing that. How do you see the strength or weakness of relying on existing Security Council resolutions, and in that context does it make a difference that one of them was a cease-fire agreement?

(Professor Brownlie) I will answer that question, but can I revert to the anticipatory self-defence question? As Christopher will expect, I do not agree with him on that. The governing rules are in the UN Charter, and the UN Charter, I regret to say, is not often quoted *verbatim* in public documents these days. Article 51 reserves the right of individual and collective self-defence if an armed attack occurs. There is a margin of situations in which an armed attack has almost certainly occurred without the border of the target state having been crossed, where the aggressor state has made her intentions unequivocally clear, and its naval vessels or its missiles are on the way. There has always been, even under the concept of armed attack, a margin of situations which would allow for sensible reaction. However—and this would be my main point, but I fear I may not be asked this question—the question is, how do you classify the problem? It is probably the first lesson you try to give any student. First of all, you classify the problem. You have to ask the right question. It is my view that the public papers available in the form of speeches by President Bush and by other relevant statesmen, simply do not refer to any form of pre-emptive action in the way in which those words are normally used, either by lawyers or by politicians. What is envisaged is compulsory disarmament of Iraq, with a future reach of course, enforced by one or more member states of the United Nations, perhaps with or perhaps without the benefit of a Security Council resolution. I do not see what is proposed as any form of pre-emptive attack; it is simply the imposition of a compulsory regime of disarmament. It is not only related to weapons which Iraq may now possess; it is directed to preventing Iraq producing weapons in the future. It is a long-term regime. I am not suggesting on that basis it would be illegal. I am simply saying that if you are going to consider the legality, or otherwise, of what is proposed you have to classify the situation accurately in the first place. I really do not see how

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the law relating to self-defence or anticipatory self-defence can be helpfully applied. What that means, if I am right, is that only a Security Council resolution could justify, could provide a proper legal basis for the type of action proposed. Thank you.

Mr Maples

88. Article 51 implies there is an inherent right of self-defence which goes wider than responding to an armed attack, it says, "nothing in the Charter shall impair the inherent right of self-defence". Would you think there would be a difference if it was Kuwait. If Kuwait had evidence that these missiles were being pointed at them and armed would they have an anticipatory right to self-defence in those circumstances?

(*Professor Brownlie*) With respect the difficulty is I do not believe that the drafters of the Charter had such a loose regime in view. The phrase, "if an armed attack occurs" was really carefully chosen by the draftsman. Could I point out that in the heady days of the Cold War in 1962, when the US had intermediate range ballistic missiles in Turkey, and possibly Italy, and the Soviet Union was in the business of placing them in Cuba, if the presence of ballistic missiles, no doubt already targeted at one of the parties, on any view any attack could be launched on any day on the basis that anticipatory self-defence was necessary. This is the problem. President Bush himself in I think the speech he made on 1 June did say that the right of what he called pre-emptive action should not be abused.

(*Professor Greenwood*) Might I pick that up briefly before turning to the questions about the Security Council resolution. It may surprise Professor Brownlie if I say that I agree with much, although not all, of what he said. I agree that one has to start with Article 51, and you will find the text of it in paragraph 20 of my memorandum. That is a provision that has to be interpreted in the light not only of what went before and the intentions of the draftsman but also in the way it has been interpreted by states since 1945 and in the light of common sense. As Judge Rosalyn Higgins said in her book on *Problems and the Process of International Law*, "Common sense cannot require one to interpret an ambiguous provision in a text in a way that requires a state passively to accept its fate before it can defend itself". Where I agree with Professor Brownlie is that the right of anticipatory self-defence only applies where there is an imminent threat of an armed attack; it could not be used as the basis for some kind of longer term programme of disarmament. That is why I responded to the question about the Iraqi reactor. I think there is a danger here of confusing two different elements in what is being said in public. The disarmament aspect relates to Iraq's obligations under Security Council Resolution 687, where the Council has prohibited Iraq from possessing weapons it would otherwise be entitled to possess, as well as repeating the prohibition on weapons that it is not allowed to have. That can only be enforced through the medium of the Security Council or the under the authority of the existing Security Council resolutions, it is an entirely separate matter from self-defence. At the same time if there is evidence of an imminent armed attack

emanating from Iraq against Britain or one of its allies then I think the right of anticipatory self-defence does come out into play. One needs to separate out those two strands in what we are discussing.

Mr Illsley

89. If you enter resolutions which relate to disarming they give the United States authority to launch military action, that is the defensive proposition that you are advocating.

(*Professor Greenwood*) The position is that the existing Security Council resolutions 678 and 687 remain in force. They require Iraq to take certain disarmament steps as a necessary means of restoring international peace and security in the area and Iraq has plainly not taken those steps. If the Security Council determines, maybe in another resolution or maybe by way of presidential statement or in some other form, that there is an on-going violation by Iraq, that that violation threatens international peace, and that peaceful means have failed to resolve the situation, then I do not think the Security Council needs to go further than that and actually adopt a new authorisation of military action. I think if those conditions are met it would be legitimate to rely on the existing authority in Resolution 678.

(*Professor Brownlie*) Very briefly, I really do find, and I know a lot of people who find, that interpretation of those two resolutions to be very problematical. The situation we are dealing with now is very difficult to tuck under the umbrella of the former conflict between Iraq and Kuwait. If I were writing an opinion for a third state not involved in the situation directly I would say that the evidence of the meaning and application of those resolutions would include the views of Member States generally and in particular the views of Member States who are neighbours of Iraq. As reported in the *Times* in the recent curious conference involving the Security Council and the non-aligned movements. Kuwait itself opposed any idea of a pre-emptive strike outside the terms of a resolution.

Andrew Mackinlay

90. Listening to you Professor Brownlie it seems to me in plainman's language you are saying, if you had been counselling the United States you might say we can advance this law but presentationally what is good politics, good politics is that you go do not go on the business of pre-emptive action or self-defence, we really ought to be focusing on the compliance with what was armistice, which is the Resolution 687. As a politician I think the United States have been clumsy from their own point of view of advancing this, which I think is very difficult to justify, what would put them on the side of the angels is arguing that you should have compliance with an armistice, it was not a treaty, it was not something that was freely negotiated, we stopped where we did and they signed up to agree to certain things. If you break an armistice you might debate how you enforce it, am I correct in the Treaty of Versailles when the Germans scuttled their ships in Scapa Flow that breached the

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armistice. There was contemplation of sanctions but that was an absolute breach. Is that not the sort of matter we ought to be focusing on now?

(Professor Brownlie) With respect, I think the difficulty is the connection between finding a trigger or an excuse, if you like, a reason, to launch military action against Iraq with the apparent objective of occupying Iraq and installing an occupation regime and the actual objective. The actual objective, as I understand it, and I personally have no great objections to the concept, is compulsory disarmament with some kind of forward reach. If that type of regime is applied symmetrically to other countries presenting similar threats it seems to me perfectly sound in terms of public order. There has to be some visible link even at the level of public relations between the triggering reason for taking armed action on a massive scale and the legitimate public order objective, which is imposing a disarmament regime of an effective kind on a country.

91. I am surprised you have not answered the question I asked, I am not disappointed you have not given me the reply I would like, why can we not focus on 678? We stopped, they waved the white flags, they signed up to some conditions which they have not complied with, why are the United States and the United Kingdom focusing on that?

(Professor Brownlie) With respect I think the short answer is that, if there is not a clear link between the public relations element and the ultimate objective then the public relations element is weakly presented. There is a connection between the ultimate, legitimate, public order objective and the reason given for launching military action in the first place.

(Professor Greenwood) I must say I read Resolution 678 rather differently from the way my colleague does. I do not think it is for either of us to tell this Committee what is presentationally attractive or not. Resolution 678 was not just about Kuwait. It was Kuwait that triggered the whole thing but by 29 November 1990 there were real concerns about Iraq's threat to peace and security going far beyond Kuwait, there were threats to its other neighbours, the threat it had already made explicit of military action against Israel, its record of the attacks on Iran during the war with Iran during the 1980s. It seems to me quite clear that the terms laid down in that resolution formed an authority to use force to liberate Kuwait and to restore peace and security in the area. In Resolution 687, the armistice, the cease-fire resolution, the Security Council said, "This is what is necessary to restore peace and security in the area and because you are going to do this the fighting will stop". They have not done it. It is not simply a case of a breach today. Iraq has never at any time since 1991 been in compliance with Resolution 687. Although I would not put it in quite the terms of the analogy with the armistice of 1919, because the law has changed since then as a result of the Charter, the underlying point is the same, the Security Council laid down these terms, Iraq has not complied with them. Its non-compliance is a threat to international peace. It does not comply with other requirements as well, for example the return of Kuwaiti property or cooperation about missing persons, which is a vital issue but not one that goes to peace and security in

the area. So long as the Security Council finds that it is in breach of international peace and security in this way then I think Resolution 678, the authority to use force, remains in being. I do think it needs to be triggered by a determination on the part of the Security Council that that is the case.

92. Can I go on to Article 7 resolution, which we just spoken about. That is the nearest thing to statute law in the United Nations. It seems to me to be unambiguous. There are only a few other resolutions which are part of the United Nations and some people sign up to them. This is absolute black and white, is it not?

(Professor Brownlie) These are binding resolutions under Chapter 7. There is still a difficulty because if action is taken on the basis of 687 and the reimposition, if you like, of an effective cease-fire that, presumably, is limited by the needs of the case. It is not clear that what is envisaged for Iraq—like a semi-permanent occupation with a supreme commander acting like the supreme commander in occupied Japan—it is not clear what the link would be between reimposing, as it were, the demands of 687 and the long-term objectives of governing Iraq from the outside.

93. I am bewildered because all of our questions and the presumptions over the past few weeks we moved from regime change. Nobody is talking about General MacArthur being in Baghdad, that is a different ball game. If Saddam complies he goes on, does he not, he survives. Nobody is suggest there is a resolution saying get this fella out. Am I right, perhaps I have been misreading the tea leaves? That is the way I understand it.

(Professor Brownlie) I think if there were a resolution which was more tailor-made and which had adequate contemporary support from the international community, both the law and the public relations would be better served.

94. A final question—and you might help me on this, Chairman—our colleague Ann Clwyd has been raising the question about the campaign by Indict into the past war crimes of Saddam Hussein—I think this is a system of international indictment which has been used again Milosovic—against, for instance, the Kurds. Is there not a case and can we not bring some indictment in the West? You might think it is merely a shibboleth but sometimes it really ought to be flagged up, partly to concentrate and focus the minds of commanders in the Iraqi army and other politicians that they face international indictment. Can either of you help us on that?

(Professor Greenwood) Can I answer that, Chairman, because I had a part in something similar when I acted for the Government of Spain in the Pinochet proceedings in another place. It is immensely desirable that it should happen, in my opinion, but the difficulty with it is two-fold. There is no international court which would have jurisdiction. Milosovic is standing trial before a tribunal that is specifically designed for jurisdiction over crimes committed in Yugoslavia. It has no jurisdiction over what has happened in Iraq. The International Criminal Court will not have a retrospective jurisdiction so its jurisdiction will not cover the events that we have been talking about. The

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only tribunals that exist at the moment that have jurisdiction would be domestic courts and, so long as Saddam Hussein remains the head of state, then, under a recent decision of the International Court of Justice, there will be real problems about whether he would be entitled to sovereign immunity. General Pinochet, of course, was a former head of state and that is what made his immunity more restricted.

Sir John Stanley

95. I would like to go to the general, but critically important, international legal issues as to in what circumstances in this day and age pre-emptive strike is legal, and I want to ask this not in an Iraq context only. We have already made it quite clear that in this day and age of proliferating nuclear, chemical and biological weapons, in this day and age of both state-backed terrorist organisations and non-state terrorist organisations, that the present boundary is unworkable. The American Government in their *National Security Strategy* published last month makes the point on page 15: "Legal scholars and international jurists often conditioned the legitimacy of pre-emption on the existence of an imminent threat, most often and visible the mobilisation of armies, navies and air forces preparing to attack. We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries." I do not think it can be disputed that in the world of today, however appalling and regrettable, that that world is the reality to which I have just referred, and reliance on imminent threat is simply not a realistic legal basis or security basis to defend your population. There is not going to be, in all likelihood, any ability to detect imminent threat. It may well be that the first indication of a CW or a BW attack on a major city is going to be, tragically, very large numbers of people suddenly being found dying of toxic chemicals or fatal bacteriological substances, and that may be the first indication you get that an attack has actually taken place. However, if you go to the lengths that the Americans are perhaps suggesting, pushing out the frontier of legality, if you start resting on the capabilities and objectives of today's adversaries, then in terms of capabilities, we have got a very considerable number of states which hold weapons of mass destruction. Surely you just cannot make legal pre-emptive strikes because, for example, of the possession of WFD weapons, and when you get into objectives then of course you are in a very big area of subjectively as to what a particular state's or organisation's objectives are. I think this is one of the most critical issues in international law, and we are very very dependent on people such as yourselves; where do you believe, in present day circumstances, the new boundary, which can no longer rest on imminent threat if we are going to be able to protect the people of our country and everybody else's in law-abiding societies, the boundary can properly be set? Surely, you would not agree that it just goes on capabilities and objectives because that could legalise, for example, a nuclear exchange between India and Pakistan because both possess the capabilities for nuclear warfare, but that clearly would be utterly unacceptable legally. How far do we progress legally beyond imminent threat?

(*Professor Brownlie*) I have a rather more conservative view than my friend and colleague Professor Greenwood, but even on his view there was always a concern that it should not become a purely subjective matter. The Caroline incident, which was mentioned by Christopher, is very important but it is still question-begging. It simply says there has to be absolute necessity which you cannot ignore, but it is still rather circular and begs the question as to what the level of necessity should actually be. This is the difficulty because the fact is, of course, that only relatively strong states within a given region will have this privilege of using such a loose doctrine and, as I have said before, even President Bush is careful to say that a broad doctrine of pre-emptive action would be open to abuse and should not be abused. The fact is that in the Cuban missile crisis I think I can say the states concerned did show considerable care in handling the situation. My feeling is that it would be much better not to invent some new umbrella of subjective action which would have a pseudo-legality which could be used on almost any occasion providing the acting state was powerful enough. It would be much better to be honest and say what we need to do and what we intend to do, and if that is enforcing the compulsory disarmament of a state, which has happened before—it happened after the Second World War, in some form at least—it is much better from the public order point of view to be clear about the objectives and not to disguise those objectives under some form of expanded self-defence.

96. That is a very interesting answer. What you are saying is that do not move the legal boundaries and you rest on the facts and the policy in that particular case. Yes, thank you.

(*Professor Greenwood*) I do not take as pessimistic a view about the ability of the existing law to respond to the situations that Sir John has just outlined. First of all, the Security Council has the power to take or to authorise action whenever it determines there is a threat to international peace. You do not have to look here at imminent threats of armed attack. The Security Council's responsibilities and its powers go far broader than that. So within the framework of the Security Council it is certainly possible to impose a regime of disarmament upon a state which has violated international order in the past. It is certainly possible to organise pre-emptive military action. The imminent armed attack rule is one which applies only where a state acts on its own under the rubric of self-defence. There, I take the point entirely that we have to steer a course between, on the one hand, the rock of too loose a definition, which means that every state can use this as a licence for action and, on the other hand, the whirlpool of a definition which is so restrictive it does not fit the conditions of today. That is why I suggested that when you come to assess what is a threat of an imminent armed attack, what you have to look at includes the nature of the threat, the method of delivery, and the gravity of that threat. Obviously, mere possession of a weapons capability is not sufficient; one has to have some indication of an intention to use that. Of course that indication can come in part from a state's past record and the fact that a state has itself been involved in activity of this kind. If you look at chemical weapons for example,

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[Continued

[Sir John Stanley Cont]

Iraq has made very free use of chemical weapons during the 1980s. That gives you some indication of what its intentions might be at the moment.

(Professor Brownlie) The International Court was asked to give an advisory opinion on the legality of the threat of use and even the possession of nuclear weapons. It did not speak clearly on all aspects of those matters but in 1996 it did not regard the mere possession of nuclear weapons as unlawful. That, as far as I know, is quite a general view. Chemical weapons have been prohibited *per se*, bacteriological weapons way back in 1972 were prohibited *per se*, but nuclear weapons have not been prohibited *per se*.

Chairman

97. In trying to examine intention, presumably, as Professor Greenwood was saying, you could look at all the circumstances including that being the natural consequence of the possession and a past record of using it against one's own people or neighbours?

(Professor Brownlie) I think, though, there is a special element here which is not really appreciated sufficiently, if I may say so, which is that here non-regional powers are purporting to act, so to speak, on behalf of Kuwait. Kuwait and other neighbours of Iraq have not accused Iraq of an imminent attack and that is a central reason we have to stay close to commonsense. I accept that all the circumstances must count, but those circumstances must surely include the attitude of Iraq's neighbours, not least that of the original victim of Iraqi aggression—Kuwait.

Mr Mackinlay

98. Two quick final points. On your definition of the nature of the case, which is compulsory disarmament, there is the fact that compulsory disarmament was part of the package in Security Council resolution 687, and clearly the Iraqi Government is in breach of 687. Are you saying there has to be a further trigger and that it has to go back to the Security Council for enforcement?

(Professor Brownlie) I accept that there are breaches of 687, that is self-evident. What I find difficult is the link between the trigger, the arguments about a breach of the cease-fire where it might be there is a need for anticipatory self-defence, and the nature of the permanent disarmament regime which emerges from at least some official statements from various governments. The problem I have is the link between the trigger, the reason for the armed action that might be taken, and the long-term objectives which, are not linked clearly, for my money, to a simple restoration of the cease-fire regime.

99. But you are reading now further along the road, you are reading into it regime change—

(Professor Brownlie) Yes I am.

100. If one simply looks at disarmament, that is covered by a Security Council resolution of which they are in breach.

(Professor Greenwood) I think there is a danger of over-complicating the issues if we are not careful. The Security Council authorised action to remove Iraq's threat to peace and security in 1990. In 1991 it

said, "Alright, the fighting will cease on the condition that you remove all ballistic missiles with a capacity of more than 150 km; you remove all chemical and biological weapons and all the means of manufacturing them; and you remove any nuclear capability; and that you submit yourself to independent verification that you have done all these things." We know that Iraq has not complied with that so the question becomes: if disarmament of this character—and it is only a partial disarmament, it still leaves Iraq with vast armed forces—is what the international community has decided is necessary for international peace and security, how are we going to achieve it? I do not think it can reasonably be said that the international community has not been patient with Iraq over this. This dispute has now been going on for eleven and a half years.

101. Can one state take on itself the role of the enforcer?

(Professor Greenwood) As a general proposition, I think no. In this case, provided the Security Council on behalf of the international community determines that there is a continuing threat to international peace posed by Iraq's violations, then those states that were given the authorisation in 1990 still have that authorisation. It would require some kind of Security Council determination on that.

Mr Maples

102. I want to take a parallel point, the British, French and United States intervention in Kosovo was not only without a UN Security Council resolution but in circumstances which it would have been impossible to have obtained a UN Security Council resolution and we, it seems to me, invented a doctrine on humanitarian intervention, which I think has been dealt with in the same international way by Nicaragua—am I wrong? The point I was getting at that seemed to me to be an interesting new piece of international law, an interesting development, whether or not you think it is sound or legally based perhaps you have different opinions. It does seem to me to be strange that if we are to have a liberal interpretation of the right humanitarian intervention and a restricted determination of some sort of pre-emptive or anticipatory self-defence you end with a situation where it is okay for Britain and the United States to bomb Serbia in the interests of protecting the human rights of some of the people in that country but it is not all right for Britain and the United States to take military action against Iraq in circumstances in which they see the very basis and fundamental rights of their own citizens and those of their allies directly treated?

(Professor Greenwood) I take that point entirely. It would be fair to say we would disagree for a lot longer than the time allotted if we get on to the subject of humanitarian intervention. Professor Brownlie and I have been on opposite sides of that debate for some time. The point about humanitarian intervention as it was espoused in the Kosovo case and indeed in earlier cases, including two interventions in Iraq, was that it was to be used only in the most extreme case where there was an immediate pressing humanitarian emergency. Of course, self-defence already gives you, on the analysis

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[Mr Maples Cont]

I suggested, the right to use force where there is an immediate, pressing threat to your own people. I do not see the dichotomy between the view of humanitarian intervention that the government took in 1999 over Kosovo and the view of self-defence which the government has always taken, namely that it includes the right of anticipatory self-defence but limited to cases of imminent armed attack.

103. I was suggesting that the dichotomy would arise if one took a more restrictive view.

(*Professor Brownlie*) I had to be somewhere in Africa at the time but I did burden the Committee with a very extensive opinion on the question at the time. Occasionally lawyers should be dogmatic. I think it was clearly illegal.

104. What, the action in Kosovo?

(*Professor Brownlie*) The action in Kosovo. I think the ultimate Foreign Office position was a very straight forward work one, they said they would work in the future to establish the legality of humanitarian intervention, which seemed to me to be some kind of an admission that perhaps it had been questionable at the time.

(*Professor Greenwood*) I do not read it that way at all.

Sir John Stanley

105. We have raised some very, very important but also some extremely complex legal issues with Professor Greenwood and Professor Brownlie and if they felt they wished to submit supplementary written memorandum to us when they have had time to consider the transcript of the exchanges it would be very helpful to the Committee.

(*Professor Brownlie*) There is a small paper from myself¹.

(*Professor Greenwood*) And one from me².

Chairman

106. One final thought, international law, the law between nations. We are now getting to the point where law which were relevant to sovereign nations appear less relevant because of the appearance on the

international stage of so many irregulars, non-sovereign states. Is there any prospect of international law moving in areas like this? You think of the Geneva Convention and the problems posed in Guantanamo Bay, to what extent is international law sufficiently flexible to move to encompass these new non-state actors?

(*Professor Brownlie*) The first point I would make is that international law is often, as it were, treated as though it is going to be a source of solutions, it is not always a source of solutions, no more than national law. After the September 11 disaster Michael Howard wrote in the *Times*—he is a man of great common sense as well as being a leading historian. Michael Howard said the main answer to the problem of terrorism was better criminal investigation. That is a matter both for national law and international law. I do not think international law has any easy answers in this area as it does not on other matters, like drug enforcement, and so forth. I would point out that international law is now in two gears, there is the geo-political catastrophe gear but there is also the gear in which I spend much of my time, and so does Christopher, settling disputes peacefully. There is another gear and because that is boring and involves lawyers and diplomats, people who wear ties, the press are not really interested in that side of things. Thank you.

(*Professor Greenwood*) I could never concede that what lawyers do is boring. I agree there are no easy answers. I do think, however, in respect of international terrorism the existing framework of international law on the use of force and international humanitarian law is capable of adapting to the change in circumstances. I do not think it is necessary that we throw up our hands in horror and say that after 11 September we need a wholly new legal system. We cannot have a wholly new legal system; therefore we have to work within the realms of what we have. That is perfectly capable of delivering an effective solution.

Chairman: I reach two key conclusions, one the Committee, as before, is extremely grateful to you both. Secondly, when we come to an International crisis we must choose our professor carefully. Thank you very much indeed.

Examination of Witnesses

LORD WRIGHT OF RICHMOND and SIR HAROLD WALKER, examined.

Chairman

107. Welcome, gentlemen. We have just had an interesting difference of views between the expansionist and the more restrictive view of international law as it applies to the problem of Iraq. Whether there will be any wafer-thin difference between two distinguished diplomats in this area I do not know but we look forward to that with anticipation. Can I welcome you both, Lord Wright, a former Permanent Under Secretary and Sir Harold

Walker, a very distinguished diplomat still very involved in the Middle East. Lord Wright you said on 21 August, “that implications of an attack against Iraq would be absolutely devastating, and I do not personally believe that the case has yet been made.” Since when an amendment has been moved in that we have both the IISS dossier, we have had the Foreign Office dossier, do you believe that is sufficient to change your own view?

(*Lord Wright of Richmond*) Chairman, first of all, thank you very much for inviting me to appear. It is 11 years since I last appeared before the Foreign Affairs Committee and it is very nice to be here again. If I can take your second point first. I do not actually

¹ Ev 21-23.

² Ev 17-21.

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[Chairman Cont]

yet believe that the case has been made for a military invasion of Iraq. Mr Mackinlay said in the previous session that we were no longer talking about regime change but, with respect, a lot of people are still talking about regime change. The first point I would like to make is that, to me at least, the objectives of the United States administration are still very unclear. I hope it is right to say that their first objective is disarming Iraq of dangerous weapons. I personally believe that that should be the absolute priority. There are still a lot of noises coming out of Washington, not necessarily from the President himself, but suggesting that there are people still in the administration who think that the aim should be to remove Saddam Hussein. I think a very clear case has to be made if the Americans and their allies, including the British government, are going down that route and I do not actually believe that case has yet been made.

108. What would be necessary to convince you.

(*Lord Wright of Richmond*) I would regard any evidence of an attack, imminent or otherwise, against Britain or the United States or our allies, our western allies, as a good case for it. The dossier produced by the British Government gave me no evidence whatsoever that there was such likelihood of an attack. I think I am right in saying the dossier showed no evidence at all of links between Saddam Hussein and Al-Qaeda. I know there has been talk, and this was mentioned in the IISS interview, there has been talk from the United States of various activities by Al-Qaeda in Iraq; interestingly in the north of Iraq, an area over which Saddam Hussein has no control and contacts with people for whom Saddam Hussein has very little sympathy. I think it is unlikely, it is possible but I think it is unlikely, that Saddam Hussein would want to enter into a collaboration with Islamic extremists over whom he has no control. Perhaps the greatest internal threat to Saddam Hussein is precisely from that sort of Islamic extremist. I think it is very unlikely—Sir Harold Walker is a former Ambassador to Baghdad and I would defer to his views—that Saddam Hussein is willing to enter into collaboration with Al-Qaeda. I also think that the dossier did not produce any evidence that Saddam Hussein has collaborated with or supported, let alone armed, extremist Palestinian groups. I notice that the Foreign Secretary made a slightly different point in his last evidence to you; but the dossier itself, I think, produces no evidence that Saddam Hussein has supported “terrorists” in Palestine.

109. Bounties to suicide bombers is not support?

(*Lord Wright of Richmond*) I do not think it is. Of course it is offensive that he should behave like that. But there is a very widely felt feeling in the Arab world that the Palestinians are being severely discriminated against and ill-treated. Perhaps you may not approve of it, but it is an entirely understandable public relations exercise on Saddam Hussein’s part.

(*Sir Harold Walker*) I agree with all of that. I think it is worth stressing that it seemed to me at the time extremely unlikely that the Iraqi regime would be behind 9/11 because at the time the Iraqis were doing rather well by their lights in seeing sanctions crumble, in getting on better terms with regional people,

including the Syrians, so why on earth should Saddam risk everything by being caught out in an operation like that. As Lord Wright said, Saddam is seen by Al-Qaeda and the Muslim world as a totally bogus Muslim, if I may say so. He has led a secular regime in a secular way and he raises the Islamic flag purely for PR reasons. I do not like to say things that could be interpreted as in favour of this regime, which is a really wicked regime, but I do think the claim that there are significant contacts between Al-Qaeda and the regime in Iraq is a very murky area. The Ansar Islam, or whoever they are, as I think Lord Wright said, are in northern Iraq, they are not under Baghdad’s control, and senior Iraqi spokesmen have twice claimed—and I do not know whether anybody has disputed it—that the Iraqi regime have actually helped the Kurds defeat the incursions of Ansar Islam. Despite what Secretary of State Donald Rumsfeld has said, one needs to be a bit careful about associating Saddam’s regime with this particular bunch of terrorists, although there is plenty of historical evidence of links with terrorists.

Mr Olnier

110. That is extremely enlightening from someone who has lived and been in Baghdad under Saddam. If what you just said is right, why is all this pressure now being put on Saddam Hussein to disarm when for five years he has been dormant?

(*Sir Harold Walker*) My position is really rather a simple one, that the record of the Iraqi regime in actually developing weapons of mass destruction, in actually using them and actually going on developing them (using incredible devices to deceive the inspectors and so on) demonstrates that in the long term, as the IISS witnesses indicated, Saddam regards developing weapons of mass destruction as an integral part of his regime, for prestige and for imposing his will on the area as he would like. President Bush has said that we are “faced with a grave and growing danger”—I think those were the words. I entirely agree it is growing but I do not agree it is grave at this moment. I think it is a medium-term problem, not an immediate problem, but one can readily see why the world, the American world in particular, faced with 9/11, should suddenly realise that there are new threats out there, and one of the good things, surely, that the American response has done is to force the Security Council to face up to responsibilities it ought to have addressed five or more years ago.

111. That is given the UN come behind the resolution and there is the backbone to do something. The corollary is if the UN do not do anything this time then they themselves will be extremely discredited in the future. Do you think Saddam will ever comply with UN resolutions?

(*Lord Wright of Richmond*) Can I answer a slightly different question first because, going back to the Security Council resolutions, I also heard that very interesting exchange with the lawyers? But leaving aside the legal arguments, perhaps I do not need to remind the Committee that today is United Nations Day. I do think it is very important, whatever the legal arguments and justifications, that there is a Security Council resolution which explicitly

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[Mr Olnér Cont]

authorises military action against Iraq, if that is what the United States and her allies decide to do ultimately. Although there clearly are some lawyers who argue that the existing Security Council resolutions are enough, I do not believe that politically or in terms of public credibility that is adequate.

Chairman

112. Would you like to comment more directly on the question, Sir Harold?

(*Sir Harold Walker*) I might add to that—it is no doubt something that you will come on to, Chairman—that a firm Security Council backing for any action could have a significant effect on the reactions in the region, amongst governments perhaps, not amongst people. I think that is another important *realpolitik* reason why we should have another Security Council resolution, regardless of the law.

Sir John Stanley

113. As we all know, the business of going to war is surrounded with monumental uncertainty. Predictions in advance of hostilities commencing, as to their length and as to the loss of life that will ensue subsequently, are notoriously difficult to make and historically have been the subject of massive miscalculation, that is to say massive miscalculation in both directions. If one looks back at some of the comment before the Kosovan war and the war against the Taliban regime in Afghanistan, most of the comment was that the loss of life and the difficulties would be very much greater than was actually shown, but of course when we come to the 1914–18 War the miscalculation was massive the other way. It would not be reasonable with your background to ask you to make a judgment to the Committee as to the ease and likely cost in life of this particular military operation, but what we would be very interested to hear from you is your judgment if military operations do take place (and they must take place if they do, presumably, with a view to removing the Saddam Hussein regime and thereby going into Baghdad) as to what you think would be the repercussions for Britain and its allies—obviously we focus particularly on Britain—in terms of its own relations with other countries in the Middle East and in the wider world?

(*Lord Wright of Richmond*) The first point I would like to make is that this very much depends on the public perception, and the perception in the Middle East and in the Islamic world, of what the objective of military action is. With great respect to Mr Mackinlay, I do not believe that is yet clear. It is certainly not clear to me what the Americans expect to follow military action. There has been rather wild talk about General Tommy Franks becoming Governor of Iraq. One can dismiss that perhaps, but it is very unclear to me how the Americans expect to settle Iraq, as they say, as a democratic country as a result of a military operation. I think the perception in the Middle East of what the Americans, and with Security Council authority what the Americans and

the rest of us are going to do, depends very much on what the objective is and how clearly that objective is set out.

Chairman

114. How do you distinguish Afghanistan; was that a successful regime change?

(*Lord Wright of Richmond*) I think it is very different. There was widespread opposition to the Taliban, it was authorised by a Security Council resolution, and it had wide international support. Whatever other Arab states may feel privately about Saddam Hussein, they have all expressed openly opposition to military action. If I could go to Sir John's second point on what are the implications of this. I think that if military action takes place (and I should have said in parenthesis that I believe that the immediate objective and the sole objective at this moment is to get the weapons inspectors back into Iraq and I think that should be the overriding aim of any Security Council resolution, as indeed we have seen in the press today in the text of the resolution tabled yesterday) the response in the region will depend very much on the "success" of any operation to remove weapons of mass destruction from Iraq or to neutralise them and it will depend most particularly on the speed, because I think that if it is a quick, clean action—and I have no idea how that can be achieved—then I believe that the regional response can probably be held under control; but I think there is a serious danger of real problems on the streets of the Middle East and perhaps more widely. You may have seen Mahathir Mohammed of Malaysia quoted as saying that war against Iraq would lengthen the anti-terrorist campaign and that it would cause anger in the Muslim world where there would be more willing recruits to the terrorist ranks. I think that is a danger and I think it is a danger that the United States need to take very carefully into account before any launch of military action. Can I just make a few points about this? We need to remind ourselves that there is a widespread view in the Arab world that the first priority should be to tackle the Arab/Israel problem. When I say the Arab/Israel problem, I am not just talking about the Palestinian problem, I am talking about the occupied Golan and Syria and Southern Lebanon. There is an almost universal feeling in the Arab world, both on the streets and among Arab governments, that the priority is wrong. They are really asking the question you asked Mr Olnér, "Why are the Americans focusing on Iraq when in the view of the Arab world, and I am bound to say the view of the British Government, much more priority ought to be put on trying to solve the Arab-Israel problem?" I must say I very much welcomed the passage in the Prime Minister's speech in the House of Commons on the day of the emergency debate and what he said about Arab/Israel; compared with that, I am afraid I found the few lines in President Bush's speech in the General Assembly rather inadequate. I would like to see the United States putting much more effort at a high level into the Arab/Israel problem. Secondly, I think there are fears in the Arab world and among Arab governments about this talk of "democratising" the region. It may be an admirable

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aim; but I am blown if I know how the United States is going to achieve that by occupying Iraq. I am sorry, Mr Mackinlay, I am probably going into fantasies which I believe you think do not exist, but I actually believe that in the Arab world they are paying attention to these various speculations in Washington about what the purpose of military action would be.

Sir John Stanley

115. Could Sir Harold just respond as well.

(*Sir Harold Walker*) Of course, you are not going to find a cigarette paper between us, Chairman!

Chairman

116. We are waiting for it!

(*Sir Harold Walker*) It seemed to me that Sir John put his finger on a most significant point, which is that he said he could not expect us to tell you what is going to happen because there are multiple uncertainties in the contemplation of military action against Iraq—the level of resistance in Iraq, the level of casualties we will have to take, the form of a new regime, how do you introduce a new regime, what will be the effect on oil, what will be the economic cost, what will be the effect on the world economy, on which we all have views—but I think we should be honest and say that we do not know and anything we say should be regarded with an equal degree of scepticism according to our experience. It is important because you are contemplating sending young men and young women to die and it is not right that they should go if the situation is very uncertain. I noted down what Donald Rumsfeld said in an article in the *Daily Telegraph* on 25 February: “If . . . you are going to put people’s lives at risk, you had better have a darned good reason.” All these uncertainties are not an ultimate reason for putting war out of the window, but they are a reason for saying it should be a last resort and not a first resort. In amplification of what Lord Wright said about reaction in the Arab world, I think that there are a great many variables and if action were taken with a Security Council resolution the chances are that the Arab world, the governments, would actually breathe a huge sigh of relief (they would not say so but they would breathe a huge sigh of relief). I do not think that the people of the Arab world will like it whether it is with a Security Council resolution or not. They will see it, wrongly, as one of a series of American assaults on Muslim people, forgetting that the Americans have helped Muslim people in, for example, Kosovo. However, that is the way they see it. The big unknown is: so what will the famous Arab in the street do? Will he rise up and overthrow his government? He has not done anything about Afghanistan, he has not done anything about the current oppression of the Palestinians, so why should he rise up about this further assault on an Arab country, or would it be the straw that broke the camel’s back? We do not know but we have to note that Arab leaders have used pretty powerful language in forecasting disaster. I noted that President Mubarak of Egypt on 27 August said: “If you strike Iraq . . . while Palestinians are being killed

by Israel . . . not one Arab leader will be able to control the angry outburst of the masses.” The Omani foreign minister talked of plunging the world into chaos. In public at least some responsible Arab leaders see a very bad situation. Many commentators think, and I think I am one of them, that the Arab man in the street in this context is a busted flush—that is not the right expression—and will not do anything significant. We can go into great detail about why. The only place I would really worry about would be Jordan, depending on what the King was perceived to have done in helping an American assault. If he just said search and rescue, fine, but if he was caught out, as it were, allowing his territory to be used for American and British Special Forces there could be serious trouble in the streets. As I say, this is one man’s view.

(*Lord Wright of Richmond*) Sir John Stanley very kindly said that he would not expect us to talk about military operations. Can I talk about military operations for a moment? I am not a military expert, but I have very strong doubts whether the Americans are likely to find an invasion of Iraq as smooth as the ejection of Iraqis from Kuwait was. Whatever their real feelings about Saddam even the Shia Iraqis would be defending their own homeland. None of us needs to be reminded of the difference between people defending their own homeland, however badly they think it is governed, and taking part in an operation to occupy their neighbour. Many of us have memories of the appalling brutality of the Iraqi Revolution of 1958. I think there is a real danger of street fighting in Iraqi cities and the likelihood of heavy casualties and presumably the risk of Saddam at last being provoked to use the weapons of mass destruction that he is believed to possess. On that point can I just remind you, I think the IISS were asked to look into the mind of Saddam Hussein as to why he has these weapons of mass destruction? One aspect which was not mentioned was deterrence. Remember that his main enemy Israel has all of the weapons of mass destruction that he is believed to possess or is developing and I think many Arabs would argue that it is reasonable for Saddam Hussein to supply himself with a deterrent.

Andrew Mackinlay

117. I want to ask two questions. In a sense I am a little disappointed, I did not explain myself adequately. I think it is bonkers to suggest that you can go and create a democracy like that. I thought the whole thrust of what I was saying, I am really not disagreeing with you, is I think the United States are so intoxicated with power they miss the thing they should keep their eye on, compliance. Even you, Lord Wright, fall into the chasm of talking about disarmament. If you were advising the British government now both legally and from the point of view of spin you should be emphasising, and us politicians as well now want compliance with that armistice. It is a matter of rule of law. That is really what I was trying to say to the lawyers, and I think you agree with me.

(*Lord Wright of Richmond*) Absolutely.

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[Continued

[Andrew Mackinlay Cont]

118. It is good presentation but good in law and morality. The other thing I did want to ask both of you about, this is something new this afternoon, I have mentioned it in other meetings we have had, what frightens me is that Saddam may not actually understand the gravity of the situation in this sense. If you look at the 20th century tragically so often our adversaries have not understood we really mean to go down the road. I wonder if you think there is a danger, indeed ought there not to be some high level interlocutor, perhaps in a very private way going over there. You mentioned the Cuba crisis, a lot of things were not in the public domain but were done. One, spell it out to Saddam that this is going to happen. Also, and I return to this point, you are not going to have regime change. Lord Wright, whilst I think they have been saying all these things, Rumsfeld has been saying these things, there has been a major shift in the past four weeks in attitude by the United States. They are not going to go to war on regime changes. I want you to advise us on this, ought there to be people going to Saddam and saying, they do mean this, it is going to happen but you can survive. If you comply in a real sense we are not going to go for regime change.

(Lord Wright of Richmond) In talking about the absolute priority to be given to disarmament and compliance, I nevertheless think that it is right to back that up with credible threats. Whether Saddam Hussein believes those credible threats is a very difficult question to answer; Sir Harold is much better placed to do that than I am. As he reminded me earlier today, Saddam Hussein has very little understanding of the great outside world. He has hardly travelled abroad at all, if at all, in his life. As diplomats you would expect us to sympathise with your suggestion that it is a pity that there is not diplomatic contact with Saddam Hussein if only to get messages across directly.

Chairman: Sir John Stanley will now take over to ensure that everyone has a good say.

In the absence of the Chairman, Sir John Stanley was called to the Chair

(Sir Harold Walker) It is a very good point raised by Mr Mackinlay. We all know that Saddam Hussein is not a travelled man and he is surrounded by sycophants. It is extremely difficult to know how he makes decisions. It does point to an important point about diplomacy, you need to get people he regards as in some sense friends to warn him. I think it is more important that the French, Russians and the Chinese speak to him and say you had better do this or else than it is to get a message over the airwaves from the Americans or the British. That is the stuff of diplomacy, you think how best to get your message across. If I can again add one man's view on the war, I think personally that the regular armed force of Iraq will crumble when they are invaded. But there are somewhere between 500,000 and one million people very dependent on Saddam for their standard of living in the security forces, in the republican guard and in the umpteen security services and I think that a considerable number of those people would see that they hang together or separately and there would be people who would fight with Saddam out of severe self-interest on top of the unknowable business of people rallying round a leader when your

country is invaded. It should not be thought that the military victory will be a walkover, although undoubtedly it can be won.

(Lord Wright of Richmond) That still leaves the question of "what afterwards"?

(Sir Harold Walker) One more point I think is worth making for a Committee with this wide scope. IISS witnesses quite rightly said that Saddam has his weapons of mass destruction for prestige and for securing his regional ambitions and Lord Wright added that he lives in a dangerous world. It should be noted that in recent decades in modern history it is not possible to construct a security system in the Gulf area using solely local ingredients because you have a powerful Arab country, Iraq, always at loggerheads with a powerful Iranian country and underneath countries with strong social societies with lots of money but they are weak militarily and in terms of population. So you have needed an outside power, which since 1971 has really been the US or the US using the Shah as a policeman, to construct some kind of balance of power, and I do not see how in the long run you are going to have a security situation other than a regional one. In the long, long run you are going to have to have a regional security situation in which these powerful people are taken care of, otherwise you are always going to have to have intervention from, as it is now, a superpower.

Mr Maples

119. We have had a very interesting conversation with you and with the two previous witnesses. Whether or not the United States' policy is correct or indeed whether or not it is legal, the fact is that these decisions will be made by them and not us. What I am really interested in is if we were collectively advising the British Prime Minister in circumstances without a United Nations Security Council resolution which explicitly mandated the use of force that perhaps a new resolution might imply, and the United States chose to take action, do we really have any alternative but to support them? Surely by not supporting them the damage we would do to our alliance with them and the extent we rely on them would far outweigh any damage it might do to us in supporting them? Secondly, if you look at the position that Chancellor Schroeder has got himself into, I doubt Bush is ever going to speak to him again. Relations between the United States and Germany might be repaired but I think Schroeder is just out of the game. France is playing its usual quite dangerous game and I would have thought if it pushes the United States too far it is likely to put itself in the same position.

(Lord Wright of Richmond) I would not contest what you say at all about the effect on the relationship if we were to draw back. But the logic of what I have described and others have described as the absolutely essential point—that any operation is done through the United Nations and on the basis of a Security Council resolution—is a point which I would hope the Prime Minister has stressed again and again to President Bush. I would hope that President Bush has drawn the conclusion that without that—

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LORD WRIGHT OF RICHMOND AND SIR HAROLD WALKER

[Continued

[Mr Maples Cont]

120. My question is a different one. Obviously the Prime Minister has tried and succeeded to some extent but suppose they decide to take unilateral military action and they ask us to come with them, is it really in our interests to put distance between ourselves and them in the way the Germans and to some extent the French have? Forget the rights and wrongs of the argument, do we really have any alternative?

(*Lord Wright of Richmond*) I have very little doubt as to what the answer would be from Number 10 Downing Street, but I would hope that some discreet warning could be given now to President Bush, not publicly because nothing should be done to reduce the pressure on Saddam Hussein, but I would hope that there could be some discreet warning to the United States. The Prime Minister will find it very difficult indeed—and it is not for me to talk about domestic political problems—to go along with him without the backing of the Security Council resolution.

121. Does he have any alternative, Sir Harold?

(*Sir Harold Walker*) May I just say in one sense in advance, just as a world citizen, that I do think it is terribly important that the authority of the United Nations Security Council be maintained because the history of mankind is a history of groups identifying themselves in opposition to other groups, fighting, and human nature is never going to change. We have to try very hard to have systems in the way of international law, treaties and institutions like the UN to control our aggressive impulses. It would be very much away from the interests of even the superpower if, following the League of Nations, the UN goes just because of American action. But in answer to your question, we have no alternative.

Mr Chidgey

122. I would like to press you both a little more on your views on the regional implications of the various scenarios that we have been describing. I think you were both here when I asked questions of IISS on the possibilities of Iraq either keeping or enhancing its weapons of mass destruction, and we were talking about chemical, nuclear and biological weapons. I would really like to know what your views are. It may well happen because of the time it takes to get UN support and to get inspectors in place and so on that, firstly, Saddam Hussein could already have enhanced weapons of mass destruction and gone nuclear, or secondly, because of the difficulty of identifying and locating chemical and biological weapons we get to a situation where he is given a clear bill of health and suddenly a year later he announces, "I have got all I need to do what I want in the region". What has been said about the Gulf is if he had nuclear weapons then he would have gone and been okay in Kuwait. My question is given the situation he has managed to acquire a deterrent with weapons of mass destruction, what advice would you give to the Government now, and if that is the case, what would happen in terms of the power structure within that region?

(*Lord Wright of Richmond*) If I can, first of all, talk as a former Deputy Political Resident in Bahrain, where we were responsible for the Defence and

Foreign Policy of all the Arab states in the Lower Gulf. I think there is still a feeling amongst the Gulf states that Iran poses them just as much of a threat as Iraq. I think they are mistaken and I think that is actually a wrong view, but never under-estimate the potential for conflict between Arabs and the Iranians.

123. Are you suggesting that Iraq would then attack Iran?

(*Lord Wright of Richmond*) No, I think the Gulf states will probably be too complacent about the risk of weapons of mass destruction from Iran.

124. I am sorry, I am talking about Iraq.

(*Lord Wright of Richmond*) They are complacent about a potential attack from Iraq.

125. What do you think Iraq would be doing in the situation where it had deterrents?

(*Lord Wright of Richmond*) Iraq has had certain weapons of mass destruction for a long time, as we all know, and we do need to ask ourselves why, if they have not used them yet, they would use them unless they are provoked by an attack from the United States?

126. Are you saying you think Iraq's position is one of being in defensive mode rather than aggressive, expansionist mode?

(*Lord Wright of Richmond*) I think politically undoubtedly they want to dominate the region.

127. That is my point.

(*Lord Wright of Richmond*) But I do not believe that there is an imminent threat that they are going to use those weapons of mass destruction.

128. Maybe they have not got enough yet.

(*Sir Harold Walker*) I do not know if the Committee has covered this point separately but the present debate of course in the world is about military invasion or not.

129. We are talking about the destruction of weapons of mass destruction and the implications of not destroying them; that is my point.

(*Sir Harold Walker*) I do not know whether the Committee has considered it but what is wrong with deterrence in the region? The then American Secretary of State in the Gulf War gave a warning to the Iraqis that if they used weapons of mass destruction a terrible fate would befall them, and they did not. I do not understand why the same technique should not now be used.

130. The IISS said earlier today that if Saddam Hussein did acquire nuclear weapons then any prospect of invading Iraq would be off. My point is we are changing sides. Iraq has the deterrent not the USA.

(*Sir Harold Walker*) That was the bit of the IISS's evidence that surprised me.

131. It surprised me too actually.

(*Sir Harold Walker*) I have not thought it through but it just surprised me. I would still maintain that deterrence which worked in a different context with the Soviet Union, which was a much bigger enemy, and worked in the Gulf War, really ought to be able to work with Iraq now.

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[Continued]

[Mr Chidgey Cont]

132. You are happy with the prospect that, if my scenario is right, Iraq could have a deterrent ability through WMD against Iran?

(Lord Wright of Richmond) That is why we want weapons inspectors.

133. But this is my point; we are very, very suspicious of their ability to track down all those weapons. We know historically this is going to be a huge problem.

(Lord Wright of Richmond) The history of the weapons inspectorate is not one of total failure.

134. I did not say it was, but it was not until Saddam Hussein's son-in-law told us where they were that we discovered them.

(Lord Wright of Richmond) But I would question whether an invasion is any more likely to be able to find them.

Mr Chidgey: There is a conundrum.

Sir John Stanley

135. I would like to address one final question to you in a different area but a very relevant one and one in which the Committee has taken a close interest. This follows the appalling terrorist attack in Bali and the very, very serious loss of life, indeed significant loss of life amongst British citizens. As you will know from the Foreign Secretary's statement in the House this week, he included in his statement an apology on behalf of the Foreign Office that although our staff in Indonesia clearly did their very best, they were not sufficient and were not able to mobilise sufficiently quickly at the area of the attack in order to be able to meet the needs of relatives and next of kin.

Sir John Stanley

136. Lord Wright, could we have your view as to whether you believe that it is necessary now in the world in which we now sadly live for the Foreign and Commonwealth Office to develop a really effective rapid response capability in terms of diplomatic personnel, who are going to be available and who are prepared to move at very, very short notice indeed to meet the needs of families if there are further deeply regrettable appalling such incidents.

(Lord Wright of Richmond) I think that is a perfectly credible idea. It is undoubtedly true that staff on the ground are always going to be inadequate to cope with disasters of this sort. As you know the consular presence in Bali was one honorary consul. Although Baroness Amos extended her apologies for the slow response, in fact staff were sent from Jakarta and elsewhere quite quickly. I am not suggesting that it was adequate; it was not. Even since I finished being Permanent Under Secretary 11 years ago the number of British residents abroad and travellers abroad has increased exponentially. I have a two year old figure of 56.7 million British travellers abroad each year. Most of the British casualties were, probably all of them, travellers not residents. As you will remember very well, Sir John, the British residents in Saudi Arabia when I became Ambassador—I think you were my first official guest in Riyadh—totalled 30,000, and I suspect it is not much less now. It is a happy situation that we are so well spread round the world but it does obviously pose very considerable problems for consular staff. I think one problem which I tried to get across publicly when I was Permanent Under Secretary, and that is that consular staff are not travel agents, they are very often asked to do things that are quite inappropriate for government officials serving abroad. I think the Foreign Secretary has said that he will examine the possibility of a sort of flying squad. In a sense I think what you need is a flying squad of counsellors, not foreign office counsellors, but people who can counsel the victims and their relations and that is a very specialised task which I would see as being quite a difficult one for foreign office officials to conduct themselves. You might need trained psychologists to do it. I certainly would not exclude the idea of a Flying Squad. What I am absolutely certain of is that staff on the ground are never going to be adequate to cope with the likely figures given the enormous number of British citizens who travel abroad.

Sir John Stanley: Lord Wright and Sir Harold Walker thank you very much for the benefit of your expertise and experience. Thank you very much indeed.

Memorandum from Sir Harold Walker

FOREIGN POLICY ASPECTS OF WAR AGAINST TERRORISM—HUMANITARIAN CONSIDERATIONS

In the course of his courteous treatment of witnesses today, for which I am grateful, the Chairman indicated that witnesses could submit in writing points that had been covered in the oral exchanges.

In the course of my evidence I mentioned a number of considerations that should in my opinion cause people to conclude not necessarily that military action against Iraq should be abandoned altogether but that it should be thought of as a last, not a first resort, I should like to add to my list of considerations the humanitarian ones set out in a paper (enclosed) that was issued on 23 September by a number of non-governmental organisations working in Iraq. I should be grateful if this paper could be found a place in the Report of the Committee.

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[Continued

I declare an interest in the sense that until November 2001 I was for four years chairman of the board of CARE International.

Sir Harold Walker

24 October 2002

UNITED NGO STATEMENT ON IRAQ

Signed by Save the Children UK, CARE International UK, Christian Aid, CAFOD, Tearfund, Help Age International, Islamic Relief and 4Rs.

Based on the experience of our agencies and their partner organisations on the ground in Iraq we, the undersigned organisations, fear that a new war on Iraq risks deepening and extending the current humanitarian crisis: creating large numbers of civilian casualties and extending human suffering. We have serious concerns about a new war for the following reasons:

- **There is a high possibility of large numbers of civilian casualties.** Aerial bombardment, followed by the ground war that would be necessary to achieve the stated aim of some major powers of “regime change,” would place large numbers of civilians—particularly in densely populated urban areas—in grave danger.
- **Years of war and sanctions have already created an extremely vulnerable population whose ability to cope with any additional hardship is very limited.** This includes children, who make up almost half of Iraqi society, widows, the elderly and the poor. Child mortality rates have risen by 160 per cent under sanctions. According to UNICEF: “If the substantial reduction in child mortality throughout Iraq during the 1980’s had continued through the 1990’s there would have been 500,000 fewer deaths of children under five in the country as a whole during 1991–98.” (UNICEF, 1999)
- **Extensive and prolonged conflict risks undermining the essential supply of food and medicine to Iraqi civilians.** The populations in the Kurdish North and the Centre/South already rely on monthly, imported food rations under the Oil for Food Programme. These rations last only three weeks on average. If the ration is cut in an emergency, monthly salaries of \$3–\$6 on average would be sufficient to purchase food from local markets. 30 per cent of children are already chronically malnourished (UNICEF, 2002). If the war is prolonged the risks of serious disruption of, and access to, local markets for essential food supplies will rise.
- **Extensive and prolonged conflict would threaten key infrastructure.** Water quality is already very poor for many Iraqis and the prime contributory cause of death for children. Risks of major health problems caused by further disruptions to water supplies and erosion of water quality would increase significantly if pumping stations and sewage treatment plants ceased functioning. Electricity infrastructure is vital for those installations, as well as for hospitals, but could become a military target—as occurred during the Gulf War—in any conflict.
- **Iraq already has approximately 700,000 internally displaced people.** Increased conflict could lead to massive population displacement with catastrophic consequences if these people’s access to food is cut off, or they find themselves trapped at closed borders. The heavily mined border not only poses a threat to those fleeing conflict but will cause major impediments to providing humanitarian supplies from external sources. A winter campaign would add to humanitarian problems, as this region would be heavily snowbound.
- **Conflict has wider humanitarian implications.** The wider repercussions of war will be felt throughout the region. We are concerned that the war could destabilise the region, and sow the seeds of future humanitarian crises.

We urge the British government not merely to take effective steps to avoid exacerbating the current humanitarian crisis but the seek ways to improve the humanitarian situation, while pursuing a diplomatic solution to the current crisis. The current focus on the government’s “dossier of evidence,” weapons inspectors and Iraqi disarmament should not detract from the urgent need to address the humanitarian crisis that has been unfolding in Iraq for the last 12 years.

United NGO Statement on Iraq

23 September 2002

MONDAY 28 OCTOBER 2002

Members present:

Donald Anderson, in the Chair

Mr David Chidgey
Sir Patrick Cormack
Mr Fabian Hamilton
Andrew Mackinlay

Mr John Maples
Mr Bill Olnier
Sir John Stanley

Examination of Witnesses

RT HON JACK STRAW MP, Secretary of State, MR TIM DOWSE, Head, Non-Proliferation Department, and MR PETER RICKETTS CMG, Political Director, Foreign and Commonwealth Office, examined.

Chairman

137. Foreign Secretary, may I on behalf of the Committee welcome you and your two colleagues to the continuation of our study into foreign policy aspects of the war against terrorism. You have with you Mr Peter Ricketts, Political Director, whom we have certainly met before, and of course Mr Tim Dowse, Head of the Non-Proliferation Department, who returns again. We met him last Thursday. Perhaps he should be permanently encamped here with the Committee. Foreign Secretary, I would like to begin with an update on the current position in New York at the Security Council. I well understand the constraints which lie on you because of the continuing negotiations, but can you at least begin by telling us this? It is said that the United States is losing patience with the lack of movement at the Security Council and if there is no agreed resolution by, say, the end of the week do you think there is a real danger that the US will indeed lose patience to the extent of seeking to go ahead on its own and dispense with the Security Council resolution?

(*Mr Straw*) The United States Government has to answer for itself, point one. Point two is that these discussions about any Security Council resolution have been in the air since the speech made by President Bush on September 12, which must now be six and a half weeks ago, although it is also true that discussions amongst the P5 as a whole did not begin until about two weeks ago. It is now important that the Security Council reaches a conclusion. I am not going to put a deadline of the end of this week or the beginning of next on it because this does not work that way. In my view what is as important as, if not slightly more important than, reaching a timely conclusion is the nature of that conclusion and if it takes an extra day or an extra two days in order to bolt down some other aspect of the resolution and by doing so we then gain a wider measure of agreement, so much the better. Of course, all the parties, particularly those in the P5, recognise that we are towards the end of the negotiations and, speaking for the British Government, I hope very much that we are able to secure the resolution which is currently agreed by the widest number of people in the Security Council.

138. So far as the key sticking points are concerned, would you confirm that one of them is the automaticity that the French are particularly

concerned about, that there would be a danger of in one resolution going ahead without a reference back to the Security Council if there were to be non-compliance?

(*Mr Straw*) It has been called automaticity. I do not think it is a very helpful description because none of the relevant drafts put forward at any stage has had within it any automatic trigger which moves from the resolution being agreed to military action without cause. If I can put the difficulty in a more complete way, Mr Chairman, it is this. On the one hand there are those, France and Russia particularly, who are concerned that the Security Council having in one resolution laid down the terms of the weapons inspections and what would amount to a failure by Iraq, and they are concerned that that resolution might be used in certain circumstances to justify military action. On the other side there are the United States and the United Kingdom with, if you like, the opposite concern, which is that we could end up with a situation where the future integrity of the whole of the international system of law is at stake: military action is necessary and palpably obvious and yet one or other member of the Security Council decides to veto it. It is how you square this circle which has been the matter in discussion. It is well known that it has been our position that we would have preferred a single resolution where everything was up front from the current failures by Iraq through to prescriptions related to the inspectors through to what would happen if those inspectors were not able to do their job properly all with one resolution. But we have also made it clear that we are ready, whilst that is a preference, to discuss a two-phase process and these discussions are now in hand.

139. And the two-phase process would be a return to the Security Council before any question of military action is considered?

(*Mr Straw*) Not before any question of military action can be considered because we do not know the full circumstances of what may happen once the inspectors go back and then the circumstances envisaged in which the whole international community believed that military action was fully justified without a necessity to return to the Security Council. In practice, however, let us be clear about this, that no single member—no two members—of the Security Council can control the agenda of the Security Council, so to a degree there has been some

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RT HON JACK STRAW MP, MR TIM DOWSE
AND MR PETER RICKETTS CMG

[Continued

[Chairman Cont]

tilting at windmills here. However, by way of reassurance, we are happy for it to be said that matters should be able in all the circumstances to go back to the Security Council. Any member of the Security Council can have items put on the agenda of the Security Council and move resolutions. As I say, there has been this implication that somehow the US or the UK would control the agenda. It is not the case.

140. What about the presidential palaces? Is this an area of disagreement?

(*Mr Straw*) I think there is now understanding amongst the P5 that if there are to be proper inspections they have to include the presidential palaces. We cannot have an obvious hole in the arrangements where "presidential palaces", which cover literally the area of Blackpool, for example, are exempt from inspection because that would be no inspection at all.

Sir John Stanley

141. Foreign Secretary, as you know, the Committee had briefings in New York and Washington the week before last and in the discussions we had with the US Government it was made very clear to us that in the event of there being military action it would be insufficient to focus that military action on simply seeking to remove Saddam Hussein's weapons of mass destruction and that military action would have to be accompanied not merely with removing the weapons of mass destruction but also with regime change. Does the British Government take the same view, that if there is military action it would be purposeless to focus simply on disarmament and that if military action takes place it must necessarily involve regime change?

(*Mr Straw*) Let me take this from the top. What would be the objective of any resolution which we hope will be agreed inside the Security Council? The objective of such a resolution would be to disarm Saddam Hussein and the Iraqi regime of its weapons of mass destruction, full stop, and not regime change per se. How could that be achieved? Hopefully by peaceful means, albeit backed by the threat of force. If, however, those means fail then a change in the regime in Iraq would almost certainly become a consequence of any military action and may be the means to the end of the objective of disarming Saddam Hussein because by that stage it would have become a self-evident truth that the existing regime was unwilling to comply with international law. Beyond that I am not going to speculate, Sir John, because the circumstances in which military action may take place cover a wide spectrum of possibilities.

142. I would not in any way seek to ask you to speculate on anything to do with future military operations for very obvious reasons. I am simply seeking clarification of the British Government's position which from what you said appears to be virtually identical to that of the American Government, namely, that if military operations start it would be largely futile to just focus on trying to remove Saddam Hussein's weapons of mass destruction and it would have to be accompanied by

regime change. The point the Americans made to us was that we might be able to destroy a significant amount of Saddam Hussein's weapons of mass destruction but they were saying to us that as long as Saddam Hussein was still there it was a total certainty that he would try and build back that weapons of mass destruction capability and therefore he had to go.

(*Mr Straw*) I have said what I have said. What we are seeking in the United Kingdom Government is a peaceful resolution of Saddam Hussein's flagrant violation of international law, the rule of the United Nations. I hope and pray that it is possible to secure disarmament of the Iraqi regime by peaceful means and if they are disarmed then it is literally the case that the nature of that regime will have been changed, albeit that the regime itself will not have been. If those peaceful means are not possible then the message we will have received from Saddam Hussein is that his defiance is complete; he is unwilling to co-operate with the international community, and it is therefore very hard to see, short of some late conversion by him, how he could possibly assist in that disarmament.

Mr Chidgey

143. Foreign Secretary, putting aside your optimism for one moment, can I just take your mind back to what happened after the Gulf War and the inspection regime went in then to destroy weapons of mass destruction. I am sure you will be better briefed than I in knowing that it was only at the last minute that it was discovered that many of the weapons of mass destruction that Saddam Hussein had had not been discovered and it was only with the defection of one of his sons-in-law that the UN inspectors were able to find and destroy them. Given that scenario I would like to ask you how confident you are under the new inspection regime, given the time that Saddam Hussein has had to develop his skills, that we can in fact discover all weapons of mass destruction that threaten the region and destroy them? Secondly, what is your policy and the Government's policy in a situation where, subsequent to an inspection and destruction programme, Saddam Hussein would of course apply for sanctions to be dropped and you may well therefore find us a hostage to fortune in the event that the weapons of mass destruction are still there in plentiful supplies? What advice have you received on those two questions?

(*Mr Straw*) You are asking me to prove a negative here. What we know from the previous inspection is that when there was a very deep international consensus about the imperative of Saddam Hussein accepting the weapons inspectors that led to compliance by Iraq. It also led to a flow of information which is obviously necessarily a part of any inspection process. The combination of those was that a large amount of Hussein's arsenal of weapons of mass destruction and the capability to produce them were destroyed. We also know that in the last four years since the inspectors had to leave Saddam has been rebuilding capabilities in both chemical and biological weapons and trying to build up his capability in the area of nuclear weapons. It is

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RT HON JACK STRAW MP, MR TIM DOWSE
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[Continued]

[Mr Chidgey Cont]

my belief that the tougher, more rigorous, better resourced the inspection regime the more likely the regime is to be successful.

144. May I ask if you are confident that the new inspection regime will be tougher and more efficient than the previous one?

(*Mr Straw*) It is learning from what happened before, not least in respect of restrictions by Saddam Hussein as to where they could or could not go or conditions that they could or could not have when they went to places. That is one of the reasons why we have been so insistent on the right of the inspectors to go anywhere, including presidential sites. Your last point was what would happen in respect of sanctions. We will have to see. The removal of sanctions is not part of any draft resolution that I have seen.

Mr Maples

145. We were told in the United States that under the new inspection the part of the United Nations in this was unlikely to be as effective as UNSCOM because of the facilities available to it, which I suppose largely dictate expertise in terms of personnel. Do you believe this is true or do you believe we can take steps or the United Nations can take steps to make sure that it is at least as effective as UNSCOM was?

(*Mr Straw*) A great deal of work here is going on to make sure that the skills and numbers of people available to the inspection regime are similar to if not greater than those available to UNSCOM, and also, in respect of the IAEA, the International Atomic Energy Agency will be conducting inspections alongside it. We are obviously aware of the need for high level human capability as well as other resources. Otherwise the inspections will not work out as they should do.

146. As long as that is being dealt with that is fine. The second thing I wanted to ask you about is this question of the one or two resolutions. When we were in New York we also met the Russian and French ambassadors to the United Nations who made it very clear, and I think I summarise their position correctly, that what they were not prepared to see was one resolution which called on Iraq to comply with the new inspection regime and at the same time authorised a single member of the Security Council by implication to take action if they felt that resolution had been broken. What you seemed to be implying was that if we allowed this to take place in a two-stage resolution, one resolution imposing a new inspection regime and then a need for another one to authorise military action, then somebody who voted for resolution one could have a veto on or not vote for resolution two. I wondered why you or we collectively think that that is likely to happen, because what it would mean would be that somebody who took the problem seriously enough to have voted for resolution one then, when it was pretty clear that Iraq was in breach of that, was actually prepared to veto the United Nations Security Council taking any action because that would actually be to put the United Nations Security Council in the worst of all possible worlds. If that was your view as a country you would be better off to veto

resolution one and never allow resolution two to arise because, as I say, you would by voting for one and vetoing two be putting the United Nations Security Council in an impossible position. I wonder why you think that is likely to happen and why it is a problem.

(*Mr Straw*) I did not say it was likely to happen. All I was trying to do was to explain to the Chairman why these discussions take a long time because there are fears on both sides. One can equally turn the point on its head, as I have done on many occasions when talking to my French and Russian counterparts, and say that I do not believe that the United States Government or the United Kingdom Government would participate in military action against Iraq if it were not justified. Everybody involved in these very intensive negotiations, from and including President Bush, wants to see a peaceful resolution to Saddam Hussein's flagrant violation of international law if that is remotely possible. What is being teased out in these intensive discussions is the routes that events may take so that we are all clear about the likely actions we will take and positions that will be taken by the different Member States in the event, for example, that there is a violation so that we are able to square the circle or deal with these anxieties on both sides. May I say, Mr Chairman, that when I said to Mr Chidgey, I think it was, that there was not anything in the existing draft resolutions relating to sanctions, that is correct.

Mr Chidgey

147. What about previous resolutions?

(*Mr Straw*) Mr Ricketts has reminded me that in 1284 there are provisions for the lifting of sanctions and those would still apply, but only when we have certified that Iraq is back in compliance.

148. Chairman, it is worth stressing that previous experience shows us that inspections are not in fact totally reliable in terms of finding weapons of mass destruction. We could find ourselves in a situation where sanctions are lifted and just a little while after weapons of mass destruction are still available to Saddam Hussein.

(*Mr Straw*) There is a variety of possibilities. The inspectors will be intent on doing an extremely thorough job before they offer any certification. Their knowledge base will depend not only on what physical facilities they find but also what access they have to data, to records, and so on. They may be fortunate, they may not. I have no confidence in the Iraqi regime, let me make this plain. We would not be here if any of us had any confidence in the Iraqi regime, but I am someone who does have considerable confidence both in the IAEA and in UNMOVIC, and both Blix and ElBaradei as I speak are before the Security Council giving a presentation to them.

Andrew Mackinlay

149. There are two aspects I want to ask the Foreign Secretary. One I have given Mr Dowse notice of on our laboratories and internal chemistry labs but I will come to that in a moment. Because of time can I merge together two points? Both in the

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United States and when we have had witnesses here, including a former Ambassador to Iraq, I have bounced off them the concept that perhaps Saddam might not understand absolutely what is before him: one, that we really do mean business, “we” being the United Kingdom and allies, the United States, but also, taking up the point you responded to Sir John Stanley on, if he complies we are not in the business as such of regime change. Witnesses, both in the United States and here, have said that they share the anxiety that this man probably might not understand. I use the analogy of the Cuba missile crisis where you did have intelligent people at both ends of the spectrum who nevertheless did use secret interlocutors to make it quite clear, one, the gravity of the situation, but also the key to unlocking the situation. I wonder if you can give us some reassurance that that point has been taken on board. Also, flowing from that is that I am concerned that even later on this afternoon my colleagues may quite rightly ask you about the legal legitimacy of the concept of self-defence under the UN Charter. We have been through this before. As a politician who is defending the Government I am frustrated about the presentational aspects. Rather than going down that road about whether or not it poses a threat and therefore you have got to take defence, we really ought to be emphasising here in the United Kingdom and our United States colleagues that it is a question of enforcement of the United Nations authority. I think we have got off on a wrong tack and I put to you that rather than going along with this business about whether or not you have got a right and there is an imminent threat to the United States coast from Saddam Hussein, we ought to be saying that what is at stake is the United Nations. That is (a) and (b) I want to put down and I will come on to the laboratories afterwards.

(Mr Straw) I agree with you. Whether that has come across fully or not is for others to judge. I can only say that in all the speeches I have ever made about this I have said that it is the authority of the UN that is at stake and I recall that at our party conference I went through all week saying that it is not the United States, it is not the United Kingdom but the United Nations’ authority that is at stake in this. Therefore it is not the responsibility alone of the UK or of the US but of the United Nations. That firm position must be taken in respect of Iraq and it is about the authority of the United Nations. That is why I believe that the Security Council has such a responsibility to grip this issue; it is very important that it does. It cannot dodge it. Otherwise, for sure the authority of the international order so painstakingly built up over a period of almost 60 years will be at stake with very serious consequences well beyond Iraq.

150. What about Saddam understanding, because there are one or two people who believe he might not fully understand?

(Mr Straw) All the evidence is that he does understand when there is a clear threat of force and he is faced with the alternative. That is why he complied post the 1991 defeat. For sure, alongside complying he worked hard to destabilise the inspectors and to split the international community and he ceased fully to comply and then to comply at

all at the point where he had succeeded in splitting the international community to the point at which the inspectors found it impossible to do their job. I just say this to you, Mr Mackinlay. There is a reason why in the space of three days, between 11 September and 14 September, the position of the Iraqi Government went through a 180 degree turn on whether to have the inspectors in. As sure as I sit here, on September 11 the Iraqi Deputy Prime Minister was saying, “We will not have inspectors”, and on 14 September as I was leaving New York, they said (the same people), “We will have inspectors in”. Why were they saying that? Because they had suddenly digested the fact that the international community was getting extremely impatient with the excuses, lies and prevarication from the Iraqi regime and that there had to be the beginnings of compliance. Have they been told about the consequences? Yes. I know that. I have had it from people who have spoken to them.

151. I am grateful for that. I will not probe you further on that. A nod is as good as a wink. I am satisfied with that.

(Mr Straw) Foreign ministers I have spoken to and heads of government have themselves been in to see Saddam Hussein and told him in words of one syllable about the consequences.

152. Last week, technically on another inquiry, on the Biological Weapons Convention, I was questioning Mr Dowse who has accompanied you this afternoon¹. I really am concerned with a degree of some urgency about our postgraduate institutions in this country. The way I understand it there is very little supervision of what is going on, partly because of sheer volume and the old days when we were not so exercised about these things, like pre-September 11. There is a transient scientific community in this country which brings us a lot of money and there is also the need for academic freedom, which I accept, but nevertheless we do not know who is doing what this very afternoon in some of our laboratories in our academic institutions, what they are literally here for, where they come from and what they are keeping in the back of the fridge. I put it in simple terms. Since I met Mr Dowse last week I have probed one or two people who are in this field and privately they will say to me, “Yes, you have got a point, Mackinlay”.

(Mr Straw) You have a point.

153. I do, yes, of some validity, I should stress to you. You were Home Secretary and are now Foreign Secretary; you have got the Intelligence Service under you. I and I think members of this Committee are deeply concerned and I think we would be reassured if you said, “Yes, we are looking into this”, because it cannot be a satisfactory state of affairs. We really do not know what is happening in our institutions and, I put it to you, who they are.

(Mr Straw) There is a resumed Biological Weapons Convention Review taking place on 11 November, Monday week, and this is a high personal priority for me. I published a Green Paper about the Biological Weapons Convention earlier in the year. There are a lot of detailed discussions going on. I am very anxious indeed to see some progress

¹ Foreign Affairs Committee. First Report of Session 2002–03, *The Biological Weapons Green Paper*, HC150, p Ev 4.

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made internationally and for the gap between the various parties to be closed. We currently use a voluntary scheme. I think there are many advantages in using a voluntary scheme. If the Committee says to me, after having looked at this, "We think you ought to look at this again", then we shall do so. That is the best I can say. If this is your judgment I will certainly look at it again.

154. Your colleague did undertake to give us some more details anyway. I do not want to prolong the meeting but I do think we need, even if it is only confidence, some greater details on this.

(*Mr Straw*) We can provide you with those but it is probably best if they are provided confidentially. Our science base here generally is very large. There are various indicators for the depth and breadth of our science base which includes a disproportionate number of citations of British papers, a disproportionate number of Nobel prizewinners in the scientific field and so on. There are many other indicators and maintaining and developing our science base is extremely important. The second point is that the boundary between some science whose application is for military purposes and some science whose application is for civilian purposes can be very blurred indeed, and this is most obvious in the area of biology and biochemistry and many other areas as well. You have got to be careful because there are issues here of the climate for scientific endeavour as well as genuine issues of academic freedom, so you have got to balance a number of factors. However, as I say, we are happy to look at this again but it is better if we brief you in confidence about all this.

Chairman

155. I anticipate that Mr Mackinlay will ensure that the Committee come back to this point.

(*Mr Straw*) If you think we ought to have a look at it, we will have a look at it.

Mr Olnier

156. To take you, Foreign Secretary, back to the UN, it is France and Russia who seem to be holding out against any sort of agreed statement. Given events over the weekend and the experiences there, the particularly nasty form of terrorism within Moscow itself, have you any private thoughts as to how we can get France to be a more honest broker?

(*Mr Straw*) If you had the French Foreign Minister, Dominique de Villepin, in front of you,—

157. If he came.

(*Mr Straw*) I am sure he would accept the invitation. His English is significantly better than my French, but if you had him in front of you I am sure he would say that it was the United States and the United Kingdom who were holding out against an agreement. Even my Russian counterpart would put it in similar terms. What is happening here is that there is a discussion taking place between the five members of P5. Everybody is agreed about the need to secure compliance by Saddam Hussein of the previous decisions of the Security Council. I have to say that the fact that that has now become a shared

imperative represents very significant progress since President Bush's speech on 12 September. So far the points of debate are on how that is to be achieved. My own sense is that the areas of difficulty between the parties are reducing. I hope that we will reduce them still further. We cannot be sure but that is the position we are in.

Sir Patrick Cormack

158. Foreign Secretary, in your statement to the House last week on Bali you talked about the campaign against terrorism lasting years, maybe even decades. Since that statement we have had yet another terrible terrorist outrage. What does the nature of the timing of these acts in Indonesia and in Kuwait, now Moscow, etc, tell us about the state of al-Qaeda? Do you believe that al-Qaeda has indeed been involved in all of these?

(*Mr Straw*) We do not know for certain. The group which has claimed responsibility and which was obviously immediately involved in the outrage in Moscow was of Chechen rebels, and those in Indonesia were Indonesian rebels, but both groups are known to have links with al-Qaeda. We cannot be certain at the moment about the precise nature of the links in the cases of these particular atrocities. The fact that well over 300 people have been killed and many more injured in terrorist outrages in the space of two weeks should alert us to the continuing threat that we all face from this kind of terrorism, and today we had the shooting of an American diplomat in Amman, the capital of Jordan, and I am afraid to say that the threat is going to stay. Indeed, the combination of failing states, proliferation of weapons of mass destruction by rogue states and international terrorism represents the greatest strategic challenge to the civilised world at the moment and I think for at least the next two decades. We have two so-called asymmetric threats. I have made the point recently in two speeches that I have delivered that in the last year, for example, only one of 24 conflicts identified was a classic conflict between two functioning states. All the rest come within the category of these other threats: conflicts within states, conflicts based on failing states and so on, so these are the new strategic threats and the most immediate and acute threat is from international terrorism which labels itself with the face of Islam but which represents a most profound perversion of Islam and which has a fanaticism based on religious as well as political belief but often, as we saw in Afghanistan, hardened in a failing state and extremely anxious to conspire with those who have access to weapons of mass destruction.

159. In your statement last week² you were talking particularly about British subjects. One accepts that it is exceptionally difficult to give adequate warning without spreading unnecessary panic, that this balance has got to be achieved, but you also said that had there been even a one per cent chance of knowing on September 10 what might happen on September 11 then action should have been taken. Do you

² HC Deb, 21 October 2002, Cols 21-35 (Commons Chamber).

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believe, and there has been much press speculation, that there was a one per cent chance of terrorists attacking Bali before they struck on the 12th?

(*Mr Straw*) I dealt with this rather fully in my statement but I am happy to repeat it. We certainly received no intelligence whatever which was sufficient to justify using the word “warning”. As I said, what we had was this generic threat information which related to six islands and those six islands taken together cover a 100 million population and 60 per cent of all tourist destinations for western tourists in Indonesia. That was taken into account. It was received on 27 September—I am speaking from recollection but we can give you the letter if that recollection is not accurate—and I think the final threat assessment made by the Security Services and other streams of intelligence by 8 October led to a judgment which I in retrospect think was correct, that we should not change the overall threat levels for Indonesia. It is immensely difficult, Sir Patrick. If we were to react to every piece of intelligence the world would seize up. We would have done the terrorists’ job for them. Bear in mind that one of the reasons why intelligence assessment takes some time is that it does not come with a certificate of truth attached to it. Even if it had that they have then got to decide on its value. Quite a lot of intelligence that is fed or picked up is deliberately the opposite of the truth. The difficulty is that we do not know until we really assess it which part is true and which is false. It is a very complex exercise.

Sir Patrick Cormack: I fully accept that. Thank you very much indeed.

Mr Olnier

160. Given that over here we had some amber, red, black alerts, goodness knows why, should there not be a continuing grade of advice that the Foreign office give to its nations when they are abroad?

(*Mr Straw*) We do it all the time. It is constantly updated. I was looking over the weekend at the updating of advice in other countries within South East Asia on the basis of intelligence assessments and the changes will be made public very shortly. All the time one is looking at this. Life has also to go on. Some of us here, including myself, have had direct experience of Irish terrorist outrages and we had to take precautions, but we also had to ensure that we as a society were not defeated by IRA terrorism which, it will be recalled, led to the assassination of a Conservative Member of Parliament just the other side of Bridge Street; it led to an attempt to assassinate the whole of the British Cabinet on not one but two occasions, and led to many innocent people being killed or injured. Life had to go on because if we simply decided to seize up the economy and life altogether the IRA would have won and we could not allow that to happen. That applies equally to the whole of the international community. I personally was once involved in a terrorist attack so I have some sense of what it feels like, albeit I was not badly injured. Life has to go on.

Mr Maples

161. Foreign Secretary, of course we completely follow that and I have heard from other people that when the IRA made warnings if you publicised them all life would have ground to a halt. What we are trying to do is to get some idea of where the Foreign Office strikes that balance because we regard perhaps your second most important duty as the protection of British citizens abroad. I wonder if you would deal specifically with one matter which was in *The Sunday Telegraph* on 20 October, which quoted two US intelligence officers as saying that the CIA had briefed that Bali was a target and had passed that to the British Government two days before the bomb blast but it was not made public, and also that Britain was briefed that Islamic terrorists could be planning to attack night clubs in Bali two days before the blasts. Is that true or false?

(*Mr Straw*) I will have to write in to the Committee³ but my recollection is that we could find no provenance for the first part of what was said, that there was a CIA report sent to us two days before the bombing.

162. There was no source?

(*Mr Straw*) No provenance for that story in *The Sunday Telegraph* saying that we received a report from the CIA two days before. That is my clear recollection. If I am wrong of course I will write to the Committee. There are two bases for saying that. One is that people have been through the files and had a look, but the second is this, that what is a matter of public record is that at all material times the advice given by the United States State Department in respect of Bali was the same as was given by the United Kingdom Foreign Office.

Chairman

163. And the second point Mr Maples made?

(*Mr Straw*) That meant that US diplomats themselves from Jakarta were on holiday in Bali at the time of the blast, at least six according to the US Ambassador in Jakarta. It is wholly improbable that had such a warning been received, leaving aside whether it had been passed on to us, the United States would not have acted on it in respect of its own diplomats, so that is why.

Mr Maples

164. You said on the first one that you had looked through the files. The second one was saying that Britain was brief that Islamic terrorists could be planning to attack night clubs in Bali two days before the blasts.

(*Mr Straw*) I have no evidence to that at all. You must not always believe what you see in newspapers.

165. That is why I am asking.

(*Mr Straw*) Not even *The Sunday Telegraph*. I have already told the Committee, as I told the House last week, that the reference to Bali was much more generic information about a threat which we received and it came to us on 27 September and was assessed

³ See Ev 70-71.

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by 8 October. May I also say that this is exactly the sort of detail which will be examined by the Intelligence and Security Committee.

166. I just thought that since these two particular matters were in the open it was fair to give you the opportunity to deny them. The second one, according to the newspapers, specifically related to Bali and to night clubs.

(*Mr Straw*) I have given the answer to that, which is that there was a generic threat which covered six islands.

Sir John Stanley

167. Foreign Secretary, going back to the question of Iraq, both you and the Prime Minister have made it very clear that if there is to be the commitment of British military forces in Iraq this will only be done on a clear legally justified basis. It has been reported that the law officers advised the Government that a new UN resolution would be required to provide such a legally justified basis. I am not going to ask you for the law officers' advice because I know what answer I would get, but can I ask you in front of this Committee to say what is the Government's position? Does the Government believe that there is a legally valid basis for the commencement of military operations against Iraq without there being a new UN resolution?

(*Mr Straw*) The Government's view is that there might be, is the answer to this.

168. There might be a legally valid basis, not a certain one?

(*Mr Straw*) It all depends on the circumstances at the time, Sir John, before you get too excited about my answer, and that must be the case. Colleagues will know that there are a number of bases for judgments about whether military action is or is not justified in particular circumstances, one of which is a new Security Council resolution. A second will be existing Security Council resolutions. A third will be rights either under the UN Charter or a customary international statement to use force in certain circumstances, so you have to take them all together. The final judgments will obviously be made on the basis of advice which we will receive from the law officers and which we do not disclose. Both the Prime Minister and I have said that we are obviously committed to ensuring that actions we take are consistent with our obligations in international law. There are so many possible scenarios that I do not think there is a lot of point in speculating about whether force would or would not be justified in this circumstance or that circumstance because we have not got there yet. Would we prefer there to be a resolution or resolutions from the Security Council? Yes. That is why I am devoting so much time and attention to securing exactly that end.

169. If there is no new UN resolution do you envisage that the legal basis for any commencement of military operations will rest on a pre-emptive right of self-defence or do you think it will rest on the non-compliance by the previous aggressor, namely Iraq, with the previous cease-fire agreement, thereby

allowing the members of the previous coalition to recommence hostilities on the basis of non-compliance with the cease-fire?

(*Mr Straw*) With respect, Sir John, I am not going to be tempted down that path of speculation. I prefer to rest on my previous answer which is that there is a wide range of circumstances. We are talking here about a range of circumstances which are not fully certain at the moment. It depends on the circumstances at the time. No decisions have been made at this stage for us to be involved in military action and I cannot say exactly what the circumstances would be.

170. I would like to ask you lastly in the legal area on the general issue of international law in relation to pre-emptive strikes on which the Committee took some extensive evidence last week. The US Government, in its *National Security Strategy of the United States of America*, which was published last month, has stated quite clearly that the existing legal basis for pre-emptive action is no longer valid against the threats which you have outlined to the Committee this afternoon. On page 15 of that document it says that legal scholars and international juries often condition the legitimacy of pre-emption on the existence of an imminent threat and the US administration makes the case that that is not a basis that is really valid any longer when you do not have threats necessarily posed by identifiable nation states, when the threats may come from unseen terrorist groups and using weapons of mass destruction which may be wholly invisible, like biological weapons, and when the first indication of some terrible tragedy is that people in the target area start contracting terrible fatal diseases. I would like to ask you to say on behalf of the Government whether you accept the general thesis that the existing boundary of international law on pre-emption, based on having to demonstrate imminent threat, now looks as if it has been rendered somewhat obsolete or certainly anachronistic by the way in which the threat is developing on the lines I have indicated and you have indicated this afternoon to the Committee.

(*Mr Straw*) The first thing to say about the national security strategy document is that it is a United States document; it is not ours. The second point is this, that international law, like our own common law, is not a fixed quantum. It changes as circumstances change. If what is being said is that international law has to adapt to threats that were not anticipated even ten years ago, the answer to that has to be yes. It is worth bearing in mind, and I do not know when you took evidence on this but having got into the concept of pre-emption in international law, that it arose, amusingly enough, from the British Government in *The Caroline* in 1837 deciding to take pre-emptive action against what we would argue was a rather difficult state which we thought was hiding what we regarded as terrorists, and the difficult state was the United States and the terrorists were Canadians. We impounded *The Caroline* boat and rendered it unsaleable in order to pre-empt action by these marauding bands of Canadians who had been given shelter by the United States, and that led to a protest by the United States and led them to develop the concept of international law.

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Circumstances have changed since then. I do not speak for a second for the United States Government; they can speak for themselves, but all I can say is that I do not find anything irrational at all about the approach of the US and their desire, which we have to share with the rest of the civilised world, to adjust their mechanisms to deal with the new threats which arose most lucidly on 11 September. Had we known on 10 September, for example, that the planes which had been hijacked in that way were for certain going to be used as explosives against the World Trade Center, then some difficult judgments would have had to be made about bringing those planes down, and if they had been brought down the correct judgment would have been made, horrible though that would have been. Had we known some weeks before about the possibility of this group of terrorists committing such a terrorist threat, then it would have been wise and sensible and appropriate to have taken military action against them. I read what the United States is saying as not much more than that. It is not that they are going to waste their time identifying some remote academic threat and then removing the government in the state concerned because in the real world life is not like that and governments have to prioritise their actions, but should we now be increasing our efforts against international terrorism and should we be pre-empting the sort of thing they did in Bali and the sort of thing they did in Moscow? Yes indeed. I think of the entirely reasonable demands on me in the House of Commons last Monday for information about what we knew in advance and to improve our intelligence base in the future. All of that is directed to one aim, namely, that we should develop our systems so that we are better able to pre-empt both the possibility of terrorist action and its consequences than we are at the moment.

Chairman

171. No-one would doubt that the circumstances you have described would come squarely within imminence and we would not need to look at a wider definition of pre-emption. Before calling Mr Hamilton can I try and sweep up what Mr Mackinlay and Sir John have said in respect of self-defence? Have you ever sought to rely in this case on self-defence under customary law or Fifty One and how would you seek to explain to a British citizen that we as the United Kingdom need to defend ourselves against Iraq? One can understand and easily explain to a British citizen that Kuwait or Saudi Arabia might talk about self-defence. How do we apply that to the United Kingdom?

(Mr Straw) Mr Anderson, apologies for not being tempted down the path of various scenarios. Let me be clear about the position here. We wish to see Saddam Hussein disarmed of his weapons of mass destruction. We wish to see disarmament of those weapons of mass destruction both because of the threat which they pose to his own people, to the region and to the wider international community and also because he is in flagrant defiance of the international community. We have made the world relatively safer over the last 60 years because of the relative success of our international institutions

based on the United Nations, and if we want to have a safer world still in the future that system has to be upheld and enforced. That is what I am aiming for. What is the best chance of resolving the Iraqi situation peacefully? It is by preparing to take military action and certainly not speculating publicly about the circumstances in which it would be taken. That is why, I am afraid, I am not willing to be taken down that path. Saddam Hussein should be in no doubt that if he fails to comply with the rule of international law then I believe most people in the international community think that force should then be used.

Mr Hamilton

172. That brings me quite conveniently, Foreign Secretary, to the questions I want to ask which relate to the consequences of war against Iraq. You will recall in 1991 during the then Gulf War when Saddam Hussein's back was against the wall that he fired missiles into Israel. Thirty nine Scud missiles in all were fired and at the time the then Prime Minister of Israel, Yitzhak Shamir, refused to retaliate and the world praised Israel for that. The current Prime Minister of Israel, Ariel Sharon, according to some sources has made it clear that he would not take such a view and that should he be attacked during another war against Iraq he would retaliate. Can I ask you whether the British Government has discussed any of this with the Israeli Government and whether in your view or that of the British Government the Israeli Government would retaliate? I should say that while we were in Washington there were very mixed views about this. Some thought that the Israelis would retaliate and would be right to do so; others thought there was no chance of that happening.

(Mr Straw) I personally have not discussed this with representatives of the Israeli Government. I have discussed it with others. It is perfectly possible that British diplomats have discussed it in Tel Aviv or it has been discussed at an official level. The decisions that have to be made are ones made by the Government of Israel. If Shimon Peres or the Defence Minister were on the stand here he would give you the same answer as I am about to give you, which is that I am not going to say any more and it would depend on the circumstances at the time. Every country has a right to act in self-defence under Article Fifty One of the United Nations Charter. As I say, decisions which Israel make will be a matter for Israel. Are we looking at possible consequences of military action in the region? Yes, of course.

173. I would like to move on because I think there is a very important question that we have touched on about regime change. The Prime Minister on 24 September in the special debate we had in the Commons said, "Iraq deserves to be led by someone who can abide by international law, not a murderous dictator . . .", a sentence which I think we would all agree with. "We have no quarrel with the Iraqi people. Indeed, liberated from Saddam, they could make Iraq prosperous and a force for good in the middle east." The question is this: is our Government currently working with exiled Iraqi groups to consider the future of Iraq after Saddam Hussein?

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(Mr Straw) To say we are working with exiled groups would give a wrong impression. There have been talks at official level with the Iraqi opposition groups which are based here, which received information about their views, but to suggest that we are working with them would be over-egging the situation.

174. But we have had contact with them?

(Mr Straw) Yes.

175. Can I move on and ask you about the consequences of Saddam being removed from power for the country of Iraq itself? We asked several people in Washington whether they believed that the country would fragment. The general belief was that it would not. What is the British Government's view about this?

(Mr Straw) I have talked a lot to people in the region about this. It was part of the agenda when I visited four of the countries in the region three weeks ago when I went to Cairo, Oman, Kuwait and Teheran. It was a matter which I discussed this morning when I met the Crown Prince of Bahrain here in London. There is a wide measure of agreement by most of Saddam's neighbours about what needs to be done, including, post-disarmament of Iraq, for Iraq's territorial integrity to be maintained. There are points of view about that and anxiety that no-one should take decisions or actions which would destabilise those borders. The borders, as you all know, were basically British inventions some 80 years ago. They do not follow every natural geographic feature in the region, it is all over the map, but they are the borders which are now internationally accepted so it would be unwise to depart from them. I think that there is such a common interest among the states bordering Iraq that first of all it is improbable that any of Iraq's neighbours would take any action to destabilise and fragment Iraq and, secondly, that it has developed in the last 80 years as a single entity, albeit with these three distinct groups, the Kurds, the Shi-ites and the Sunnis, that with proper support to a successor regime its territorial integrity would be enhanced.

176. You mentioned earlier that you have been to the region and have had discussions in several key capitals. I think one of those, and perhaps one of the most important in the region, is Iran. May I ask you what the Iranians' view was about the possibility of military action against Iraq and whether or not they would intervene?

(Mr Straw) Again, it is for them to say what their views are rather than for me. However, you will know that Iran suffered more at the hands of Saddam Hussein than any other country. There are still every month one or two people dying from the effects of the gases of what must be 15 years ago in Iran. There is very considerable anxiety across Iran about Saddam Hussein and his continuing to build up weapons of mass destruction, and certainly a deep desire to see measures taken to ensure Iraq's compliance with the United Nations Security Council resolutions.

177. I would like now to move on to the effect of a war in Iraq and the broader struggle against al-Qaeda. Tony Blair said on Australian television on 22 October, just last week: "The purpose of terrorism is not just the act of destruction itself, the purpose of

terrorism is as its name applies—to cause terror, to produce chaos, to produce division . . . that is why the only way of dealing with it is for people to come together." How do you think an attack on Iraq will affect the cohesion of the international coalition against terrorism?

(Mr Straw) I think it will improve it, is the answer. Military action against Iraq, as military action against anywhere else, has to be justified and would have to be seen to be a last resort. It comes back to the point I made much earlier, that it is fanciful to suggest that any power is going to use military force in a quixotic way and there is no evidence whatever that the United States is intending to. Indeed, President Bush has shown very great patience and caution and is concerned to ensure that there is international legitimacy and support for all the actions he is taking. If military action turns out to be necessary and it is justified, as I say, as a last resort, then I think that it could only indirectly assist the fight against terrorism because it shows the resolve of the international community.

Mr Hamilton: You do not think that a war against Iraq, even under the circumstances you describe, would fragment and push away Arab Muslim countries?

Mr Mackinlay: And destabilise it?

Mr Hamilton

178. And destabilise it.

(Mr Straw) I personally doubt it. It is something which I discussed in confidence with many of the leaders I met. Of course, there always are, every day, people in the Arab world who wish to stir up violence against the "infidel" West, and we saw that most acutely with Osama Bin Laden. Those people exist. I am afraid they are deeply evil people with a completely perverted idea of humankind and of their own religion. I am afraid to say it has got to a pass where it is only by military action it is going to be possible to defeat them. The idea of dialogue with these people seems to me to be entirely fanciful.

Mr Chidgey

179. Can I just carry on that line of questioning with you, Foreign Secretary, if I may, because I think it is an extremely serious part of this examination, particularly for the longer term. From the evidence we have taken and the discussions we have had with many people, both with people in Washington and of course here, many experts are deeply concerned about what I would call the "hijacking" of people's religious beliefs to support international terrorism. The facts make quite frightening reading. I am sure you are familiar with the RAND organisation and you possibly know Bruce Hoffman, one of their terrorism experts, who has produced information from his database to show that in 1996, the last time he had data available, the groups driven in whole or in part by salient religious, theological motive committed ten of the 13 most lethal terrorist attacks in that year. My point is, linking with Mr Hamilton, that should we take military action against Iraq, justified as you say, and should, for example, Al Jazeera be putting television pictures around the

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RT HON JACK STRAW MP, MR TIM DOWSE
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[Continued

[Mr Chidgey Cont]

Arab world of massive Iraqi civilian casualties, is that not by definition going to further encourage evil people like Osama Bin Laden to recruit many thousands more people under the cloak of people's religious beliefs in the provocation and expansion of international terrorism?

(Mr Straw) Mr Chidgey, if I may, I will just park your "ifs". Of course, it is true that there will be international terrorist organisations, particularly Islamic terrorist organisations who claim Islam to themselves which seek to exploit any situation where military action is taken against an Islamic country. I have to say they sought to exploit, however, military action being taken against the Taliban in Afghanistan in order to free a Muslim country, as they did military action taken to free another Muslim country, Kuwait, in 1991 and to free Muslims in Kosovo in 1998. They will seize on all excuse or none, but the question for us has to be is the military action justified in this case? If it is justified, we will be able to justify it. I have a very, very large Muslim population myself in my own constituency. I remember the anxieties of people over Kosovo and even more so in respect of Afghanistan. Those anxieties are not there now because you can point to the fact that this military action not only was justified at the time but palpably, in retrospect, has been justified because we have freed Muslim people. What I also say to my Muslim friends is look at the record of Saddam Hussein. It happens that his is not a particularly devout regime so one should not think they are all—

180. I accept what you say and I think your analysis in terms of logic is absolutely correct. What I am seeking and I think other members of the Committee are seeking is some reassurance that the Government under its foreign policy is launching some form of diplomatic offensive to ensure that the very points that you are putting to us reaches a much broader and more sensitive audience, if I can put it this way, not in this country but in the Middle East. Al Jazeera is there putting its point of view. What are we doing to ensure that the logic of your argument reaches the wider world?

(Mr Straw) We have done a great deal. We have an Islamic Media Unit based in the Foreign Office. One of the areas of very, very great expertise in the Foreign Office (one of many) is that of its Arabists and people with intense understanding and knowledge of the Islamic and Arab world. That unit has been very useful. The kind of conversation which I had in the region three weeks ago with President Mubarak, with King Abdullah of Jordan, with the acting Prime Minister of Kuwait, the Emir, and also in Teheran with the Foreign Minister and the President, Kharrazi and Khatami are all part of this diplomatic effort and I had a very good conversation—and I am sure he will not mind me saying this part of it—with President Khatami in Iran about his great concern to see a dialogue of nations. He calls it a "dialogue of civilisations". My only difference with him is that I call it a "dialogue of civilisation", singular, because of the important inter-relationship between Islamic traditions/civilisations and the West. We are in error if we think that these are two very separate traditions because they are much more intertwined than many people think. For sure all that is important. At the summit

between times discussing *le cheque Anglais* or even bigger *cheque Français* last Thursday and Friday, we had a very interesting discussion amongst the foreign ministers about the UNDP report which was written by some Arab experts about the relative under-development of the Arab world. That is a really interesting report. So we are looking at all of that to try and build up understanding and change within the Islamic world. That said, Mr Chidgey, I am afraid we are dealing with very mad and very bad people amongst the terrorists. We came to that stage we had with the Fascists during the Second World War—would that we got there earlier—and when you get to that stage you are dealing with people infected with hatred.

Chairman: I would like to bring in two colleagues, Mr Olnier and Sir John Stanley.

Mr Olnier

181. Briefly, Foreign Secretary, talking to you about Pakistan, given that there is a deep polarisation in that country between secular, democratic parties and the Islamic right wing, how stable do you think the Musharraf regime is and what are the UK doing to stabilise Pakistan?

(Mr Straw) We have given a good deal of support to the Musharraf Government, particularly over the last 18 months. That has included being in the lead on the EU textile agreement which has been of considerable assistance in developing the economy.

182. It did not work particularly well for him in the last election.

(Mr Straw) Hang on a minute. In Pakistan we have also given President Musharraf encouragement to stick to the roadmap which was laid down by the Pakistani Supreme Court and its judgment about whether the takeover of power by President Musharraf was or was not legitimate, and we applaud him for the fact that he has done so. There have been elections in Pakistan. I am told they produced an unanticipated result. That is what happens when you have elections. I do not think we should throw our hands up in horror simply because there are parties which are called "Islamic" which have been elected. There are parties in our own tradition which are called "Christian Democrats" and "Christian" where the relationship between our religion and political parties is a closer one than many of us would wish to see. My own view is that it is early days in terms of the formation of the government there and there are a number of parties. We need to watch the situation with care and to give support to democratic, secular forces there. That is what we are doing.

Sir John Stanley

183. Foreign Secretary, do you share the confidence of the US administration that if there is no new UN resolution in relation to Iraq it will still be relatively easy to put together a significant military coalition against Iraq? Do you consider it is axiomatic that the British Government will be part of that coalition?

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AND MR PETER RICKETTS CMG[Continued

[Sir John Stanley Cont]

(*Mr Straw*) What I would say on that, as I have said all the way through this evidence, is that we would prefer there to be a Security Council resolution or resolutions. We would also infinitely prefer this to be resolved by peaceful means. I know for certain that it can only be resolved by peaceful means if we are prepared, and prepared to take military action, and we do not therefore rule out the possibility of us being involved in military action, within international law, even if there is no new Security Council resolution. However, we would far prefer there to be a Security Council resolution or resolutions.

184. You have not answered the first part of my question. Do you share the confidence of the US administration that if there is not a new UN resolution that it will still be relatively easy to put together a significant military coalition?

(*Mr Straw*) If military action is justified, then putting together a coalition would be relatively straightforward.

Chairman: Foreign Secretary, alas, time is up. The debate will continue. May I thank you and your colleagues.

APPENDICES TO THE MINUTES OF EVIDENCE

APPENDIX 1

Correspondence between Rt Hon Sir John Stanley MP and the Parliamentary Under-Secretary of State, Foreign and Commonwealth Office.

Letter from Sir John Stanley to Denis MacShane, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office.

I should be grateful for your answer to the three questions I posed in the Westminster Hall debate on British-US Relations on 25 April namely:

1. Please could you confirm that it remains the posture of the British Government that a change of regime in Iraq would be desirable but that as of now it is not a policy commitment of the British Government that the Iraqi regime should be changed.
2. Please could you clarify whether the British Government's policy on no first use of nuclear weapons remains as stated in paragraph 31 of chapter 5 of the 1998 Defence Review or not, and in particular, whether the states excluded from the Government's no first use policy now encompass not only states that possess nuclear weapons but those that possess any weapon of mass destruction ie nuclear, chemical or biological.
3. Please could you tell me what is the British Government's view, particularly from an arms control standpoint, of the US Government's conclusion that they need to develop a new generation of tactical nuclear weapons, and please could you tell me whether the British Government is participating, or intending to participate, in this US programme.

Sir John Stanley

8 May 2002

Letter from Mike O'Brien, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, to Sir John Stanley.

Thank you for your letter of 8th May to Denis MacShane. I am replying as Minister responsible for relations with Iraq and non-proliferation issues. I apologise for the delay in replying.

The answers to the questions posed in your letter, following the debate on UK/US relations on 25 April, are as follows:

1. A more sympathetic regime in Iraq is desirable. We have always said that Iraq would be a better place without Saddam Hussein. The real issue however is the threat that the Iraqi regime poses to its own people and the international community through its weapons of mass destruction programmes. We have made clear our determination to remove this threat.

2. The British Government's policy on the issues raised in paragraph 31 of the fifth Supporting Essay to the 1998 Defence Review remains the same. Both the UK and the US have recently reconfirmed our commitment to our negative security assurances. UK policy when faced with an assault by biological or chemical weapons is also clear. The UK seeks to deter use of these weapons by emphasising that use will not secure political or military advantage for an aggressor. On the contrary, it will invite a proportionately serious response, and we will hold personally accountable those at every level responsible for any breach of international law relating to the use of such weapons. Any state that chose to use them should therefore expect us to exercise our right of self-defence and to respond accordingly.

On the general question of UK policy relating to the use of nuclear weapons, we have repeatedly stated that the United Kingdom would only be prepared to use nuclear weapons in extreme circumstances of self-defence. The UK would not use weapons, whether conventional or nuclear, contrary to international law.

3. You ask about speculation that the US is intending to develop a new generation of tactical nuclear weapons. It is, of course, for the US not for us, to set out and explain what is, and what is not, US policy. The US has emphasised, however, that there is no such programme. US Secretary of State, Colin Powell, made this clear on 10 March, when he said: "What we are looking at, and what we have tasked the Pentagon to do, is to see whether or not within our lowered inventory levels we might want to modify or update or change some of the weapons in our inventory to make them more effective. But we are not developing brand new nuclear weapons, and we are not planning to undergo any testing."

I hope this is helpful.

Mike O'Brien, Parliamentary Under Secretary of State, Foreign and Commonwealth Office

5 July 2002

APPENDIX 2**Letter from the Counter Terrorism Policy Department, Foreign and Commonwealth Office to the Rt Hon Sir John Stanley MP****SIGNATURE AND RATIFICATION OF UN CONVENTIONS**

Mr Mike O'Brien has asked me to write to you to pass on some further information which he thought might be of interest, about the status of ratification of the twelve UN anti-terrorism Conventions and Protocols.

On 11 September last year, the UK was the only State to have ratified all 12 UN Conventions relating to terrorism. Since then, States have tackled ratification of these Conventions with renewed urgency. This is in part owing to the obligations imposed on States to improve their counter-terrorism capacity by UNSCR 1373.

Because of the level of activity, the statistics which we receive from the UN are not always up-to-date. Since we replied to your PQ, we have learnt that Cuba, Spain, and Austria have also signed and ratified all 12 Conventions and Protocols. Denmark hope to have completed the ratification of the UN Convention for the Suppression of Financing of Terrorism by the end of this month, which means that they too will have signed and ratified all 12 Conventions and Protocols.

*Counter Terrorism Policy Department
Foreign and Commonwealth Office*

14 June 2002

APPENDIX 3**Memorandum from the Foreign and Commonwealth Office****CO-OPERATIVE THREAT REDUCTION AND NON-PROLIFERATION ASSISTANCE PROGRAMMES***Introduction*

1. The Foreign Affairs Committee has requested a memorandum giving full information on all current and planned UK and EU threat reduction and non-proliferation assistance programmes, together with further information on the US programmes, in each case setting out available details of the disbursement of funds under the various programmes. The memorandum details the assistance being provided on chemical demilitarisation, biological non-proliferation projects and the disposition of nuclear materials in Russia and the States of the Former Soviet Union.

CHEMICAL AND BIOLOGICAL PROGRAMMES*UK Assistance*

2. One of the key features of the Chemical Weapons Convention is that member states must destroy any chemical weapon stocks according to a set timetable—1 per cent by 2000, 100 per cent by 2007. Russia has declared the world's largest CW stocks—some 40,000 tonnes, largely comprising modern nerve agent, contained in over 4 million artillery and aircraft munitions. Russia—unlike the other states which have declared stocks of CW—has not yet started full scale destruction, and has now sought an extension of the final destruction deadline to 2012. The delays in Russian destruction of its CW are a serious problem for the Convention.

3. Following a Russian request for assistance and the completion of Spending Review 2000, the Government announced in July 2000 that it would contribute up to £12 million over three years (2001–04) towards high priority chemical demilitarisation and non-proliferation projects in Russia. This funding is included in the Defence Assistance Fund, and the project is managed by the Proliferation and Arms Control Secretariat of the Ministry of Defence, with oversight from a committee which is chaired by MOD and includes representatives of FCO and DTI. A full time project manager was appointed in August 2000.

4. In considering options for UK assistance, we have decided to focus our efforts on industrial infrastructure projects that will contribute to bringing the planned chemical weapons destruction facility at Shchuch'ye into operation at an early date. We decided to provide assistance at Shchuch'ye because of the non-proliferation benefits from the destruction of the nerve agent munitions stored there, and because we hoped to encourage the US Congress to approve further US funding for the facility. Shchuch'ye in Western Siberia, will be the main facility for the destruction of Russian nerve agent munitions, where the Russian Munitions Agency plans to destroy over 4 million artillery munitions from the Shchuch'ye and Kizner storage depots, and possibly also munitions from other sites. The US, Canada, Italy, Germany, the EU and Norway are also providing assistance at Shchuch'ye.

5. On 20 December 2001 in London, on behalf of the British Government, the Defence Secretary signed a bilateral agreement with Russia, which provides the essential legal basis for UK assistance. Dr Zinovi Park,

Director General of the Russian Munitions Agency, signed the agreement on behalf of the Russian Federation. On 25 March, an Implementation Arrangement was signed by the Ministry of Defence and the Russian Agency, which provides for implementation of the UK's first project at Shchuch'ye.

6. The UK has decided, as an initial project, to fund construction of the water supply for the destruction facility, subject to the agreement of a reasonable price for the work and appropriate technical and financial oversight measures. This project is a Russian priority, and is essential for the operation of the destruction facility. Elements of the project will also assist in providing water for the local community. Through an arrangement with the US Department of Defence the UK intends, subject to the satisfactory completion of contractual negotiations, to use Parsons, the US prime contractor, to carry out this initial project, in order to allow an early start to work on site. We hope to place a contract with Parsons shortly. Subsequent UK projects have not yet been selected and will be subject to separate tender action.

7. Two donors have so far chosen to provide funding to support Shchuch'ye through the UK programme:

- On 25 June 2001, the EU decided to provide €2 million to support building infrastructure for Shchuch'ye. Subject to confirmation, this project will be implemented under a Financial Agreement between the European Commission and the UK, through the UK assistance programme. Negotiations on the Agreement are at an advanced stage. In addition, the UK is discussing with the European Commission the possibility of carrying out the EU-funded project to provide consultancy support to the Russian Munitions Agency in order to improve presentation of the Russian CW destruction programme and co-ordination of international assistance.
- Following an approach by Norway, in December 2001 the MOD signed a Memorandum of Understanding under which Norway agreed to provide assistance to Russia at Shchuch'ye worth some £700,000 to be implemented through the UK assistance programme. This funding will be used to procure a transformer for an electricity substation to support the Shchuch'ye facility. In March, a further Memorandum of Understanding was signed under which Norway agreed to provide a further some of £700,000 for provision of an second electricity transformer at Shchuch'ye, again to be implemented through the UK programme.

The EU and Norway have followed this approach because they wanted to provide assistance with CW destruction, but—because of the time and resources needed—did not want to set up their own bilateral arrangements with Russia. We are willing to consider such arrangements with other donors too, provided it is cost-effective.

8. The MOD proposes to invite tenders for the further UK assistance projects at Shchuch'ye as part of a common tender process which will also cover projects funded by Norway and the EU. We started the tendering process in May by placing a contract forecast in the European Journal. It is anticipated that this process will take approximately 6-9 months.

9. Although managed by the MOD, the UK's assistance programme relies heavily on specialist support from a variety of sources, in both MOD and FCO. It has also benefited from regular consultation with the DTI on lessons learned from their nuclear programmes.

10. As a result of the need first to complete negotiations on our agreements with Russia and our first contract, it has not yet been possible to start implementation of assistance projects. Expenditure of some £250,000 has been incurred to date on setting up the assistance programme.

11. As a result of the priority given to CW destruction projects, no decisions have yet been undertaken to implement any biological non-proliferation projects. The possibility of doing so will be considered in the light of priorities and available resources.

Existing EU Assistance Programmes

12. Under a Council decision of December 1999 the EU committed 5.8 million Euro, through the Joint Action on Non Proliferation Programme, for support to the construction of the chemical weapon destruction facility at Gorny in the Saratov region of Russia. The project is being implemented through an established German assistance programme at Gorny. The EU funds are being used to pay for the management effort of a German firm assisting the Russians to assemble equipment supplied under the German programme, and to supply filter boxes and equipment to drain chemical agent from transport containers into tanks at the destruction facility. All three elements of the project are underway and will be completed in 2002.

13. The EU is also providing assistance with Russian chemical demilitarisation through two projects under the TACIS (Technical Assistance to the Commonwealth of Independent States) programme. The first project involves the development of an environmental monitoring system for the area around the planned chemical weapon destruction facility at Gorny. This included the establishment of an analytical laboratory and monitoring facilities. The value of this project is €3 million and, following an extension, is due to be completed in August 2002. The objective of the second project is to address the safety and environment issues in preparation for the decontamination and destruction of a former chemical weapon production facility at Dzerzhinsk, in the Nizhny Novgorod region of Russia. This has included establishing a health monitoring strategy for workers involved in the destruction process, and the establishment of a CW analytical lab and a pilot decontamination facility to test environmentally friendly detoxification technologies. The budget for the

project is €4 million and the project is due to run until August 2002. Both projects are managed by a consortium of EU companies that includes the UK's Defence Science and Technology Laboratory (Dstl).

Planned EU Assistance Programmes

14. Following a Council decision in July 2001 the EU Joint Action Programme is currently setting up two further chemical weapons related projects in Russia. Under the first project the EU will provide €2 million for infrastructure projects to support construction of the planned chemical weapons destruction facility at Shchuch'ye in Western Siberia. The EU is seeking to implement this project through the UK programme (see above).

In addition the EU has allocated €700,000 to provide consultancy support and training to the Russian Munitions Agency in project management and in presenting the Russian chemical weapons destruction programme both to existing and potential international donors, and to the local public. The EU is in discussion with the MOD concerning the possible implementation of the project through the UK.

Nuclear

15. Enclosed with this Memorandum is a copy of the latest "FSU Programme Quarterly Progress Report"¹ published by the Nuclear Industries Directorate (NID) at the Department of Trade and Industry (DTI). This report summarises progress in the Programme directed by NID to help tackle nuclear safety, security and non-proliferation issues in the states of the Former Soviet Union (FSU).

United States

16. The United States is committed to co-operation with the Russian Federation through programmes such as the Co-operative Threat Reduction Programme (CTR) and those authorised by the Title V of the Freedom Support Act (which includes the International Science and Technology Center, Civilian Research and Development Foundation, Export Control and Related Border Security). Such programmes add to the security of both countries by securing weapons of mass destruction (WMD) and associated technologies, equipment, and expertise, and by eliminating excess WMD, fissile materials, and delivery systems. President Bush has made clear the administration's commitment to those efforts, including in his FY2003 budget a request for non-proliferation and threat reduction assistance to the amount ever requested for such programmes.

17. However, under the legislation authorising CTR assistance, the Administration must certify each year the commitment of each recipient country to six courses of action, including complying with all modernisation programmes that exceeds legitimate defence requirements. In considering whether to certify Russia to receive CTR assistance this year, the US identified concerns about Russia's commitment to comply with the Biological and Chemical Weapons Conventions. The enclosed chart gives a breakdown of current US programmes.

18. The following is a brief description of some of the US programmes currently underway in Russia and countries of the former Soviet Union:

Nuclear Weapons Storage Security

A total of 123 security fencing and sensor systems have been provided for installation at warhead storage locations sites in Russia. In addition, equipment and training has been provided to Russian guards at these sites, and an integrated computer network is under development to improve Russian warhead control and accounting.

Nuclear Weapons Transportation Security

This effort supports secure transport of Russian warheads from deployment to storage, and from storage to dismantlement locations. The US has also provided funding for 79 specialised railway wagons used for warhead transport.

International Nuclear Materials Protection and Cooperation—Navy Complex

This programme is helping to improve the security of weapons usable material by installing improved nuclear material protection, control, and accounting systems at Russian naval nuclear warhead sites, naval HEU (High Enriched Uranium) fuel storage facilities, and shipyards where nuclear materials are present.

¹ Ev 54-65.

Nuclear Cities Initiative (NCI)

This programme facilitates reduction of the Russian nuclear weapons complexes by removing functions and equipment from weapons facilities within the closed nuclear cities and helping to create alternative non-weapons work for scientists who will be displaced by the reduction in scientific personnel.

Biological Weapons (BW) Proliferation Prevention

Destruction of the former Soviet biological weapons production facility at Stepnogorsk in Kazakhstan has begun; equipment has already been removed and demilitarised. Efforts have started with Uzbekistan to eliminate the testing complex on Vozrozhdeniye Island and destroy anthrax stocks located there.

Bio Redirection Programme

This programme, involving 30 institutes in former Soviet states, provides incentives to ensure that biological weapons scientists do not market their skills to countries of concern or terrorists, while also promoting access and transparency at former Soviet biological weapons research and production sites.

Export Control and Related Border Security Assistance (EXBS)

The EXBS programme broadly seeks to stem the proliferation of weapons of mass destruction by ensuring that potential suppliers have proper controls over the exports of arms, dual-use goods, and related technologies. It also helps states that may serve as transit and trans-shipment points to develop the tools to interdict illicit shipments. Within Russia and the former Soviet states, the programme has worked to improve national legal and regulatory infrastructures related to export controls; provided equipment and training in WMD identification and interdiction techniques for customs officers, border guards, and other personnel; and encouraged regional cooperation in the interdiction of smuggled materials among former Soviet states.

NON-PROLIFERATION AND THREAT REDUCTION—ASSISTANCE TO FORMER SOVIET STATES

<i>Programme Title</i>	<i>Recipient</i>	<i>(\$US million)</i>		<i>Unfunded Costs²</i>
		<i>FY92–02 US Funding</i>	<i>FY03 US Request</i>	
Strategic Arms Elimination	Russia current (other former Soviet states in past)	1,688	77	0
General Purpose Nuclear Submarine Dismantlement	Russia	0	0	1,000
Nuclear Warhead Transport and Storage Security	Russia current (other former Soviet states in past)	484	60	0
Nuclear Warhead Dismantlement Infrastructure Downsizing	Russia	68	16	2,900
Weapons of Mass Destruction Infrastructure Elimination	Ukraine, Kazakhstan	52	13	0
Elimination of Weapons-Grade Plutonium Production	Russia	104	49	0
Fissile Material Storage Security and Consolidation	Former Soviet States	1,603	195	1,300
Plutonium Disposition	Russia	138	34	1,200
Plutonium Production Reactor Decommissioning, Spent Fuel Storage	Russia, Kazakhstan	6	34	3,000–4,000
HEU Research Reactor Fuel Return	Former Soviet States	12	9.5	20
Civil Nuclear Reactor Safety, Shutdown	Russia, Ukraine	611	35	9,000

² Beyond US plans for future funding.

<i>Programme Title</i>	<i>Recipient</i>	<i>(\$US million)</i>		<i>Unfunded Costs²</i>
		<i>FY92–02 US Funding</i>	<i>FY03 US Request</i>	
Secure Radiological Sources	Former Soviet States	0	0	100
Chemical Weapons Destruction	Russia	295	127	4,000
Elimination or Conversion of CW Production Capability	Russia, Kazakhstan	39.5	10	430
CW Storage Security	Russia	20	0	0
Biological Site Security and Consolidation	Former Soviet States	21	35	200
Elimination or Conversion of BW Production/Testing Capability	Former Soviet States	41	11.5	320
Export Control and Border Security Upgrades	Former Soviet States	258	104	100
Non-proliferation of WMD Expertise (including Science and Technology Centers)	Former Soviet States	414	61	1,000

*Non-Proliferation Department
Foreign and Commonwealth Office*

28 June 2002

FSU Programme

QUARTERLY PROGRESS REPORT

Fourth quarter January–March 2002

(a) This report summarises progress in the Programme directed by Nuclear Industries Directorate to help tackle nuclear safety, security and non-proliferation issues in the states of the Former Soviet Union (FSU).

(b) The programme was established by the Government in July 2000 at the conclusion of the last three year spending review, when it announced a new £84 million programme of UK assistance to contribute to international efforts to tackle the nuclear safety, security and non proliferation problems of states in the FSU. The programme, which covers the financial years 2001–04, is managed by the DTI, with advice given by an inter-departmental committee. It covers a wide range of multilateral and bilateral initiatives.

(c) One page summaries of progress in each sub programme area are contained in Annex A of the report.

(d) A further progress report will be presented at the July meeting of the Advisory Committee. This will cover:

- a further assessment on the forecasts presented in this quarterly report and those for 2002–03; and
- details of progress in appointing new project managers for the programme under Call Off Contract Arrangements;

Note:

(1) The “allocations” for each programme area in Annex A are those set out in the Cross Cutting Review paper unless otherwise indicated. These were reviewed and agreed at the March 2002 Committee meeting.

(2) Risk—in Annex A, a brief statement of the key risks associated with each sub programme area is highlighted. However, it should be borne in mind that some elements of the programme carry very low risk in terms of achieving poor value for money and exposure to financial mismanagement etc (eg the comparatively small-scale technology transfer and training activities under the Nuclear Safety Programme). This is in contrast to the planned NW Russia projects that are likely to commit multi-million pounds of the FSU Programme budget in future years. The risk here will be reduced by rigorous project management and tight monitoring of projects together with utilising technical experts who fully understand the complexity of the nuclear engineering involved. The appointment of the project managers via Call Off Contracts Arrangements in the early part of 2002–03 should make a material difference in handling future risk issues.

FSU PROGRAMME—FOURTH QUARTER REPORT*First quarter—summary of achievements*

1. Financial and risk management arrangements for the programme were put in place during the first quarter. These cover every stage of running the programme from project selection and expenditure commitment. The financial and risk management structures were developed in consultation with DTI Internal Audit and the National Audit Office.

2. ROAME Statements were drafted for both the overarching programme, and most of the main sub-programmes and circulated to members of the Interdepartmental Advisory Committee (the two remaining mini ROAMEs covering Kazakhstan and the KEDO project will be circulated for comment in February). Formal approval of these was given at the fourth meeting of the Committee on 12 November. The ROAME Statements are intended to be the main vehicle to demonstrate that adequate monitoring and evaluation procedures are in place, and to ensure that individual projects fulfil the overall objectives of the programme.

3. The first quarter also saw the development of a number of new project proposal notably focused on NW Russia. These are expected to start in the first quarter of 2002–03 once the Supplementary Agreement is signed with Russia covering liabilities, tax and access arrangements etc (the signing of this agreement is now expected around late Spring if the remaining legal issues on third party liability can be resolved—see below).

Second quarter achievements

4. As in the first quarter, the main factors holding up project initiation ranged from a mixture of Russian bureaucratic delay (eg concluding our bilateral Supplementary Agreement with Russia), to in some cases policy disagreements (eg German objections to MOX fuel, and the reluctance of some G7 countries to commit funding prevents agreement on plutonium disposition). In addition, as with all new programmes, they take time to get set up and established. This is especially the case where there is a need to ensure there are robust financial and project management frameworks in place. A vital element, initiated in the second quarter was to develop an effective contract strategy for the programme to:

- Ensure we recruit experienced project managers for portfolio of projects we expect to initiate over the next few years;
- Ensure projects that have been through a lengthy negotiation period with FSU countries can be started with the minimum of delay.

5. The contract strategy was completed in October, and the competitive tender process to recruit project managers also started in October (see below).

6. However despite these delays, a number of projects proposals were taken forward particularly focused on NW Russia. One of the physical protection of proliferation sensitive materials projects was able to be successfully completed in Russia without the Supplementary Agreement (the nuclear propelled cargo ship in NW Russia).

Third quarter achievements

7. As indicated above, a substantial level of effort was undertaken in the third quarter to develop the contract strategy for the programme and start the recruitment process for external project management contractors. A contract notice was placed in the EC Official Journal in late October and 15 Expressions of Interest were received. All the tender documents were drafted for this major procurement exercise and a short list of companies were invited to submit bids. The tender documents were sent out in the fourth quarter (See below). In completing the tender documents, NID3 consulted DTI's Procurement Adviser, Internal Audit, Legal and the Independent Panel Member (Mark Armitage, a contract expert from the Coal Authority) plus Ken Penman (MoD) and Phillippe Borys (consultant but formerly EBRD). Messrs Armitage, Penman and Borys plus Alan Heyes would form the evaluation panel with Ian Downing chairing.

8. As reported in early quarterly reports, as part of the programme of expenditure on nuclear problems in the FSU, the UK is focusing on projects to help tackle the issue of the 100 plus decommissioned nuclear submarines in NW Russia. Before project work in this area and on other nuclear safety related programmes in Russia can be undertaken, there needs to be a legal framework in place to cover issues such as nuclear liability, access to sites, tax and confidential information. The third quarter saw considerable effort to try and reach a consensus on the text of this bilateral framework agreement, the so-called Supplementary Agreement, with Russia. No project work can commence until the agreement is signed. In addition, negotiations on a multilateral agreement, the Multilateral Nuclear Environment Programme in the Russian Federation (MNEPR) are continuing.

9. The third quarter also saw the completion of a major review of the Nuclear Safety programme that was discussed at the 12 November meeting of the Committee.

Fourth quarter achievements

10. Previous quarterly reports have emphasised the absolute need to conclude a legal framework with Russia, the so-called Supplementary Agreement, before substantive project work in NW Russia and on other nuclear related programmes in Russia can commence. Good progress was made in negotiations in Moscow on 12–13 February but one outstanding but crucial issue remains to be resolved (on which the Russian Ministry of Foreign Affairs is isolated). The Foreign Secretary has written to the Russian Foreign Minister in an attempt to resolve this issue and a reply is expected shortly. It is not clear how helpful this reply will be but it is expected that the Agreement will be concluded in the period up to June 2002.

11. Notwithstanding the situation with the Supplementary Agreement, there has been considerable progress in preparing the planned NW Russia projects to be able to begin as soon as the Agreement is concluded. The spent nuclear fuel (SNF) interim storage project at Polyarnyi is still ready to commence almost immediately. Further specification and contract work has been concluded for the cooperative project with Norway to fund the building of a SNF cask transport ship. Ministerial approval has been given for this project and MoU is now ready for signature with Norway. Methods of monitoring the use of this ship have also been established. In addition, UK commitment to assisting vital site characterisation work at Andreeva Bay has been strongly signalled to and acknowledged by the Russian authorities and potential donors. This includes taking forward a project proposal for the Russians to develop and use remote inspection equipment on the SNF stocks and legacy at the site. This is a fundamental area of work if a strategy and international response, both bilateral and multilateral, is to be determined.

12. NW Russia work and the call-off contract arrangements have formed the basis for further and deeper cooperation and exchange of information with colleagues dealing with the Destruction of Chemical Weapons programme and MoD to MoD initiative (the AMEC Programme—Arctic Military Environmental Cooperation Programme). The UK was specially invited to join the AMEC Programme (Russia, the US and Norway) to broaden the cooperation on the military side with the Russian Navy. This is being managed by our Naval Attaché in Moscow and will form an important part of the UK response to the situation in NW Russia, both in areas where the Russian Navy of the civilian authorities (MINATOM) has responsibility.

13. Good progress was made with the multilateral legal framework agreement, the Multilateral Nuclear Environment Programme (MNEPR) during negotiations in March. The Agreement is subject to Russian legal and ratification procedures. It may be some 18 months before it can come into force.

14. Following on from previous quarterly reports (See paragraph 8 above) a contract notice was placed in the EC Official Journal in late October. 15 Expressions of Interest were received and a short list of seven organisations were invited to submit bids (Nukem, PE International, Mott MacDonald, BNFL, Crown Agents, NNC and Halcrow) by Tuesday 9 April. However, to provide the tenderers with an opportunity to ask questions, offer comments and feedback to DTI on the FSU Programme tender documents DTI hosted a Q&A session on 20 February. This session was attended by representatives from all of the seven organisations.

15. The mini Roame statements for KEDO and the Kazakhstan project were presented to, and approved by the Inter Departmental Committee on 4 March 2002.

16. An updated strategy paper for UK assistance to Russia's Closed Nuclear Cities was presented to the IDC meeting on 4 March and has now been approved by its members.

17. The Russian government has approved the text of the MNEPR and this is expected to come into effect in the medium term.

Summary of key issues to address for the first quarter 2002–03:

- Signing of the Supplementary Agreement with Russia. Without this it will be very difficult to undertake the planned projects in NW Russia.
- Complete the competitive tender process for recruiting up to four call-off contractors to provide external project managers for the programme. Deadline for bids was 9 April and evaluation of tenders took place on 11–12 and 24 April.
- Initiation of the revised strategy for “Closed Cities” and recruitment of first project(s)—the revised was approved by the Advisory Committee by correspondence and a submission to Ministers will be prepared by the end of April (FCO and DTI Ministers).
- Complete the evaluation and contract around 27 projects worth £2.5 million.
- Developing and agreeing proposals for specific assistance in the programme areas of Closed Cities, Kazakhstan and Plutonium Disposition.

- Signing of the MNEPR Agreement and the tracking of its progress through the Russia Duma. Only when this process is complete can the MNEPR become an effective legal vehicle for the spending of UK funds in the Russian Federation.
- Progression of the project for Plutonium Disposition. The PU Experts Group recommenced its meetings on 16 April following the completion of the US non-proliferation policy review in December 2001.
- Consider the options should the Supplementary Agreement not be concluded. These include scaling back of some of the projects (to reduce potential liability), termination of other projects, possible piggy-backing on the Norway/Russia legal framework agreement and reliance (in the longer term) on the MNEPR if concluded.

Annex A

Update on projects

1. NAME OF PROJECT AREA: CHERNOBYL SHELTER PROJECT

Rationale

Repair and replacement of the sarcophagus surrounding Unit 4 at Chernobyl—thus preventing a further serious release of radioactivity into the environment.

Long term: Complete new Shelter by 2008.

Objectives

Interim: Tenders for major construction elements of projects released by end 2001. Lead contractors selected mid 2002. Construction work on the new containment to begin by mid/end 2003.

Risks

This will be a massive construction project requiring tight project management by EBRD contractors if cost and time over-runs are to be minimised. Potential for Ukrainian Govt to try and renegotiate agreed design and other issues that could (i) delay start date, (ii) increase scope of project beyond current specification. Management of radioactive waste from the site is one such issue.

EXPENDITURE

<i>Allocation</i>	<i>2001–02</i>		<i>2002–03</i>		<i>2003–04</i>	
	<i>Spend to date</i>	<i>Outturn</i>	<i>Allocation</i>	<i>Forecast</i>	<i>Allocation</i>	<i>Forecast</i>
£5.53 million	—	£7.88	£5.53 million	£4.04	£5.53 million	£4.04

The CCR estimated some £20 million was required for this activity over the next 10 years. The budget for the Shelter project within the FSU Programme stands at £16.59 million total for the three years. The UK has pledged the money in two tranches. The first pledge totalled US\$16.82 million. The majority of these funds were disbursed prior to April 2001. The balance of £3.84 million was paid to the EBRD on 18 July 2001. The second pledge is for £12.13 million and this is being paid in three annual tranches. The £3.84 million spent this year from the first pledge together with the £12.13 million committed for the second pledge, totals £15.97 million over the three year programme. Consequently there is a £0.65 million surplus in the allocation for this programme area at present.

Project Status: This is a long running EBRD managed project to stabilise and replace the sarcophagus surrounding the damaged Unit 4 reactor at Chernobyl that exploded in 1986. The present position is that all the major design phases of the project are now complete—including critically the design of the new Shelter—and tendering for the construction works will begin this year. The project is not scheduled to complete until 2008.

2. NAME OF PROJECT AREA: PLUTONIUM DISPOSITION IN RUSSIA

Rationale

Reduce the threat posed by the proliferation of fissile nuclear material by converting weapons grade plutonium extracted from dismantled surplus nuclear weapons into a non weapons useable form.

Objectives

Long term: Conversion of at least 34 tonnes of Russian weapons grade plutonium into a non-weapons usable form.

Short term: Completion of further negotiations between donor governments and the Russian Federation to produce a politically acceptable, technically feasible and cost effective programme for the disposition of Russian surplus weapons grade plutonium.

Risks

The considerable uncertainty on when the Programme might start impacts on the effective management of the FSU programme budget. Difficulties in the negotiations to achieve the short term objective may cause continued delay to the disposition programme. Insufficient international funding may put further pressure on the UK to increase its pledged contribution of £70 million.

EXPENDITURE

<i>Allocation</i>	<i>2001–02</i>		<i>2002–03</i>		<i>2003–04</i>	
	<i>Spend to date</i>	<i>Outturn</i>	<i>Allocation</i>	<i>Forecast</i>	<i>Allocation</i>	<i>Forecast</i>
£2.5 million	—	£0 million	£10 million	£10 million	£10 million	£10 million

Note: there is still considerable uncertainty about the future spend profile of work on plutonium disposition. The forecasts carry a very strong health warning!

Project Status: The UK has announced a contribution of £70 million over the next 10 years. Up to £20 million of this will come from the new interdepartmental programme over the next three years, although the precise level of our contribution is probably fairly flexible. The US has now completed its review of its non-proliferation programmes and reaffirmed its commitment to the plutonium disposition programme whilst indicating that search for a more cost effective solution must continue. The G8 Experts Group (PDPG) will recommence its meetings on 16 April 2002 with a view to progressing the main project for the Russian disposition programme. In parallel, the US and Russian costings' groups have expanded their work to include an evaluation of the cost and effectiveness of hitherto unexplored disposition scenarios. This work forms a part of the Experts' ongoing attempts to identify the most cost effective disposition scenario. The UK has, throughout this period, continued its close dialogue with US colleagues in an attempt to identify projects which the UK might usefully fund as a necessary contribution to whichever disposition scenario is eventually decided upon.

3. NAME OF PROJECT AREA: NUCLEAR MATERIALS ACCOUNTANCY

Rationale

Proper nuclear materials accountancy (NMA) at FSU facilities reduces the risk that nuclear materials could be lost or otherwise removed without detection.

Objectives

Overall: to improve NMA at key Russian facilities—in particular the Mayak RT-1 reprocessing plant, the Angarsk uranium centrifuge enrichment facility and in due course other Russian facilities.

More specific objectives are defined and developed in the context of particular projects (eg development, delivery and installation of accountancy software/hardware packages).

Risks

The projects are collaborative to the extent that “intellectual” (as opposed to hardware) input on the part of the Russian facilities has not been funded by DTI—such dependency brings with it some risk of delays in milestone delivery.

EXPENDITURE

<i>Allocation</i>	<i>2001–02 Spend to date</i>	<i>Outturn</i>	<i>2002–03 Allocation</i>	<i>Forecast</i>	<i>2003–04 Allocation</i>	<i>Forecast</i>
£150,000	—	£43,000	£150,000	£200,000	£150,000	£150,000

Note: the CCR estimated some £1.5 million was required over 10 years for this activity.

Project Status: This programme has been operating for several years and has been rolled into the FSU programme. Projects at Mayak and Angarsk are continuing—the projects are managed by UKAEA on behalf of DTI (as part of the UK Safeguards Programme) and involve exchange between British and Russian NMA specialists. Future projects are currently under early stage discussion, and may involve a small increase in the material accountancy budget.

4. NAME OF PROJECT AREA: INTERNATIONAL VERIFICATION OF EXCESS WEAPONS MATERIAL

Rationale

To provide the international community with assurance that nuclear materials declared excess to weapons requirements are indeed not re-used for weapons purposes.

Overall: to establish an effective international verification regime for excess-weapons material disposition programmes.

Objectives

Specifically: to contribute to funding IAEA verification of nuclear material from the dismantlement of Russian nuclear weapons.

Risks

See project status notes—continuing uncertainty about the timing and extent of US and Russian programmes for the disposition of surplus military plutonium are compounded by uncertainties about the IAEA's role in verifying these programmes (eg its timing and costs).

EXPENDITURE

<i>Allocation</i>	<i>2001–02 Spend to date</i>	<i>Outturn</i>	<i>2002–03 Allocation</i>	<i>Forecast</i>	<i>2003–04 Allocation</i>	<i>Forecast</i>
£200,000		£0 million	£200,000	£0 million	£300,000	£0 million*

Note: the CCR estimated that expenditure over the next 10 years would be £3 million.

* at present due to the delay in reaching agreement on Pu disposition it is unlikely any funds would be committed during the first part of 2004 (see below).

Project Status: Russia, and the US and the IAEA have yet to reach agreement on arrangements for IAEA verification of material from the dismantlement of Russian nuclear weapons and the subsequent conversion of that material into forms not suitable for use in such weapons. In the absence of such agreement, and then endorsement of the IAEA's role in it by the IAEA's Board of Governors, it is not possible to be more precise about likely funding requirements and timescales (in which context it should be noted that implementing such verification does not now feature amongst the IAEA's expected accomplishments by 2003 but instead in its tentative budgetary planning for 2004 and 2005).

5. NAME OF PROJECT AREA: NUCLEAR SAFETY PROGRAMME

Rationale

To improve safety at nuclear reactors in CEE/FSU—and assist moves towards the early closure of these reactors.

Objectives

To deliver safety improvements through small scale projects involving the transfer of technology, best practice, training of nuclear regulators and plant operators and management and some very small scale equipment supplies. There are specific objectives for the 20 odd projects supported under the programme.

Risks

Risks include duplication of effort in reproducing activities that are being supported by other bilateral donors; failure to effect change through activities by not focusing projects onto recipients requirements; lack of impact through inability of recipients to exploit support.

EXPENDITURE

<i>Allocation</i>	<i>2001-02</i>		<i>2002-03</i>		<i>2003-04</i>	
	<i>Spend to date</i>	<i>Outturn</i>	<i>Allocation</i>	<i>Forecast</i>	<i>Allocation</i>	<i>Forecast</i>
£2.76 million	—	£2.4 million	£3.5 million	£3.5 million	£5.0 million	£5.0 million

The budget was discussed at the Advisory Committee at its November 2001 meeting. A rising increase in the allocation for those programme areas was recommended and is shown above.

Project Status: Proposals for the 2001-02 Nuclear Safety Programme were evaluated following an open EU wide tender, and 27 contracts were awarded. At the end of quarter three an additional seven projects were commenced, some of which will continue within financial year 2002-03. 24 projects have been completed at the end of quarter four; four projects are planned to be completed in financial year 2002-03 and six projects have slipped, such that they will be completed in 2002-03, although they had been planned to complete within 2001-02. In addition, the portfolio includes a further seven projects continuing from 2000-01, six projects were completed in 2001-02 and one will be completed in 2002-03.

The launch of the 2002-03 programme took place in December and the majority of the associated work for this competition has been completed at the end of quarter four. The first stage in the competition has resulted in 71 proposals being submitted with a value of £13.4 million spread over a three-year period.—At the end of quarter four, contracts totalling just over £3.0 million for 2002-03 have been awarded or are planned. Further work is being undertaken in collaboration with NII to identify support programmes to the nuclear regulators in Bulgaria and Russia. Other activities are planned that will result in contracts for the total £3.5 million budget being allocated to projects in 2002-03.

6. NAME OF PROJECT AREA: PHYSICAL PROTECTION OF PROLIFERATION SENSITIVE NUCLEAR MATERIALS

Rationale

Ensuring that proliferation sensitive nuclear materials in FSU are adequately protected from theft and/or sabotage.

Overall—to assist with the protection of proliferation sensitive nuclear materials in FSU to International standards.

Objectives

Specifically, (a) to identify with Minatom additional projects by end December 2001 and (b) to provide physical protection systems for two icebreakers in the Atomflot fleet in collaboration with Norway and Sweden. Provisional start date April 2002 and completion January 2003.

Risks

That the equipment supplied and fitted would either not be properly operated or maintained during its designed life. Projects are evaluated 6 and 12 months after completion and equipment warranted for two years by suppliers to minimise the risk. Also plan long-term evaluation as part of overall FSU Programme evaluation in 2003.

EXPENDITURE

<i>Allocation</i>	<i>2001-02</i>		<i>2002-03</i>		<i>2003-04</i>	
	<i>Spend to date</i>	<i>Outturn</i>	<i>Allocation</i>	<i>Forecast</i>	<i>Allocation</i>	<i>Forecast</i>
£1 million	—	£293,000	£1 million	£1.7 million	£1 million	£1 million

Project Status: The UK collaborated with Sweden on providing a physical protection system for a nuclear-propelled cargo ship, the Sevmorput, in NW Russia. This project was successfully completed by the target date of September 2001. Further projects are under discussion with the Russian Ministry of Atomic Energy, but it may take some time to identify further suitable projects, as Minatom's recent suggestions were not considered suitable. Potential future proposals include protection systems for two icebreakers, 15 buildings

on civil/military site and a proposal from the Russian Navy. We will also be exploring as part of the work on NW Russia whether any of those projects merit including physical protection elements (eg Andreeva Bay).

The UK has been in discussion with potential Swedish and Norwegian partners and the Murmansk Shipping Company for the provision of a physical protection system for two icebreakers in the Atomflot fleet. Discussions held at DTI in November 2001 agreed the main areas requiring physical protection, and to proceed under a contract along the lines used for the Sevmorput project. It was agreed that the UK should meet 65 per cent of total project costs for the equipment and installation, the total UK contribution amounting to £736k for two vessels, subject to Ministerial approval of the proposal.

7. NAME OF PROJECT AREA: DECOMMISSIONING IN CEE/FSU

Rationale

To aid the closure of Chernobyl and other reactors in EU accession candidates.

Objectives

Chernobyl to stay closed. Ignalina (Lithuania) Unit 1 closed by 2005 and Unit 2 by 2009. Kozloduy (Bulgaria) Units 1 to 2 closed by 2003 and Units 3 to 4 by 2008. Bohunice (Slovakia) Units 1 to 2 closed by 2008. Decommissioning for all these reactors to move forward.

Risks

Beneficiaries extending the scope of the project and/or requesting increasing financial support to de-commissioning, beyond the scope of the current de-commissioning support funds, managed by the EBRD.

EXPENDITURE

<i>Allocation</i>	<i>2001–02</i>		<i>2002–03</i>		<i>2003–04</i>	
	<i>Spend to date</i>	<i>Outturn</i>	<i>Allocation</i>	<i>Forecast</i>	<i>Allocation</i>	<i>Forecast</i>
£2.86 million	—	£2.86 million	£2.63 million	£2.63 million	£2.0 million	£2.0 million

Note: payments can be made in a lump sum to EBRD at any time during the financial year.

Project Status: The UK has pledged €1.5 million to EBRD managed decommissioning funds for Ignalina and Kozloduy. In Q3 a similar pledge of €1.5 million was made for Bohunice (Slovakia). The latter fund has now been set up, and the €1.5 million for Bohunice was dispersed in Q3. Under the EBRD managed Nuclear Safety Account, support is also being extended for decommissioning facilities at Chernobyl—and further requests for UK assistance may be required.

8. NAME OF PROJECT AREA: CLOSED NUCLEAR CITIES INITIATIVE

Rationale

To prevent the transfer of nuclear weapons expertise in Russia to “rogue states”.

Objectives

Short Term: The provision of non-weapons employment to a specified number of Russian Federation (RF) nuclear weapons’ scientists and technicians.

Medium Term: Re-deployment/retraining of a specified number of Russian weapons’ scientists to non-weapons projects/employment with a commercial focus.

Risks

Delays in recruiting specialist project managers to develop projects and take forward projects.

Failure to foster material commercial engagement in the Closed Cities because of the difficulties in operating therein.

EXPENDITURE

<i>Allocation</i>	<i>2001-02</i>		<i>2002-03</i>		<i>2003-04</i>	
	<i>Spend to date</i>	<i>Outturn</i>	<i>Allocation</i>	<i>Forecast</i>	<i>Allocation</i>	<i>Forecast</i>
£1.0 million	—	£0 million	£1.0 million	£1.0 million	£1.0 million	£2.0 million

The CCR indicated expenditure of some £5 million would be required over the next 10 years for this area of work.

Project Status: An Updated Strategy Paper was presented to the Inter Departmental Advisory Committee meeting in March 2002 and has now been approved by the representatives of all departments represented at the Committee. A submission to Ministers will follow at the earliest opportunity.

Efforts will now be intensified to identify specific areas and projects for UK support. These efforts will be in close collaboration with the ISTC in Moscow, and with colleagues and experts in the ENCI and in the US and Russia.

9. NAME OF PROJECT AREA: NW RUSSIA

Rationale

Assist process of de-fuelling and decommissioning nuclear submarines in NW Russia, in order to diminish the risks of a nuclear accident or leakage of large amounts of radioactivity into the environment.

Objectives

Overall: to increase the annual rate of decommissioning of submarines.

Short term: to conclude bilateral Supplementary Agreement with Russia, by June 2002 and to start physical work on SNF interim storage facility, SNF cask transport ship, Andreeva Bay site characterisation and cutting up an early generation submarine projects in NW Russia immediately thereafter.

Risks

The key risk remains the need to conclude the Supplementary Agreement without which we could not proceed with most of the NW Russia projects. Financial risks, as with all FSU Programme projects, will be minimised by close project management to ensure value of money, modular approach to project design and only paying on delivered milestones. There may also be construction delays for some projects.

EXPENDITURE

<i>Allocation</i>	<i>2001-02</i>		<i>2002-03</i>		<i>2003-04</i>	
	<i>Spend to date</i>	<i>Outturn</i>	<i>Allocation</i>	<i>Forecast</i>	<i>Allocation</i>	<i>Forecast</i>
£5 million	—	£80,000	£3.5 million	£8 million	£3.25 million	£5.5 million

Note: the CCR estimated that some £20 million would be required over the next 10 years.

Project Status: The first two projects in this policy area are ready to start. That is the SNF interim storage facility at Polyarnyi and, in collaboration with Norway, funding of the construction of a SNF cask transport ship. This work and other efforts on other projects are being held up by the continuing delay in concluding the Supplementary Agreement to provide cover on critical issues such as nuclear liability, tax and access. We expect to conclude the text and sign the Agreement before June 2002. Despite the delay we have pressed ahead in negotiating further projects. These include the SNF transport ship project with Norway mentioned above and the dismantling of a Victor class nuclear submarine. In addition, we have offered assistance for and are beginning work on a feasibility project to deal with the problem of SNF at Andreeva Bay. Current storage

provisions for large quantities of SNF at the site is totally inadequate and represents a major risk of nuclear contamination. The feasibility work, to be concluded by 2003, will detail proposals for substantial remediation and new storage construction over a number of years,

10. NAME OF PROJECT AREA: KEDO

Rationale

Preventing North Korea from becoming a nuclear weapons state.

Objectives

Implementation of the agreement between North Korea and the international community (KEDO) on the provision of two new light water reactors, in return for agreement by North Korea to abandon its nuclear weapons programme. The decommissioning and dismantlement of North Korea's existing graphite-moderated reactors.

Risks

Uncertainty about the level of influence KEDO can exert on North Korea abandoning its weapons programmes. Breakdown of relations between North Korea and the US (a major stakeholder in KEDO) could lead to North Korea reneging on its commitments under the agreement.

EXPENDITURE

<i>Allocation</i>	<i>2001–02</i>		<i>2002–03</i>		<i>2003–04</i>	
	<i>Spend to date</i>	<i>Outturn</i>	<i>Allocation</i>	<i>Forecast</i>	<i>Allocation</i>	<i>Forecast</i>
£2.4 million	—	£2.043 million	£2.4 million	£2.4 million	£2.4 million	£2.4 million

- The CCR originally allocated £3.5 million per annum to the KEDO project. The revised allocation is the amount required to meet the lower than anticipated EU contribution to KEDO.
- The CCR indicated that some £10.5 million might be required over the next 10 years for this project. The UK has agreed to contribute to the EU KEDO project for five years, with funding agreed for the first three years from the FSU Programme.
- The lower than anticipated spend in 2001–02 was due to a favourable £/€ exchange rate. Treasury made this payment on behalf of DTI during 2001–02.

Project Status: The construction of the reactors is at least eight years behind schedule, and work is progressing only very slowly. The original planned completion date of 2003 has now been revised to end-2010. As a result the bulk of KEDO funds are currently being used for the purchase of heavy fuel oil to meet North Korea's on going energy needs. The new US Administration is still reviewing its policy in this project (and on its relations with North Korea more generally). The EU is only a minor contributor to the KEDO project.

Rising oil prices have resulted in a shortfall of funds in the KEDO project. The KEDO Executive Board sought additional bilateral contributions from EU member states (and others) last summer to cover this shortfall. The UK, in common with EU partners decided against the provision of any additional funds.

A new agreement between the EU and KEDO, guaranteeing continued EU involvement in the project for five years was signed on 18 December 2001. The EU contribution for 2001 (20 million euro) has been transferred to the KEDO account in New York. A new delivery protocol with a timetable for meeting key milestones in the project has been drafted and discussion of it with North Korea should commence early this year.

11. NAME OF PROJECT AREA: KAZAKHSTAN (DECOMMISSIONING OF THE FAST REACTOR AT AKTAU)

Rationale

Reduce the threat of proliferation of fissile nuclear material and mitigate the humanitarian and environmental risks posed by the Aktau nuclear reactor.

Objectives

The safe and irreversible shutdown and decommissioning of the Akau reactor.

Risks

That international effort to decommission the Aktau reactor will continue to proceed in an unplanned way or may not be sustained at all.

EXPENDITURE

<i>Allocation</i>	<i>2001-02</i>		<i>2002-03</i>		<i>2003-04</i>	
	<i>Spend to date</i>	<i>Outturn</i>	<i>Allocation</i>	<i>Forecast</i>	<i>Allocation</i>	<i>Forecast</i>
£0.1 million	—	£0 million	£200,000	£50,000	£200,000	£150,000

The CCR indicated that some £2.5 million would be required over the next 10 years for this project.

Project Status: Discussions within the IAEA on the decommissioning of Aktau are continuing. The US is helping with the removal of fuel—the EU may offer help with more general decommissioning, although its present position is uncertain. The UK is one of the few countries with a comparable fast reactor undergoing decommissioning (at Dounreay) and there has already been some transfer of expertise from the UK to the Kazakhs on this problem. A paper on the proposal was presented to the FSU Programme Committee in July 2001.

The DTI has confirmed with the IAEA that UK funding of \$20,000 will be available to finance the Peer Review of the Top Level Decommissioning Plan currently being produced by the Kazaks with US/EC assistance.

A further IAEA sponsored conference on Aktau decommissioning was held in March 2002 with UK officials participating. The Top Level decommissioning Plan is in an advance state of preparation and a first draft has been seen by the IAEA which expressed itself satisfied with the efforts now being made to complete it. The formal submission of the Plan is not now likely however before August 2002.

In line with the Strategy Paper on Kazakhstan agreed by the Inter departmental Committee in July 2001, detailed discussions will shortly commence to further specify areas where the UK could fund assistance to ensure the completion of the Plan at the earliest opportunity.

It remains the case that no decisions can be taken on the provision of UK funded design, technical or engineering assistance at the reactor site until the Top Level Plan has been Peer Reviewed. A further IAEA sponsored Conference will be convened as soon as this has been done.

12. NAME OF PROJECT AREA: SOCIAL AND ECONOMIC IMPACTS OF NUCLEAR PLANT CLOSURE

Rationale

Support wider objectives of plant closure through helping local communities address the social and economic consequences of closure.

Objectives

Overall: to aid the economic diversification/regeneration of local regions in the FSU which are adversely affected by nuclear plant closure and in order to ensure high levels of operational safety during pre-closure operation of plants scheduled for early closure, where such closure has been requested by the international community.

Current specific objectives:

- to continue to promote the activities and capabilities of the International Chernobyl Centre (ICC) and to aim for self-sustainability of the ICC by 2004-05;
- to investigate further projects in Slavutych, including the possibility of assisting with the communications infrastructure there;

- to help with the setting up of a functioning “new business incubator” in the Visaginas area near the Ignalina plant in Lithuania—incubator set up by 2003;
- in 2002–2003 to identify activities that may be undertaken in Lithuania, Bulgaria and Slovakia.

Risks

Risks include lack of impact and duplication and/or lack of co-ordination with activities being pursued by other donors.

EXPENDITURE

<i>Allocation</i>	<i>2001–02 Spend to date</i>	<i>Outturn</i>	<i>2002–03 Allocation</i>	<i>Forecast</i>	<i>2003–04 Allocation</i>	<i>Forecast</i>
£250,000	—	£144,000	£250,000	£250,000	£250,000	£250,000

The CCR estimated that some £1.5 million would be required over the next 10 years.

Project Status: The UK is providing small-scale assistance to develop the ICC, principally through the development of ICC’s communications strategy and capabilities, supported by a UK communications expert. An exploratory mission by BESO to the Visaginas region to work up plans for a business incubator approach to regional development has been completed and this has led to a second phase of work, focused at developing entrepreneurial skills and knowledge in the region. Work has also been undertaken to develop a business case for a fibre optic cable link to Slavutyich.

The Inter-departmental Advisory Committee meeting, held in March 2002, supported a proposal to develop the Social Consequences Programme in 2002. The approach of directing assistance to people directly affected by plant closure was endorsed and the future programme will be examining what more can be done to develop wealth creation and jobs in affected communities. Work in Lithuania and Ukraine will continue. Scoping projects will be undertaken to develop country specific plans for these countries and for Bulgaria and Slovakia. It is anticipated that a contract will be established under the call-off contract scheme to support this work.

The 2001–02 programme had a budget of £250k. A continuing commitment to the existing project in Lithuania is valued at £108k. The Interdepartmental Advisory Committee supported an increase to the budget in 2002–03 to £500k, giving £518k for projects in the next financial year. Scoping activities will be used to develop proposals for the 2003–04 budget and programme.

OVERALL BUDGET SUMMARY

	<i>2001–02</i>	<i>2002–03</i>	<i>2003–04</i>
Total Budget	£23.9 million	£27.4 million	£32.5 million
Programme outturn (of which fully committed)	£15.74 million	£34.1 million £8.44 million	£33 million £9.49 million
Project Spend to date	£15.74 million	0	0
Forecast Running cost draw down	£0.08 million	– £0.35 million	– £0.4 million
Forecast underspend/overspend	£8.08 million	(£7.05 million)	(£0.9 million)

Notes:

- Project information as of beginning of April 2002.
- Project spend includes contracted out project management costs.
- Includes payment for KEDO which has already been paid to HM Treasury and treated as an accrual.

FSU Programme

January–March 2002

APPENDIX 4**Memorandum from the Foreign and Commonwealth Office****ACTIVITIES AT THE ATOMIC WEAPONS ESTABLISHMENT, ALDERMASTON**

1. The Foreign Affairs Committee has asked for a Note on activities at the Atomic Weapons Establishment, Aldermaston, and the compatibility of those activities with the UK's international treaty obligations.

2. The primary relevant treaty obligation, from which others fall, is the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). In summary, this Treaty commits Non-Nuclear Weapon States parties not to manufacture or acquire nuclear weapons and Nuclear Weapons States (as defined by the NPT) not to aid other states to acquire them. The United Kingdom is a Nuclear Weapons State. Other NPT obligations relate to agreements safeguarding nuclear materials, the development of peaceful uses of nuclear technology, regional arrangements such as nuclear weapon free zones and, under Article VI, obligations relating to nuclear disarmament:

3. "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control." Article VI, Treaty on the Non-Proliferation of Nuclear Weapons.

4. The Atomic Weapons Establishment is Government-owned but operated by a contractor. The Ministry of Defence is the main customer for AWE's work. The Foreign and Commonwealth Office and the MoD are in regular contact with regard to AWE and the international implications of the activities carried out at its sites. We are confident that activities at AWE are fully consistent with the UK's international commitments, including the NPT and the Comprehensive Nuclear Test Ban Treaty (CTBT). AWE also carry out nuclear weapons arms control verification research directed towards scientific and technical verification in support of both the NPT and CTBT. For example, AWE played a leading role in the UK-held seminar on the civil and scientific benefits of the CTBT's verification systems in May this year.

5. The Secretary of State for Defence and the Parliamentary Under-Secretary of State for Defence described the UK's nuclear weapons policy in statements to the House of Commons on 17 June, making clear that there has been no change since the Strategic Defence Review (SDR) in 1998. We currently have no plans for a replacement for Trident, and no decision on any possible successor system is yet needed. We are not planning any new weapon designs, nor are we modifying current systems to lower their yield. As set out in the SDR (Supporting Essay 5, paragraph 14), the Government intends to maintain a minimum capability at AWE to design and produce a successor to Trident, should this prove necessary. This capability is consistent with the terms of the international treaties to which the UK is a party.

6. AWE's Annual Report for 2000, cited in some press reports, states that:

"During the course of the year [2000] a plan to rationalise the manufacturing and storage operations at both the Aldermaston and Burghfield sites was developed. As part of the plan, a project to consolidate the production facilities on the Burghfield site has started. This will bring operating efficiencies and improvements in safety management and control and is an important step towards achieving the transfer of all operations from the AWE Burghfield site to AWE Aldermaston."

This consolidation of operations—which remains a proposal—would also be in full conformity with our international obligations.

7. As a responsible Nuclear Weapon State, the UK is committed to the safe stockpile stewardship of its nuclear weapons. The replacement of older facilities and the decommissioning of those no longer required is part of an ongoing programme of work at AWE to meet safety, regulatory and operational requirements. The new tritium facility at AWE, for example, is a handling (not production) facility, which replaced an old facility.

8. The Government is committed to openness and transparency about the stockpile as far as is possible within Treaty and national security constraints. This commitment was demonstrated by an article published in *Nature* on 21 February. This article highlighted several issues, such as the planning permission being sought for a hydrodynamic facility to aid UK compliance with the Comprehensive Nuclear Test Ban Treaty.

9. Further information about the NPT and its recent Preparatory Committee, including UK steps on disarmament, was provided to the FAC in the form of a Memorandum FCO/FAC/009-02 dated 26 June 2002.

Foreign and Commonwealth Office

11 July 2002

APPENDIX 5**Memorandum from the Foreign and Commonwealth Office****INTERNATIONAL CODE OF CONDUCT AGAINST BALLISTIC MISSILE PROLIFERATION**

As you know, the UK has for the past two years been pursuing an international initiative to introduce global norms in the area of Ballistic Missiles. This initiative, the International Code of Conduct against Ballistic Missile Proliferation, is set to be adopted in November this year. I am writing now to let you and the Committee have sight of the text.

The idea for a Code of Conduct on ballistic missile issues stemmed from a UK initiative in the international Missile Technology Control Regime. The idea has since grown into a proposal for a politically-binding Code, which we hope will attract wide global support. The EU has led international efforts to reach agreement on a text, in particular since the Gothenburg European Council conclusions of June 2001. The key elements of the ICOC call on governments to make a series of commitments to non-proliferation of ballistic missile and related technology, and to a series of confidence building measures in the areas of ballistic missile and space launch vehicle technology. For instance, subscribing States will make annual declarations on their Ballistic Missile holdings and policies, and the same for their Space Launch Programmes. Subscribing States will participate in a pre-launch notification system. Subscribing States are committed to “maximum possible restraint” in their own ballistic missile programmes.

The UK has been closely involved in the elaboration of this text. We shall continue to lobby internationally for the broadest possible range and number of subscribing States to the Code. The launch conference for the Code is set for 25–26 November in the Hague. While it is possible there could be changes to the ICC text before then, we do not expect there to be.

We will let the Committee have a copy of the text in its final, formally adopted state, after that Conference.

*Parliamentary Relations & Devolution Department
Foreign and Commonwealth Office*

20 September 2002

International Code of Conduct against Ballistic Missile Proliferation

The Subscribing States:

Reaffirming their commitment to the United Nations Charter.

Stressing the role and responsibility of the United Nations in the field of international peace and security.

Recalling the widespread concern about the proliferation of weapons of mass destruction and their means of delivery.

Recognising the increasing regional and global security challenges caused, *inter alia*, by the ongoing proliferation of Ballistic Missile systems capable of delivering weapons of mass destruction.

Seeking to promote the security of all states by fostering mutual trust through the implementation of political and diplomatic measures.

Having taken into account regional and national security considerations.

Believing that an International Code of Conduct against Ballistic Missile Proliferation will contribute to the process of strengthening existing national and international security arrangements and disarmament and non-proliferation objectives and mechanisms.

Recognising that subscribing States may wish to consider engaging in co-operative measures among themselves to this end.

1. Adopt this International Code of Conduct against Ballistic Missile Proliferation (hereinafter referred to as “the Code”).

2. Resolve to respect the following Principles.

- (a) Recognition of the need comprehensively to prevent and curb the proliferation of Ballistic Missile systems capable of delivering weapons of mass destruction and the need to continue pursuing appropriate international endeavours, including through the Code.
- (b) Recognition of the importance of strengthening, and gaining wider adherence to, multilateral disarmament and non-proliferation mechanisms.
- (c) Recognition that adherence to, and full compliance with, international arms control, disarmament and non-proliferation norms help build confidence as to the peaceful intentions of states.
- (d) Recognition that participation in this Code is voluntary and open to all States.
- (e) Confirmation of their commitment to the United Nations Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States taking

into particular account the Needs of Developing Countries, adopted by the United Nations General Assembly (Resolution 51/122 of 13 December 1996).

- (f) Recognition that states should not be excluded from utilising the benefits of space for peaceful purposes, but that, in reaping such benefits and in conducting related cooperation, they must not contribute to the proliferation of Ballistic Missiles capable of delivering weapons of mass destruction.
 - (g) Recognition that Space Launch Vehicle programmes should not be used to conceal Ballistic Missile programmes.
 - (h) Recognition of the necessity of appropriate transparency measures on Ballistic Missile programmes and Space Launch Vehicle programmes in order to increase confidence and to promote non-proliferation of Ballistic Missiles and Ballistic Missile technology.
3. Resolve to implement the following General Measures.
- (a) To ratify, accede to or otherwise abide by:
 - the Treaty on principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967);
 - the Convention on International Liability for Damage Caused by Space Objects (1972); and
 - the Convention on Registration of Objects Launched into Outer Space (1974).
 - (b) To curb and prevent the proliferation of Ballistic Missiles capable of delivering weapons of mass destruction, both at a global and regional level, through multilateral, bilateral and national endeavours.
 - (c) To exercise maximum possible restraint in the development, testing and deployment of Ballistic Missiles capable of delivering weapons of mass destruction, including, where possible, to reduce national holdings of such missiles, in the interest of global and regional peace and security.
 - (d) To exercise the necessary vigilance in the consideration of assistance to Space Launch Vehicle programmes in any other country so as to prevent contributing to delivery systems for weapons of mass destruction, considering that such programmes may be used to conceal Ballistic Missile programmes.
 - (e) Not to contribute to, support or assist any Ballistic Missile programme in countries which might be developing or acquiring weapons of mass destruction in contravention of norms established by, and or those countries' obligations under, international disarmament and non-proliferation treaties.
4. Resolve to implement the following:
- (a) Transparency measures as follows, with an appropriate and sufficient degree of detail to increase confidence and to promote non-proliferation of Ballistic Missiles capable of delivering weapons of mass destruction:
 - (i) With respect to Ballistic Missile programmes to:
 - make an annual declaration providing an outline of their Ballistic Missile policies. Examples of openness in such declarations might be relevant information on Ballistic Missile systems and land (test-) launch sites; and
 - provide annual information on the number and generic class of Ballistic Missiles launched during the preceding year, as declared in conformity with the pre-launch notification mechanism referred to hereunder, in tiret (iii).
 - (ii) With respect to expendable Space Launch Vehicle programmes, and consistent with commercial and economic confidentiality principles, to:
 - make an annual declaration providing an outline of their Space Launch Vehicle policies and land (test-) launch sites;
 - provide annual information on the number and generic class of Space Launch Vehicles launched during the preceding year, as declared in conformity with the pre-launch notification mechanism referred to hereunder, in tiret (iii); and
 - consider, on a voluntary basis (including on the degree of access permitted), inviting international observers to their land (test-) launch sites.
 - (iii) With respect to their Ballistic Missile and Space Launch Vehicle programmes to:
 - exchange pre-launch notifications on their Ballistic Missile and Space Launch Vehicle launches and flights. These notifications should include such information as the generic class of the Ballistic Missile or Space Launch Vehicle, the planned launch notification window, the launch area and the planned direction.
 - (b) Subscribing States could, as appropriate and on a voluntary basis, develop bilateral or regional transparency measures, in addition to those above.
 - (c) Implementation of the above Confidence Building Measures does not serve as justification for the programmes to which these Confidence Building Measures apply.

5. Organisation aspects.

Subscribing States determine to:

- (a) Hold regular meetings, annually or as otherwise agreed by Subscribing States.
- (b) Take all decisions, both substantive and procedural, by a consensus of the Subscribing States present.
- (c) Use these meetings to define, review and further develop the workings of the Code, including in such ways as:
 - establishing procedures regarding the exchange of notifications and other information in the framework of the Code;
 - establishing an appropriate mechanism for the voluntary resolution of questions arising from national declarations, and/or questions pertaining to Ballistic Missile and/or Space Launch Vehicle programmes;
 - naming of a Subscribing State to serve as an immediate central contact for collecting and disseminating Confidence Building Measures submissions, receiving and announcing the subscription of additional States, and other tasks as agreed by Subscribing States, and other tasks as agreed by Subscribing States; and
 - others as may be agreed by the Subscribing States, including possible amendments to the Code.

Annex

(list of subscribing States)³

APPENDIX 6

Correspondence between the Chairman of the Committee and the Secretary of State, Foreign and Commonwealth Office

Letter from the Chairman of the Committee to the Foreign Secretary

At its meeting this morning, the Committee considered your statement in the House yesterday and its relevance to the Committee's ongoing inquiry into Foreign Policy Aspects of the War against Terrorism. We were of course mindful of the fact that you are to give oral evidence to that inquiry on Monday afternoon.

The Committee has asked me to write with two requests before that meeting, as follows.

First, the Committee wishes to receive an update of the memorandum submitted by the FCO to its predecessor Committee in January 1999, on the Travel Advice System.

Second, the Committee wishes to receive on a confidential basis the same papers as are being supplied to the Intelligence and Security Committee by the intelligence co-ordinator in the Cabinet Office, as referred to in your statement at column 23.

In order that the Committee is able to take account of your reply before next weeks' meeting, I would hope to receive it not later than Noon on Monday 28 October.

Chairman of the Committee

22 October 2002

Letter from the Foreign Secretary to the Chairman of the Committee

Thank you for your letter of 22 October. As requested, I enclose an updated Memorandum on the FCO's Travel Advice system.⁴

You also asked to receive, on a confidential basis, the same papers which will be provided to the ISC by the Cabinet Office Intelligence Coordinator, as referred to in my statement to the House on 21 October about the terrorist attack in Bali. As I said in my letter to you of 23 September, Agency Heads are obliged to provide information to the ISC under the Act of Parliament which established that Committee for the purpose of overseeing the work of the Agencies. That is why I have asked the Intelligence Coordinator in the Cabinet Office to ensure that all the intelligence available to us before the Bali bombing is made available to the Committee. It would not be appropriate to establish a competing jurisdiction by engaging your Committee on this as well; nor do I believe it to be necessary for the efficient discharge of your, different, functions.

Secretary of State

Foreign and Commonwealth Office

28 October 2002

³ Not included with this document.

⁴ Ev 70-71.

FCO Travel Advice Service

1. Residents of the United Kingdom made over 58 million trips overseas in 2001 (compared with 45 million in 1998). The safety of British nationals abroad is one of the Foreign and Commonwealth Office's (FCO) principal concerns. We therefore attach great importance to providing information about personal safety and security overseas to enable people to make informed decisions about travel. The FCO's Travel Advice is designed to provide British travellers with practical, objective, accurate and up-to-date advice. However, the decision on whether to travel to a particular country must always remain a personal one. We cannot stop British nationals travelling to a particular destination, although we do advise against all travel or all non-essential travel to a number of countries.

2. Since January 1999, when the FCO submitted to the Foreign Affairs Committee its last memorandum on Travel Advice⁵, the FCO has made considerable progress in this area. The FCO's Travel Advice now covers every country in the world and has become more detailed, more user-friendly, more popular and broader in scope—achievements recognised in May 2001, when it won the *Sunday Times* Award for the Top Information Service Relating to Travel. The following sets out some background information on FCO Travel Advice and the principal improvements since 1999.

TRAVEL ADVICE UNIT

3. The FCO's Travel Advice Unit (TAU) is based in Consular Division with a full time staff of four, supervised by a senior manager. The TAU updates Travel Advice in response to requests from our Posts overseas and Departments in London. Particular attention is paid to information, including intelligence, which might affect the level of threat to British citizens abroad. Advice is under constant review, especially where it covers volatile regions or developing crises. In such cases, it may be updated on a daily basis (eg after the Bali bomb attack; during India-Pakistan crisis). All our Travel Advice is automatically reviewed monthly. In 2001, the TAU updated our Travel Advice on 1,569 occasions. There have been almost 1,200 updates so far this year—almost a 50 per cent increase on 1999. Guidance on how we draw up Travel Advice is issued to Posts annually.

4. Consular Division is engaged in a constant dialogue with the travel industry on matters relating to Travel Advice and overseas travel more generally. They meet formally with key organisations such as ABTA and the Federation of Tour Operators at least twice a year to discuss key concerns and developments.

SCOPE OF ADVICE

5. Since 1999, the content of the FCO's Travel Advice has been significantly improved. Country advice is now considerably more comprehensive and in most cases is divided into a number of standard, user-friendly categories such as "Safety and Security", "Local Travel", "Local Laws and Customs" etc. The categories are regularly reviewed and we add to them as necessary. Advice for specific areas within countries is now often available, in addition to general country advice. In 2001, a Frequently Asked Questions section was added to the travel section of the website, covering everything from money matters to crime; from timeshares to adoption overseas. There are separate sections on the Euro, insurance and health. There is also specialist advice for a number of groups, including women travellers, backpackers and those retiring overseas.

DISTRIBUTION

6. Travel Advice is available on the FCO website. The travel area of the site records an average of 675,000 page impressions per month. Many regular users arrange to receive automatic updates when travel advice changes, using the "automatic update facility" on the FCO site. During working hours, the TAU provides advice by telephone and fax. 30 organisations receive daily faxed updates from the Travel Advice Unit. Significant changes in Travel Advice are also announced through press statements.

7. Until January 2001 the Travel Advice issued on the FCO website was duplicated on CEEFAX. Due to the increasing length of the travel advice notices, however, it became impractical to include individual Travel Advice notices on CEEFAX. We therefore limited the publication on CEEFAX to countries and areas to which the FCO advised against all travel or all non-essential travel.

8. Consular Division also produces and distributes travel advice leaflets covering a range of matters of both general and specialist interest (which are also available on the FCO website) including:

- Checklist for Travellers.
- Health Advice for Travellers.
- British Consular Services Abroad.
- Death Overseas.
- Dual Nationality.

⁵ Foreign Affairs Committee, First Special Report of session 2000–01, *Work of the Committee During the Present Parliament: A Progress Report*, HC 78, pp 23–24.

- Travellers Tips.
- Travellers Tips for Gay, Lesbian, Bisexual and Transgender travellers.
- Backpackers and Independent Travellers.
- Retiring Overseas.
- Advice for British pilgrims on the Hajj in Saudi Arabia.
- British Prisoners Abroad.
- Victims of Crime Abroad.
- International Child Abduction
- Forced Marriage Abroad

9. In addition to advice issued centrally, our Posts overseas also have discretion to issue local advisories containing information and advice of interest, in particular, to the expatriate community.

CAMPAIGNS

10. The FCO has gone to great lengths to improve awareness of our Travel Advice. The Know Before You Go (KBYG) campaign, launched in June 2001, is designed to maximise awareness of the potential risks of foreign travel; and to encourage British travellers to take out travel insurance and to check the FCO Travel Advice before they depart. The FCO has run a series of mini-campaigns on specific themes: back-packers and independent travellers; the dangers of becoming involved in drugs overseas; advice for those going to the 2002 World Cup. We have also worked closely with gay pressure groups and the gay travel and publishing industries to produce a comprehensive set of Travellers Tips. Future mini-campaigns will target those visiting friends and relatives overseas over religious and national holidays; and the 18–30 year old “clubber” market.

11. Over 140 partners have signed up to the KBYG Campaign Charter and agreed to promote the campaign through their own marketing activities. Partners are asked to take every opportunity to get our key messages across, by directing customers to the FCO Travel Advice notices and by encouraging them to purchase travel insurance. In its first year, the campaign reached a potential 18 million readers, 11 million listeners and 2 million viewers.

Foreign and Commonwealth Office

October 2002

APPENDIX 7

Memorandum from the Foreign and Commonwealth Office

FOREIGN POLICY ASPECTS OF THE WAR AGAINST TERRORISM

Thank you for your letter of 8 October. Ministers have agreed the following replies to your questions.

COUNTER-TERRORISM COMMITTEE

1. *“The Committee wishes to receive a progress report on the work of the CTC. The progress report should cover, inter alia, the following points: initial findings of the review of the second set of country reports; which countries have now ratified the 12 conventions and which have legislation and ‘effective executive machinery’ in place; which countries other than UK are acting as ‘donors’, and which countries are they assisting; how the UK’s £1 million assistance package is being spent; whether HMG remains entirely satisfied that the UN has the necessary resources to enable the CTC to function effectively.”*

Progress report and initial findings of the review of second set of country reports:

One year on from its creation by UN Security Council Resolution 1373 (2001), the Counter-Terrorism Committee (CTC) has received reports from 174 UN member states and five others. It has completed the review of 170 of these and is working hard to review the remainder of the reports received. The CTC’s hallmark is openness, transparency and even-handedness. Its procedures adhere to these principles wherever possible; for example, all the reports submitted by States are published on the CTC’s website. But the CTC maintains confidentiality in the sensitive parts of its work, such as the content of its exchanges with States.

On 8 October the Security Council approved the CTC’s work programme for the period from 28 September to 31 December 2002. This programme includes:

- (i) improving the structure of its online directory of information on best practice, model laws and available assistance programmes on counter-terrorism issues;
- (ii) complete the review of the second-round letters from Member States;

- (iii) ensure that the CTC's experts meet representatives of all states requesting assistance to comply with UNSCR 1373 (2001); and
- (iv) collate information received from international, regional and sub-regional organisations on their activities in the area of counter-terrorism.

The Security Council also confirmed Sir Jeremy Greenstock as chairman until 4 April 2003. The CTC continues to have the unanimous support of Security Council members.

As States respond to the CTC's comments and concerns by submitting further reports, the CTC is taking a second look at implementation in each State. 92 second round reports have been received to date. In reviewing the second round of reports the CTC will focus on two key priority areas: (i) whether legislation is in place covering all aspects of 1373, including the ratification of the 12 international conventions; and (ii) whether each State has effective government machinery for preventing and suppressing terrorist financing. Further exchanges between the CTC and States will follow in 2003.

17 Member States have not yet submitted a first report to the CTC. Of these, six have not made any contact and the CTC is actively following up, with a view to offering advice on preparing a report.

Which countries have ratified all 12 conventions and have effective executive machinery in place?

Ratifications of the 12 counter-terrorism conventions have increased significantly since July 2001 (the last point before the adoption of resolution 1373 at which the UN published consolidated figures on ratifications) when only Botswana and the UK had ratified all 12 conventions. Since then 22 more States have done so. These are: Austria, Bolivia, Bulgaria, Canada, Chile, Cuba, Denmark, Finland, Grenada, Iceland, Japan, Mali, Netherlands, Norway, Panama, Peru, Slovakia, Spain, Switzerland, Turkey, USA and Uzbekistan. The analysis of second reports from Member States should provide the CTC with a useful guide to which States have effective executive machinery in place.

List of donor countries (other than UK) and who they are helping:

The CTC continues to coordinate and facilitate the provision of technical assistance. It has invited all States in a position to do so, to contribute to the compilation of a comprehensive directory of sources of advice and expertise in the areas of legislative and administrative practice. 13 donors have now done so; the CTC is continuing to encourage others to follow suit in order to make the Directory as comprehensive, and therefore operationally useful, as possible. The Directory of Information and Sources of Assistance is available to member states on the CTC's website (<http://www.un.org/docs/sc/committees/1373/>).

How is the UK's £1 million assistance package being spent?

In keeping with the current priorities of the CTC, three programmes have been developed within the UK's £1 million assistance package, focusing on Counter Terrorism Legislation and Administrative Measures, Charity Regulatory Measures and Law Enforcement Training on Terrorist Financing.

The assistance will be delivered, in the first two cases in the form of regional seminars, to countries selected according to various criteria, including needs expressed in the reports submitted to the CTC and in line with the findings of the CTC itself. Precise details of recipient countries have yet to be confirmed.

Is HMG satisfied that the UN has the necessary resources to enable satisfactory CTC functioning?

The Fifth (administrative and budgetary) Committee of the UN General Assembly in May 2002 authorised the UN secretariat to provide funds and sufficient resources to support for the work of the CTC. There are no outstanding resource problems at this time.

AFGHANISTAN

2. "The Committee wishes to receive a note on the work of the FCO's Afghanistan Unit."

The Afghanistan Unit was established as a separate department of the FCO in January 2002 as a successor to the FCO's Emergency Unit, set up in the immediate aftermath of the World Trade Centre attacks on 11 September 2001. The Unit's mission statement is "to help Afghanistan achieve stability, security and prosperity, to the benefit of the Afghan people, the United Kingdom and the world community".

The work of the Afghanistan Unit has focussed on three main areas:

- (i) Political. The Unit formulates policy recommendations and briefings to Ministers on a wide variety of issues—political/economic developments, human rights, anti-narcotics, bilateral contacts etc, acting as a central Whitehall co-ordination point for HMG policy on Afghanistan. Working with the UK Special Representative for Afghanistan, the Unit drives policy on relations with international partners on Afghanistan, focussing in particular on building continued international support for the Bonn Process and ensuring HMG objectives are met. The Unit arranges numerous

inward and outward visits (including Chairman Karzai and many members of the Interim Administration, and the Prime Minister and Secretary of State for Foreign Affairs), and produces all briefing for these visits. The Unit pursues a public diplomacy strategy, discussing and exchanging views on events in Afghanistan with NGOs, academics, media, companies and foreign governments; it co-ordinates a Chevening Scholarship programme for Afghans to study in the UK; organises conferences and other meetings on Afghanistan; and funds a variety of democracy/human rights related projects. A significant proportion of resources were devoted earlier in the year to responding to letters from members of the public and to advising Ministers on responses to MPs' letters.

- (ii) Political/Military. In the first half of 2002, with the UK lead of the International Security Assistance Force and significant UK involvement in Operation Enduring Freedom (OEF) activities in Afghanistan, work in this area focussed on international coalition building—including for continued support for ISAF once the UK lead had been handed over—and on maintaining a conducive political environment for action by UK forces within OEF. Work has also focussed on ways to improve security outside Kabul, and on coordination of security sector reform efforts in Afghanistan with other Whitehall Departments and international and Afghan partners. In particular, this has involved developing projects with DFID and MoD funded under the joint Global Conflict Prevention Pool (see separate below on “Spreading the ISAF Effect”).
- (iii) HMG's presence in Afghanistan. Following the lengthy closure of the British Embassy in Kabul, considerable work has been required to re-establish HMG's physical presence in Afghanistan. This has ranged from arranging procurement and transportation of equipment, to advising on the recruitment of Embassy staff. Many members of the Unit have filled positions in the Embassy on a temporary basis to cover leave, sickness etc. This area of work is now declining as facilities for the international community in Afghanistan, and the staffing of HMG's own operations, become more established.

3. *“The Committee also wishes to receive a progress report on work to ‘spread the ISAF effect outside Kabul’ and on the development of Afghanistan’s own security structures.”*

SPREADING THE ISAF EFFECT

ISAF under Turkish leadership continues to provide security in Kabul, although violent incidents persist. The Germans and Dutch have provisionally agreed to take over the ISAF lead from the Turks, using their help NATO High Readiness Force HQ with some NATO force generation/planning support.

In the regions, however, the security situation remains uncertain. Local confrontations between rival factions persist, albeit at a low level; the absence of effective law and order forces means that little is being done to combat criminal activity; and Al-Qaida/Taliban remnants continue to stir up trouble in some areas. This continues to have an adverse effect on the welfare of the population, is hampering the delivery of humanitarian aid and obstructing efforts to deliver reconstruction benefits on the ground. It also provides fertile ground for opium production/trafficking.

We have continued to work closely with international partners, including the Americans as lead nation for the development of an Afghan National Army, to explore a range of options for “expanding the ISAF effect”. Ultimately, the solution must lie in building up indigenous security and law and order forces capable of addressing the sources of instability and allowing the central government to project its authority in the regions. The challenge in the short-term is to find a way of delivering the necessary security in the regions to combat the narcotics threat and allow reconstruction to go ahead. There is no appetite amongst current contributing nations to commit large numbers of additional troops. Nor is there any guarantee that what has worked in Kabul would work in the country as a whole.

We are pressing for an urgent decision on regional security plans which, to be successful, will require full US involvement. We have also suggested that it makes sense to use the newly-trained ANA battalions for security tasks in the countryside.

Development of Afghanistan’s security structures

We are working closely with Afghan and international partners, in particular the Americans, to help establish an effective and democratically accountable national army, and with the Germans to create a national police force. To date five battalions of ANA troops have been trained, one by ISAF when under UK leadership, three by the US and one by the French. Further battalions are under training. The UK is supporting by funding radios for all newly trained ANA battalions and funding the refurbishment of barracks. As agreed at the Emergency Loya Jirga in June, the Afghan Transitional Administration has established a Defence Commission which has drawn up a plan for the further development of the Afghan National Army. However there are still some fundamental issues that remain to be addressed, including a more precise definition of the size and structure of the Army, and the mechanisms for democratic control by the Afghan security institutions.

The UK is also contributing to the German-led national police force reform programme, which is training over 1,500 recruits in the newly rebuilt Kabul Police Academy. Progress with judicial reform (an Italian lead)

has been less encouraging and we are exploring the possibility of seconding a UK legal expert to help move the process forward. We have also launched a £5.7 million project to build capacity in the office of the National Security Adviser, using Global Conflict Prevention Pool funds. This is a key project that should significantly enhance the co-ordination and delivery of security sector reform on the ground.

The UK is co-ordinating international counter-narcotics assistance to Afghanistan. In consultation with the Afghan Government, other donors and international (including UN) agencies, we have developed a strategy for the elimination of drugs from Afghanistan. It identifies four key areas where the international community should focus its support: providing alternative livelihoods for opium poppy farmers; improving Afghan drug law enforcement capacity; building up the capacity of Afghan drug control institutions; and reducing drug demand in Afghanistan. Work is continuing to identify the necessary British and international resources to implement the strategy.

GUANTANAMO BAY

4. *“The Committee wishes to receive a progress report on the position of detainees held at Guantanamo Bay, with particular reference to the British detainees.”*

There are seven UK detainees in Guantanamo Bay.

The Government is conscious of the importance of safeguarding the welfare of the British detainees in Guantanamo Bay and of the need to resolve their position. The Foreign Secretary has raised the circumstances in which British nationals are being held with the US Secretary of State, Colin Powell, on a number of occasions. Senior UK Government lawyers and officials have regularly asked their counterparts in the US Administration in Washington and London for progress on the issues concerned. The US has given us assurances that the detainees are being treated humanely and consistently with the principles of the Geneva Convention.

UK officials have paid three visits to the British detainees in Guantanamo Bay. The UK was the first state to visit its nationals there. The purpose of the visits has been to confirm the identity and nationality of the detainees, check on their welfare as well as to ask questions about national security.

The detainees appeared generally to be in satisfactory physical health, although various ailments, and in one case, injuries sustained in Afghanistan, are being treated by the US authorities. UK officials have seen no visible sign of mistreatment. The detainees can exchange letters with their families through the US authorities and the International Committee of the Red Cross (ICRC). The ICRC has a presence on Guantanamo Bay. It has access on demand to the detainees.

All detainees are housed in indoor accommodation including individual sleeping, toilet and washing facilities and air-ventilation. A field hospital and clinic are on site. The detainees are able to exercise and to practise their religion. Calls to prayer are broadcast throughout the Camp. The detainees have access to reading and writing material.

We have made clear our view that the detainees, if prosecuted, should receive a fair trial. The US is well aware of the UK's opposition to the death penalty under all circumstances.

The FCO's and Home Office's handling of the case of one of the UK detainees, Feroz Abbasi, is the subject of judicial review proceedings. The hearing took place in the Court of Appeal on 10–12 September. We await the Court's decision.

INTERNATIONAL CRIMINAL COURT

5. *“The Committee wishes to be brought up to date on any bilateral and EU moves to reach an understanding with the US on the jurisdiction of the ICC.”*

EU Foreign Ministers agreed on 30 September, “Conclusions and Guiding Principles” on how to respond to US requests for bilateral (non-surrender) Agreements under Article 98.2 of the ICC Statute without undermining the Statute. In the meantime, US officials have visited Italy, Austria, Spain and the UK for exploratory discussions, and interpretation of the “Guiding Principles” in relation to their draft Agreement which had been circulated in July. On 17 October in London, and in line with the Principles, discussion centred on:

- (i) The scope of existing Agreements (eg Status of Forces Agreements) in addressing US concerns.
- (ii) No impunity—the US have declared their willingness to prosecute ICC crimes, but it is not clear that all such crimes are covered in their law.
- (iii) Non-surrender of nationals of States Parties—the US is concerned about the many non-US nationals serving with its armed forces.
- (iv) The scope of “persons sent” by the US government—a particularly difficult issue since the US draft agreement goes beyond what is envisaged in the Statute.

The US side will take time to reflect on these discussions before seeking further dialogue. No new draft Agreement has emerged to date. The UK team made clear that, although we do not share the US concerns, we will wish to be helpful to them, provided that we do not undermine the Court or compromise the Statute.

MIDDLE EAST

6. *"The Committee wishes to receive a progress report on the latest moves to bring about peace in the Middle East."*

The Government has long recognised the importance of a negotiated settlement to the disputes between Israel and the Palestinians and between Israel and neighbouring states. We have consistently sought to reach a settlement based on UN Security Council Resolutions which would realise legitimate Palestinian aspirations and deliver peace and security within recognised borders for all the peoples involved. The 11 September attacks underlined the critical importance of such efforts. Tackling the Middle East conflict is necessary on its own merits, but would also help maintain the consensus for action against international terrorism.

Since August 2002, when the Government provided its Command Paper Response to the Committee's Report on the War against Terrorism, we have continued to work with the parties, the US, EU partners and regional and other Governments to revitalise the peace process. Israelis and Palestinians have continued to suffer the consequences of the cycle of violence and retribution. We have lobbied the parties to refrain from, and prevent, actions likely to escalate the violence and undermine efforts to resume negotiations. We have condemned suicide bombings and other callous terrorist acts, and urged the parties to respect international humanitarian law. We have raised our concerns with Israel at the impact of military operations, restrictions imposed by the Israel Defence Forces on the movement of Palestinian people and goods, and the demolition of infrastructure, property and agricultural land on the Palestinian economy and on the provision of basic services. We have made clear our view on continuing illegal settlement activity, which threatens the basis for a two-State solution and consequently prospects for peace. The Foreign Secretary has been in frequent contact with the parties, the US and EU colleagues, and visited Egypt, Jordan, Kuwait and Iran from 7 to 10 October. The Government has continued to provide UK personnel to monitor the Palestinian detention of six prisoners in Jericho as part of the agreement reached in May to end the siege of Ramallah.

The UK played a key role in the adoption of United Nations Security Council Resolution 1435 on 24 September which expressed alarm at the reoccupation of Palestinian cities. It demanded an end to all acts of violence and repeated the need for respect in all circumstances of international humanitarian law. It demanded an immediate end to Israeli measures in and around Ramallah, and withdrawal of Israeli forces from Palestinian cities. It called on the Palestinian Authority to meet its commitment to ensure that those responsible for terrorist acts are brought to justice.

The Prime Minister is personally committed to a new conference on the Middle East Peace Process based on the twin principles of a secure Israel and a viable Palestinian State, and to reviving final status negotiations between the parties urgently. We have long held that an international conference addressing political, security and economic issues could provide impetus behind a renewed political process.

The immediate focus of international activity is on work by the Quartet (US, EU, UN and Russia) to draw up a three-phase roadmap that could achieve a final settlement within three years. We expect the plan to be comprehensive, including the Syrian and Lebanese tracks, and to address the political, economic, humanitarian, institutional and security dimensions. It would spell out reciprocal steps to be taken by the parties in each of its phases. Progress would be based on the parties' performance against specific benchmarks such as comprehensive Palestinian security reform and Israeli withdrawal to pre-intifada positions by mid-2003 as the security situation improves. These benchmarks would be monitored and assessed by the Quartet. US Assistant Secretary of State Bill Burns travelled to the region in late October to consult key regional partners on the roadmap.

We recognise the dire humanitarian situation in the Occupied Territories. Overall we plan to spend £32 million in 2002-03 through our bilateral programme in the West Bank and Gaza Strip and our contribution to the United Nations Relief and Works Agency (UNRWA). We also fund 20 per cent of the European Commission's Palestine Programme, and contribute a 5 per cent share of the World Bank's Trust Fund for the West Bank and Gaza. We have provided over £12 million to UNRWA, the World Food Programme, the World Bank as well as local and international NGOs in response to emergency initiatives resulting from the intifada.

Reform of the Palestinian Authority is an important element of efforts to implement the call made by President Bush in June for a final settlement within three years, and to prepare for Palestinian statehood. We have supported international donor co-ordination to assist reform through the Task Force on Reform, and have called for the early appointment of a new Palestinian Cabinet capable of delivering credible reforms. We have provided advisers to assist the reform process.

7. *"The Committee wishes to be provided with more detail on HMG's work to address the factors which have led to the growth of Islamic extremism in the Middle East."*

We are consulting with partners in the UK and overseas on strategies for responding to a growth in violence and anti-western hostility that claims to have a religious motivation. Within the FCO we are also working on a comprehensive strategy towards the Arab world, including policies to address the causes of extremism and violence.

The FCO has allocated funds for promoting women's rights in Muslim countries. Posts in the Middle East and North Africa are supporting economic and political reform as a priority, in some cases through projects, eg:

- Morocco: booklet promoting electoral awareness among rural population.
- Yemen: projects to encourage women to participate in next year's election.
- Kuwait: sponsored visit by Kuwaiti women's organisations as part of promoting the political process.
- Iran: seminar with Iranian academics, government and religious officials within the framework of the Dialogue among Civilisations.
- Saudi Arabia: continued support for reform efforts (and help for funding with youth exchanges).
- Algeria/Tunisia: with EU partners use the mechanisms of the EU Association Agreements to press for reform.

The FCO has given full support and assistance to the interfaith initiative on the Middle East Peace Process, whose most recent meeting was at Lambeth Palace this month.

Research Analysts have been involved in a number of projects, seminars and engagements with the Muslim community eg a seminar on radical Islam in November 2001. The FCO is also planning to organise a seminar with moderate Islamists. Research trips have also had a strong Islamic focus and have helped forge relationships and contacts with the Muslim community in countries across the Middle East, South and South East Asia. The group has well established links with the Muslim community and continues to build and sustain good contacts both with the Muslim community in Britain and abroad.

The FCO Arabic spokesman gives several interviews a week to pan-Arab broadcast media, and participates in discussion programmes.

"Connecting Futures" is a five year British Council initiative which aims to build better understanding, learning and respect between young people from different cultural backgrounds, by working in new ways and with extended communities in the UK and overseas. Post 11 September 2001, due to the recognised need to address the gulf of understanding between communities in the UK and in the Arab and Muslim world, we are focusing initially but not exclusively on activities in Bangladesh, Egypt, Indonesia, Iran, Malaysia, Nigeria, Pakistan, the Palestinian Territories, Saudi Arabia, Turkey and the UK. From 2003-04 financial year, we shall include the other countries in the Middle East and North Africa, including Israel; Central Asia; Crimea/Ukraine; and South East Europe. Our work in Afghanistan is also relevant. Our target audience is aged 15-25 years and we aim to reach three million young people per annum.

THE THREAT FROM WEAPONS OF MASS DESTRUCTION

8. *"The Committee requests a fuller statement of how the FCO discharges its lead responsibility for responding to threats to UK interests overseas."*

The FCO response to the pervasive threat from Weapons of Mass Destruction (WMD) is essentially a proactive one, seeking wherever possible to prevent their further development or proliferation by means of a variety of tools—multilateral arms control agreements; export control regimes; action to assist in the destruction or disposal of existing weapons stock and materials.

Where there is a direct and immediate threat to UK interests overseas, the FCO would have lead responsibility, albeit as part of an integrated Whitehall-wide response that would draw upon a wide range of other departments and agencies, co-ordinated through Cabinet Office mechanisms. This structure applies whatever the nature of the threat, although of course the serious nature of a situation involving the possible use of Weapons of Mass Destruction would affect the level and urgency of government activity.

A primary objective for the FCO is to prevent nuclear, biological or chemical weapons materials falling into the hands of terrorists and those who support them. To this end the UK continues to take every opportunity to urge the international community to co-operate further in preventing the further proliferation of such weapons and materials. More specifically the FCO takes the lead in seeking to extend the global spread of the major international Treaties which prohibit the proliferation of WMD—the Nuclear Non-Proliferation Treaty (NPT), Chemical Weapons Convention (CWC) and the Biological Weapons Convention (BWC). In the course of 2002 we have taken action, both nationally and in concert with our EU partners, to promote their universality.

Since the events of 11 September last year, each of the multilateral export control regimes has been examining how it can contribute to the prevention of WMD falling into the hands of terrorists. The Australia

Group has introduced formal guidelines which refer explicitly to the possibility of terrorist use of chemical and biological weapons, and is refining its lists of controlled goods to catch more items of use for small-scale production of chemical and biological agents. The Nuclear Suppliers Group and Missile Technology Control Regime are considering how they can make explicit their commitment to prevent technology falling into the hands of terrorists, for instance by amending their guidelines.

The Prime Minister announced to Parliament in July this year a commitment of up to \$750 million over 10 years to the G8 "Global Partnership Against the Spread of Weapons and Materials of Mass Destruction". Our contribution to this co-operative effort will include work in areas such as Plutonium Disposition in Russia; the destruction of Russian Chemical Weapons stocks; nuclear materials accountancy at nuclear facilities across the former Soviet Union (FSU); and the physical protection of nuclear materials across the FSU. We will continue to play a leading role in developing this Partnership at G8 level and beyond. The UK has also provided an initial voluntary contribution of £250,000 to the International Atomic Energy Agency's Prevention Against Nuclear Terrorism' fund, and will continue to urge others to follow suit.

THE LEGAL BASIS FOR MILITARY ACTION

9. *"The Committee will wish to have a note on the latest position with regard to UN Security Council Resolutions on Iraq and on the legal basis under which military action might be taken against Iraq: (a) to remove weapons of mass destruction, or (b) to bring about a change of regime."*

After several weeks of bilateral and collective discussions with the other Permanent Members of the Security Council, the US and UK presented a draft text to the full Security Council on 23 October. Negotiations are continuing.

The Committee will appreciate that these Security Council discussions are confidential. So we are not at this stage able to share the draft text. In broad terms, however, the draft declares Iraq to be in violation of previous resolutions, and sets out new procedures for the conduct of inspections together with the consequences of Iraqi non-cooperation.

Our view of the legal position on military action remains as cited by the Committee in its 20 June 2002 report on the Foreign Policy Aspects of the War Against Terrorism. The objective of any military action would depend on all the circumstances, including the terms of any relevant Security Council resolutions.

THE INTERNATIONAL COALITION

10. *"The Committee wishes to know whether the Government is prepared to act militarily against Iraq together with the United States as a coalition of two in the event that no other country is willing to take such action."*

A decision to launch military action against Iraq has not been taken and is not inevitable. Our efforts are focused on disarming Iraq of its WMD through the establishment of an effective inspection regime. What we would do in the event that these efforts failed would depend on the circumstances at the time.

*Parliamentary Relations and Devolution Department
Foreign and Commonwealth Office*

28 October 2002

APPENDIX 8

Correspondence between the Chairman of the Committee and the Secretary of State, Foreign and Commonwealth Office.

Letters from the Chairman to the Foreign Secretary

PRE-EMPTIVE SELF-DEFENCE

You may recall that, at the Foreign Affairs Committee meeting on 25 September, the following exchange took place between us:

Chairman

41. Foreign Secretary, in 1981 you will recall Israel bombed a nuclear reactor in Iraq. In the light of the development of the doctrine of pre-emptive self-defence would we still be joining in the chorus of disapproval of Israel?

(Mr Straw) I am afraid I am not sufficiently familiar with the history of that. If you want me to offer you a definitive view I will write to you.

I did not take you up on that offer at the time, but I would like to do so now. I would be grateful to receive a note giving the Government's definitive view on the legitimacy of Israel's 1981 pre-emptive military strike on the Osiraq reactor at Al Tuwaitha, Iraq.

It is the Committee's intention to make a further Report to the House before the Christmas recess. In order to meet the Committee's timetable, I would very much appreciate receipt of the note on or before Monday 2 December.

*Chairman
Foreign Affairs Committee*

25 November 2002

Letter from the Foreign Secretary to the Chairman

Thank you for your letter of 25 September asking for our view of the Israeli raid on the Osirak nuclear plant in Iraq in 1981.

Our view of the raid was spelled out at the time in the Security Council by Sir Anthony Parsons, the then British Ambassador, in the following terms:

"It has been argued that the Israeli attack was an act of self-defence. But it was not a response to an armed attack on Israel by Iraq. There was no instant or overwhelming necessity for self-defence. Nor can it be justified as a forceful measure of self-protection. The Israeli intervention amounted to a use of force which cannot find a place in international law or in the charter . . .".

I see no reason to change that judgement now.

Foreign Secretary

2 December 2002

APPENDIX 9

Memorandum from Dr Stephen Pullinger, Executive Director, International Security Information Service (ISIS)

WMD AND IRAQ

BIOLOGICAL WEAPONS

1. The term 'weapons of mass destruction' (WMD) refers to nuclear (and radiological), biological and chemical weaponry. To an extent the aggregation of the term obscures the particular nature of the threat posed by each of these types of weapon. When communicating its concerns to the British people about biological weapons in particular the government needs to provide more explanation.

2. Most people have a conception of nuclear weapons and the devastation they can cause—the images of mushroom clouds and horrifically scarred victims at Hiroshima and Nagasaki. Similarly, chemical weapons conjure pictures of choking troops in the trenches of World War One. But, with regard to biological weapons (BW), there is a much more uncertain public perception. Most people associate the term 'biological' more with soap powder than disease.

3. This problem of public perception must be addressed urgently. Biological warfare is the deliberate use of disease—bacteria (such as anthrax or plague), viruses (such as smallpox or Ebola) and toxins—that can attack people, animals or plants.

4. It is a myth that BW have only a limited military application and utility. The quantities needed to cause casualties are much smaller than those needed for chemical weapons and the number of potential casualties are more akin to those resulting from nuclear use.

5. The former Soviet Union and Iraq are two countries that are *known* to have developed extensive BW programmes, but others are also suspected of having done so.

6. BW may also be attractive to terrorists. Unlike nuclear weapons, BW can be produced relatively easily and cheaply and the technical/scientific expertise needed is not great. The Aum Shinrikyo sect, for example, responsible for the Tokyo subway chemical weapon attack in 1995, had also attempted to use them, although without causing any casualties. It was working on botulinum toxin and anthrax, and had assembled several devices to disseminate such agents.

7. The impact of naturally occurring disease can be enormous. Take two examples. The strain of influenza that swept through Europe after World War I killed more people than were killed during that war, and more quickly. The spread of Foot and Mouth through Britain in 2000–01 inflicted billions of pounds worth of damage to our farming and tourist industries and beyond.

8. We are now seeing rapid advances in biotechnology, some of which is based on the manipulation of genes and on alterations to the genetic structure of cells. While this revolution will offer many benefits to the world, it will also open up a whole new range of prohibited applications that could lead to the development of new and more efficient biological weapons. For example, it might be possible to modify a micro-organism to change the way it interacts with the immune system, say, to dramatically increase the lethality of influenza. The Soviet Union apparently developed a genetically engineered strain of plague that was resistant to antibiotics.

9. Disease can take hold before one realises the scale and nature of the problem, let alone from where the outbreak originated, and let alone also whether the disease arose naturally or was introduced deliberately. This delayed effect means that attribution is difficult and, especially when an endemic disease is used for an attack, it is plausible both to hide and deny the BW attack.

10. Nor can one assume that BW will necessarily remain under strict government control, and their use, therefore, be determined by rational calculation of political leaders. States can break up—as did the former Soviet Union—controls over BW programmes can dissipate as a result, and unemployed scientists can be hired by new masters. Over 60,000 scientists were employed on BW-related work in the former Soviet Union. Many are now without jobs. Who knows where they all are, or whether they are marketing their dangerous expertise for others to exploit?

11. Perhaps the most frightening scenario for biological warfare is the “suicide infector”, who deliberately infects himself with the smallpox virus, travels to a major city and then spreads the infection—perhaps by simply touring around on public transport. By the time the health authorities became aware of the problem they were facing it would be too late to save the lives of enormous numbers of people. Moreover, simply making the public aware of that problem would inevitably result in unimaginable social consequences. The draconian enforcement of sealing off a major city from contact with the rest of the country is frightening to contemplate in itself.

12. In the context of biological warfare, therefore, concepts of containment and deterrence begin to lose relevance. Those who might pursue the cultivation and manipulation of disease for nefarious purposes must be stopped, not simply contained. Once viruses and bacteria spread and infections multiply through invisible micro-organisms, all rational calculations about deterrence theory appear redundant.

POLICY TOWARDS IRAQ

13. Although there may be disagreement about the extent of Iraq’s WMD programmes, few would contest that such programmes exist. We also know that Iraq has used its chemical weapons previously, against its own Kurdish population and against Iran, but that it did not use any WMD during the Gulf War against the Allies.

14. If Iraq is found to be pursuing nuclear, chemical and biological weapons programmes it will be in contravention not only of the UN Security Council’s disarmament resolutions, but also to the terms of the Nuclear Non-Proliferation Treaty (NPT), and Biological and Toxin Weapons Convention (BTWC).

15. The UK Government’s policy is to ensure the successful implementation of Iraq’s WMD disarmament obligations. One would expect that even those opposed to taking military action against Iraq to enforce those obligations—should it come to that—would agree that Iraq should desist from its pursuit of WMD.

16. The first question is how do you enforce those obligations upon Iraq if it refuses to comply? And the answer to that is contingent on one’s assessment of the balance of risk and consequence of either disarming Iraq forcibly or failing to do so.

17. There are, of course, enormous risks in trying to disarm Iraq through military means, if the inspection route fails: the almost inevitable deaths of large numbers of Iraqi civilians, as well as of combatants on both sides; the possible use of WMD by Iraq against Allied and Israeli targets; the consequences for the region of Israel being drawn into a wider Middle Eastern war; the impact on the global economy (at least in the short term), and so on.

18. Not acting forcibly to disarm Iraq, on the other hand, carries risks too. Were the international community to back down, one could expect an emboldened Saddam to continue or accelerate his WMD programmes. At some point in the future he might develop a deliverable nuclear capability and/or develop significant stocks of deadly viruses and nerve agent. How would this impact on regional and global security?

19. The first point to make is that Israel may not await the development of such a deliverable capability. As it did in 1981, when it attacked and destroyed Iraq’s Osirak nuclear plant, Israel might take pre-emptive military action against Iraq’s latent WMD programmes. One recalls the oft-stated maxim that “Israel would not be the first to use weapons of mass destruction in the Middle East, but nor would it be the second”.

20. Clearly, the US Administration (and perhaps also HMG) has decided that it is not prepared to accept the constraints of a deterrent relationship with Iraq, as it did have to accept previously with the Soviet Union. In other words, the US wants to be able to act in defence of its strategic interests in the Middle East without fear of being confronted by a state capable of hitting US targets with a weapon of mass destruction. (Nor does the US or UK have confidence that a stable deterrent relationship with Iraq could be established in any case.)

21. The US does not want a nuclear-armed Iraq to use its military muscle to acquire control over a vast portion of the world's oil reserves and then to hold the world to ransom through threat of nuclear or biological use if anyone tries to reverse Iraqi conquests. Under this scenario it would be the rest of the world, including the US, that would be deterred from acting.

22. Proponents of the 'containment' strategy would argue that Iraq would not and should not ever be allowed to exercise its military muscle in this way; that deployed Allied forces in the region would always keep Iraq's forces contained. Saddam's strong sense of self-preservation would dissuade him from acting in ways that invited devastating retaliation and his subsequent demise.

23. Yet, it is beyond peradventure that Iraq's possession of WMD, especially if capable of reaching major European targets and beyond, would at the very least destabilise the region and prove a constant source of political and economic uncertainty.

24. If Iraqi scientists are allowed a free hand to develop, enhance and weaponise deadly diseases how confident could we be that such diseases would not one day and by one means or another spread sickness and death on an epidemic scale against vulnerable populations?

25. For the reasons set out above it is imperative that British Government policy towards Iraq should be one of WMD disarmament, pursued through the United Nations and prosecuted within international law. In the longer term, as the Committee has previously recommended

Britain...has a key role and a key responsibility in trying to put all Weapons of Mass Destruction under international arms control regimes and in making progress towards their complete elimination. This must surely be one of the highest foreign policy priorities for the Government.⁶

26. If and when we achieve a world in which the possession of all weapons of mass destruction is banned, ensuring strict compliance with that international norm will be paramount. Intrusive inspections and UN Security resolutions backed, if necessary, by force will become vital components of a world free from the scourge of WMD. How we deal with Iraq today may signal how likely we are to reach such a world.

Dr Stephen Pullinger
Executive Director
International Security Information Service (ISIS)
October 2002

APPENDIX 10

Memorandum from the House of Bishops, The Church of England

EVALUATING THE THREAT OF MILITARY ACTION AGAINST IRAQ

The passion for inflicting harm, the cruel thirst for vengeance, an unpacific and relentless spirit, the fever of revolt, the lust of power, and such like things, all these are rightly condemned in war.... True religion looks upon as peaceful those wars that are waged not for motives of aggrandisement or cruelty, but with the object of securing peace, of punishing evil doers, and of uplifting the good.

St Augustine

A. EXECUTIVE SUMMARY

1. The Church of England's House of Bishops is grateful for the opportunity to contribute to the House of Commons Foreign Affairs Select Committee's ongoing inquiry into the war on terrorism, and its decision to extend this inquiry to Iraq. The following submission reflects the House of Bishops' ongoing concern for Iraq and the wider region of the Middle East. At its meeting 8–9 October 2002 the House of Bishops agreed unanimously that the following report and its conclusions should be submitted to the House of Commons Foreign Affairs Select Committee's ongoing inquiry into the war on terrorism. The report's analysis leads us to make the following conclusions:

- We affirm the Government's stated policy of disarming Iraq of its weapons of mass destruction (WMDs). Unfettered and unhindered access must be gained for the UN weapons inspectors, in order to facilitate the identification and destruction of Iraq's WMD in compliance with all relevant UNSC resolutions.
- We hold that the primary international concern remains Iraq's blatant disregard of the UN and its authority as expressed in relevant United Nations Security Council resolutions (UNSC). Any unilateral action to enforce Iraq's compliance with such resolutions risks further undermining the credibility and authority of the UN.

⁶ Weapons of Mass Destruction, *Eighth Report of Foreign Affairs Committee*, Session 1999–2000, HC 407, Para. 124, p.xxxix.

- We recognise that in those instances where diplomatic and economic pressure fail to ensure compliance with UNSC resolutions, military action can sometimes be justified as a last resort to enforce those resolutions.
- We nonetheless hold that to undertake a preventive war against Iraq at this juncture would be to lower the threshold for war unacceptably.
- We believe that if military action were to be considered as a last resort, the outcome in terms of suffering on all sides could be immense, with widespread and unpredictable environmental, economic and political consequences. There would also be implications for inter faith relations. We therefore urge that these concerns should be central to all political and military planning.
- We support and encourage the Prime Minister in his efforts to press for a new international conference to revitalise the middle east peace process, based on the twin principles of a secure Israel and a viable Palestinian state. We believe such a conference has an important role in trying to promote the wider stability of the region at a time of widespread suspicion and insecurity.

2. In making these conclusions the House of Bishops encourages people of all faith to pray for the world and its leaders in the search for a just and peaceful resolution of this situation.

B. INTRODUCTION

3. The events of 11 September 2001 and the ensuing war on terrorism have generated heated debate about the efficacy or morality of extending the war on terrorism to include other countries such as Iraq, Iran and North Korea. The public diplomacy of both the United States of America and the United Kingdom has been increasingly characterised by the need for either a multilateral or unilateral preventative or pre-emptive action against Iraq, with the prospect of regime change a distinct possibility. This briefing paper examines the arguments for and against the use of military force against Iraq, and the moral, legal and political hazards associated with such a policy. It examines the impact and effectiveness of United Nations sanctions over the last decade and the speed and depth by which Iraq has redeveloped its Weapons of Mass Destruction (WMD) programme post 1998. Does the evidence presented to date support the premise that Iraq presents a clear and present danger justifying the need for pre-emptive action? Or, does Iraq pose a growing threat, which can be tackled without the immediate recourse to war through a reinvigorated policy of containment and deterrence? Answers to these questions are central to the debate and affect subsequent analysis as to the appropriate legal framework through which any further action should occur.

4. While most public attention is pre-occupied by the immediacy of current events, it remains important to contextualise the debate within a wider security paradigm which has emerged following the terrorist attacks of 11 September 2001. It is difficult to understand current US policy to Iraq without recourse to the US's National Security Strategy document published in September 2002. This document, more than any other, underpins not only US policy towards Iraq, but also US foreign policy priorities in a post Cold War era where the US finds itself more a hyper-power than a super-power. Questions still remain as to the normative values underpinning this strategy as well as how it will challenge or reinforce traditional definitions of the international community, and the role of multilateral institutions within it.⁷ The current debate is not just about Iraq, but about the nature of the international community and its ability or inability to accommodate American hegemony.

5. This paper uses the methodology associated with the just war tradition. Despite its limitations, just war thinking seeks to establish the principles, criteria and rules that can help Christians to make a judgement as to whether a particular use of force is morally acceptable or even desirable. Its utility has been shaped and sustained through an ongoing dialogue between Christian and secular authorities over many centuries. This dialogue has shaped methods of statecraft, rules of military engagement while still providing guidance to conscientious individuals grappling with the moral ethics associated with war. From an institutional perspective its value lies in providing the Church with a framework of understanding to contribute to discussions on the ethics of war, but in such a way that ensures the Church is both heard and understood.

C. HISTORICAL BACKGROUND

6. Immediately following Iraq's invasion of Kuwait the United Nations Security Council introduced under Chapter VII of the UN Charter a comprehensive sanctions regime against Iraq on 2 August 1990. Resolution 661 proposed a ban on all trade, an oil embargo, the suspension of international flights, an arms embargo, the freezing of Iraqi government financial assets and the prohibition of financial transactions.⁸ Although sanctions played an important role in isolating Iraq internationally, they failed to achieve their primary purpose, namely Iraq's evacuation of Kuwait. This objective was secured by an international military coalition in early 1991 after a five-week air campaign and a four-day land offensive.

⁷ Birthe Hansen; *Unipolarity and the Middle East*, London, 2000.

⁸ United Nations, *Security Council Resolution 661*, S/RES/661 (1990), 6 August 1990

7. Any evaluation of the need for future military action against Iraq needs to be placed in a wider context recognising those military, economic and diplomatic initiatives, which have shaped the international community's relationship with Iraq since the end of the Cold War. At the end of the Gulf War, Iraq accepted the terms of UN Security Council resolution 687.⁹ This set out the terms of the cease-fire and laid down conditions for the lifting of sanctions. From a legal perspective the resolution provided only for a cease-fire rather than a peace settlement. Any peace settlement and subsequent normalisation of relations was depended upon the Iraqi Government complying with the eight specific requirements set out in the resolution. These include:

- Recognition of Kuwait's territorial integrity and newly demarcated international borders with Kuwait.
- Acceptance of a demilitarised zone with UN peacekeepers along the Iraqi-Kuwait border.
- The monitoring and destruction of all chemical, biological and ballistic missile weapons and acceptance of a permanent ongoing monitoring programme managed by the United Nations.
- The monitored elimination of nuclear weapons materials and capabilities, supervised by the International Atomic Energy Agency (IAEA).
- The return of all stolen property from Kuwait.
- Acceptance of war damage liability and a compensation fund managed by the UN.
- Repatriation of all Kuwaiti and third-party nationals.
- A pledge not to commit or support any act of international terrorism.

8. Although Iraq accepted resolution 687 on 10 April 1991 it has failed to fully implement the stated terms of this resolution. As a result, the Iraq and the UN have been consistently at loggerheads over both the interpretation and implementation of resolution 687. Successive UN Security Council resolutions have failed to resolve this issue. Most controversy has centred round the disarmament provisions of resolution 687. Iraq's failure to satisfactorily comply with this resolution is one of the reasons given as to why sanctions have remained in place for twelve years, and why the international community is presently considering further military action against Iraq.

D. DISMANTLING IRAQ'S WEAPONS OF MASS DESTRUCTION

9. Under resolution 687 Iraq was required to present within 15 days of accepting resolution 687 a full declaration of all its nuclear, ballistic missile, chemical and biological weapons.¹⁰ Twelve years on, a full accounting has not yet been received. Resolution 687 established a UN Special Commission (UNSCOM) to carry out site inspections and assure the dismantling of all materials covered in the resolution. Although the Iraqi Government allowed UNSCOM access to the country it persistently thwarted UNSCOM's activities by providing false information and denying access to important sites. Iraq's chosen policy was one of cheat and retreat. However, the Iraqi Government alleged that UNSCOM was engaged in unofficial intelligence related activity. The UN's frustration came to ahead in December 1998 when it withdrew UNSCOM observers in advance of Operation Desert Fox.

10. Operation Desert Fox amounted to a seven-day aerial bombardment of key military and strategic sites in Iraq. The aim of Operation Desert Fox was to force Iraqi compliance with resolution 687 in general and its disarmament provisions in particular. However, ever since Operation Desert Fox no UNSCOM observers have been allowed access to Iraq. It is worth noting that no UN Security Council resolution was sought for Operation Desert Fox. Both the UK and the US argued that Iraq's contravention of the cease-fire resolution invoked past UNSC resolutions which provided the authority for the international community to restore international peace and security following Iraq's invasion of Iraq's eviction from Kuwait.

11. Despite repeated attempts by the Iraqi government to undermine UNSCOM's activities, UNSCOM made considerable progress towards eliminating Iraq's chemical, biological, ballistic missile, and nuclear weapons programmes.¹¹ Most progress was made in the nuclear realm. Iraq's uranium enrichment and other nuclear production facilities were identified and destroyed early in the inspection programme. In 1997 UNSCOM reported that "there are no indications that any weapons-usable nuclear materials remain in Iraq" and "no evidence in Iraq of prohibited materials, equipment or activities."¹² In 1998 the International Atomic Energy Agency echoed this conclusion when it reported that "Iraq had satisfactorily completed ... its full,

⁹ United Nations, *Security Council Resolution 687*, S/RES/687 (1991), 8 April 1991.

¹⁰ United Nations, *The United Nations and the Iraq-Kuwait Conflict 1990-1996*, United Nations Blue Book Series, Vol. 9, New York, 1996, p. 77.

¹¹ In August 2002, the Foreign Secretary, Jack Straw, in an attempt to distinguish UK policy of getting the weapons inspectors back into Iraq from the US policy of regime change, clarified this perception. He stated, "with respect to the search for weapons of mass destruction and non-nuclear materials, they (ie. the weapons inspectors) were doing an increasingly tough job, which is why Saddam Hussein kicked them out." As quoted by Nicholas Watt; "Pressure on Bush to Back Off", *The Guardian*, 29 August 2002, p.1.

¹² United Nations Security Council, *Letter Dated 22 November 1997 from the Executive Chairman of the Special Commission Established by the Secretary-General Pursuant to Paragraph Nine (b)(i) of Security Council Resolution 687 (1991) Addressed to the President of the Security Council*, S/1997/922, 24 November 1997, p. 3.

final and complete declaration of its clandestine nuclear program.”¹³ Although these conclusions need to be set against the partial information provided by the Iraqi Government, most observers concluded that by 1998 Iraq’s nuclear threat had been effectively neutralised.¹⁴

12. Significant steps were also taken to eliminate Iraq’s ballistic missile programme. By 1998, all but two of the 819 SCUD missiles known to have existed at the start of the Gulf War were accounted for, and no evidence was uncovered to suggest that Iraq was secretly manufacturing or testing indigenous ballistic missiles.¹⁵ Large volumes of Iraq’s chemical weapons capability were also destroyed by 1998. The March 1999 report of the UN experts panel, stated that inspectors “supervised or certified the destruction, removal or rendering harmless of large quantities of chemical weapons, their components and major chemical weapons production equipment. The prime chemical weapons development and production complex in Iraq was dismantled and closed under UNSCOM supervision and other identified facilities have been put under monitoring”.¹⁶ Importantly this finding was upheld by UNSCOM reports.¹⁷ In 1998 a report by the British Foreign and Commonwealth Office confirmed that UNSCOM had destroyed 38,000 chemical weapons and 480,000 litres of live chemical agents.¹⁸ Despite these results important elements of Iraq’s chemical programme remained unaccounted for. According to a statement by the British Foreign Secretary in March 2002: “The weapons inspectors were unable to account for 4,000 tonnes of so-called precursor chemicals used in the production of weapons, 610 tonnes of precursor chemicals used in the production of nerve gas and 31,000 chemical weapons munitions”.¹⁹

13. Much less progress was made in destroying Iraq’s biological weapons capacity. A panel of international experts reported in 1998 that Iraq’s disclosures on biological weapons were “incomplete, inadequate and technically flawed.”²⁰ Yet even here some progress was made. UNSCOM supervised the destruction of Iraq’s main biological weapons and production and development facility, Al Hakim, and destroyed equipment at four other facilities.²¹ However, the 1999 experts panel report noted that Iraq retained the capability for producing biological warfare agents “quickly and in volume” but also observed that “some uncertainty is inevitable” in such a verification effort.²² A central problem in this respect is the dual use character of many biological agents which makes the verification of a biological capability inherently more difficult than monitoring nuclear or ballistic missile programmes.

14. UNSCOM’s withdrawal from Iraq at the time of Operation Desert Fox in 1998 and Iraq’s subsequent refusal to allow UNSCOM or its successor UNMOVIC entry into Iraq has created new dilemmas for the United Nations. The UN has been denied any mechanism to verify the existence of any remaining pre-1998 stock of chemical, biological or nuclear weapons. It has also been denied the opportunity to monitor any attempts by the Iraqi Government to rebuild its weapons of mass destruction. Instead it has been forced to rely on the effectiveness of its sanctions regime to control Iraq’s acquisition of material necessary to facilitate such production. Yet the effectiveness of the sanction’s regime, and with it the policy of containment, has been compromised by a sense of sanctions fatigue resulting from both Iraq’s refusal to co-operate with the UN and the UN’s unwillingness to make concessions.

15. In recognition of the fact that the most dangerous programmes, nuclear weapons and ballistic missiles, were effectively contained by 1998, a number of member countries on the UN Security Council urged a formal certification of Iraqi compliance and a closing of the nuclear, ballistic missile, and chemical inspection files. Russia, China and France urged the gradual lifting of sanctions as a response to the progress achieved on weapons inspections as a means of encouraging further Iraqi co-operation. They argued that sanctions arguably work best when combined with incentives as part of a carrot and stick diplomacy designed to resolve conflict through negotiation.²³ In the case of Iraq, however, they suggested there had been no reciprocation of Iraq’s concessions and thus no incentive for the Iraqi government to take further steps towards compliance.

16. Since Operation Desert Fox there have been repeated efforts to find a solution to the impasse. The drive to break the impasse has been driven both by geopolitical considerations and by the need to regain the moral high ground given the widespread criticism that sanctions have caused a humanitarian disaster. Most efforts have centred on developing more targeted sanctions while simultaneously improving the provisions for humanitarian aid. The British Government played a constructive part in this process by negotiating UN

¹³ United Nations Security Council, *Letter Dated 9 April 1998 from the Secretary-General Addressed to the President of the Security Council, appendix: Fifth Consolidated Report of the Director General of the International Atomic Agency Paragraph Sixteen of Security Resolution 1051 (1996)*, S/1998/312, United Nations, New York, p. 11.

¹⁴ Steven Dolley, *Iraq and the Bomb: The Nuclear Threat Continues*, Washington, D.C., Nuclear Control Institute, 19 February 1998.

¹⁵ United Nations Security Council, *Report of the Executive Chairman on the Activities of the Special Commission Established by the Secretary-General Pursuant to Paragraph Nine (b) (i) of Resolution 687 (1991)*, S/1998/332, 16 April 1998, p. 10.

¹⁶ United Nations Security Council, *Letters Dated 27 and 30 March 1999*, S/1999/356, p. 10.

¹⁷ United Nations Security Council, *Letter Dated 22 November 1997*, S/1997/922, p. 4.

¹⁸ Foreign and Commonwealth Office, *Foreign Office Paper on Iraqi Threat and Work of UNSCOM*, London, 4 February 1998.

¹⁹ *House of Commons Official Report, Parliamentary Debates*, Wednesday 6 March 2002, Vol. 381, Col 744.

²⁰ United Nations Security Council, *Report of the Executive Chairman of the Special Commission*, S/1998/332, p. 17.

²¹ United Nations, *Letters Dated 27 and 30 March 1999*, S/1999/356, p. 12.

²² *Ibid.*, pp. 12–13.

²³ David Cortwright and George Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s*, International Peace Academy, 2000, p. 56.

Security Council resolution 1284.²⁴ This resolution provided for sanctions to be suspended for renewable periods of 120 days so long as Iraq co-operated with a new UN Monitoring, Verification and Inspection Commission (UNMOVIC) to replace UNSCOM.²⁵ The resolution also lifted the ceiling on the volume of Iraqi oil exports for humanitarian purchases, while easing the import of some agricultural and medical equipment. Although the UK government signalled that resolution 1284 would restore international consensus on Iraq, only the UK and the US voted in favour, while Russia, China and France all abstained. This fragmentation might explain why Iraq rejected resolution 1284.

17. The UN again attempted to resolve this crisis in November 2001 with UN Security Council resolution 1382.²⁶ Resolution 1382 restates the central provisions of resolution 1284 that suspension of sanctions remains dependent on Iraq's compliance of its obligations under UN resolutions and its agreement to co-operate with UN weapons inspectors. In addition, the resolution contains arrangements for targeted controls on Iraq by introducing a Goods Review List, under which Iraq would be free to meet all of its civilian needs, while making more effective the existing controls on items of concern, such as military and WMD related goods. According to the UK Foreign Secretary: "The UN decision will soon mean no sanctions on ordinary imports into Iraq, only controls on military and weapons related goods. Iraq will be free to meet all its civilian needs. The measures leave the Baghdad regime with no excuses for the suffering of the Iraqi people."²⁷ In addition, the resolution aims to build greater co-operation with Iraq's neighbours through an expanded trade regime. This resolution came into force on 30 May 2002. The expanded trade regime is especially important to strengthen the waning support of those countries like Jordan and Turkey, which have experienced significant trade diversion as result of the sanctions regime. This trade diversion has encouraged an illicit cross border trade, the depth of which remains uncertain.

18. The Iraqi Government has consistently refused to accept these new resolutions. Iraqi foreign policy is driven by the attainment of two goals—an end to sanctions and the survival of the regime. Its skilful manipulation of the concerns of the original members of the Gulf War coalition has seriously, and perhaps terminally, undermined the present sanctions regime. On the one hand the Iraqi Government argues that it has complied with the original UN resolutions and that sanctions should therefore be lifted. The Iraqi Government sees the continuation of the UN sanctions policy as illustration of a hidden US agenda, namely regime change, and that to co-operate further with the UN would be to precipitate this event. On the other hand, there is evidence to suggest Saddam Hussein believes the longer the sanctions persist, the greater his chances of dividing the international community, so resulting in a further weakening of the international commitment to maintain sanctions. Co-operation with the UN would therefore be seen a counterproductive to this strategy. In fact the preferred strategy, as has been seen increasingly in recent months, is the issuing of statements, which appear to open up the possibility of UN weapons inspectors returning to Iraq. In reality these statements are designed to divide the international community as the provisions attached to such offers are so conditional to make them unacceptable to the US and the UK. Lastly, it is important to recognise the role, which Saddam Hussein has consistently tried to carve out for himself as leader of a pan-Arab nationalism. This was certainly one of the factors behind Iraq's invasion of Kuwait in 1990.²⁸ The persistence of the sanctions regime, and the renewed talk of military action against Iraq all help to create an image within the Arab world of Iraq standing up to western imperialism. It is possible that Saddam Hussein believes that this role might have even greater resonance now following the military action in Afghanistan. The danger however, is that this strategy if pursued to its logical conclusion will backfire just as it did during the Gulf War.

E. 11 SEPTEMBER 2001 AND US SEARCH FOR AN END GAME

19. To some the ongoing crisis reflects not only Iraqi but also American intransigence towards the UN. Resolution 687 states explicitly that the ban on Iraqi exports will be lifted when Iraq complies with UN weapons inspections. However, even as early as 1997 President Clinton remarked, "sanctions will be there until the end of time or as long as Saddam Hussein lasts."²⁹ In December 1998, on the eve of Operation Desert Fox, President Clinton again stated: "The hard fact is that so long as Saddam Hussein remains in power, he threatens the well being of his people, the peace of the region, the security of the world. The best way to end that threat once and for all is with a new Iraqi government, a government ready to live in peace with its neighbours, a government that respect the rights of the people."³⁰ This policy came to fruition in October 1998 when the US Congress passed the 'Iraq Liberation Act', which made significant money available for the

²⁴ United Nations, *Security Council Resolution 1284*, S/RES/1284 (1999), 17 December 1999.

²⁵ While UNSC resolution 1284 mandated UNMOVIC to continue the work of UNSCOM there are nonetheless significant differences between the two bodies. It stipulated that UNSCOM should report to the UNSC within 60 days of re-entering Baghdad for approval of its work plan. In an attempt to minimise outside influence on UNMOVIC by one or more members of the UNSC, 1284 stipulated that UNMOVIC should have a College of Commissioners and that its Chairman should report direct to the UN Secretary General. However, it needsto be recognised that UNMOVIC was still bound by the 1998 memorandum of understanding that prevented its access to Presidential sites within Iras.

²⁶ United Nations, *Security Council Resolutions 1352*, S/RES/1382 (2001), 29 November 2001.

²⁷ Statement by the British Foreign Secretary, Jack Straw, 30 November 2001.

²⁸ Marionj Farouk-Sluglett; *Iraq Since 1958: From Revolution to Dictatorship*, I B Taurus & Co, London, 2001.

²⁹ Barbara Crossette, "France, in Break with US, Urges End to Iraqi Embargo", *New York Times*, 23 November 1997, A4.

³⁰ As quoted in *Sanctions Against Iraq: A Nation Held Hostage*, CARITAS, 5 February 2001, p 12.

funding of Iraqi opposition groups.³¹ This approach continued with President Bush. In February 2002 US Secretary of State Colin Powell stated: “We believe that Iraq would be better served with a different leadership with a different regime so we have had a policy of regime change. This really has been there all along but it was crystallised by President Clinton in 1998 at the time of Operation Desert Fox.”³²

20. The events of 11 September 2001 have provided the US with an opportunity to implement its policy of regime change. Initially this policy was phrased in terms of extending the war on terrorism to include those countries such as Iran, Iraq and North Korea, listed by President Bush as constituting an ‘axis of evil’. Yet despite the best efforts of the CIA no evidence exists that establishes a link between Iraq and the Al-Qaida network.³³ From a UK perspective, it is significant that the Prime Minister used the absence of any evidence linking Iraq with 11 September 2002 to play down the likelihood of an attack on Iraq in the weeks when the US and the UK were building the international coalition against Afghanistan. The former Parliamentary Under-Secretary of State, Ben Bradshaw stated on 27 September 2001: “Iraq would clearly be better off without the current regime. But the Government of Iraq is a matter for the Iraqi people. Britain is not working towards the overthrow of the regime and supports Iraq’s territorial integrity. The aim of British policy is not to install a regime more favourable to our interests, but to remove the threat of Iraq’s weapons—to the Iraqi people and their neighbours—and relieve the Iraqi people’s suffering”.³⁴

21. The failure to find a link between Iraq and Al-Qaida has meant that justification for US policy has fallen back on arguing that since December 1998 Iraq has steadily rebuilt its WMD programme and now poses a threat to regional and international security. This policy has been fuelled by reports provided by two Iraqi defectors to the USA suggesting that President Saddam Hussein has a “network of bunkers where chemical and biological weapons have been made and where attempts are under way to create a nuclear bomb.”³⁵ This needs to be contextualised within the recent nuclear posture review conducted by the Pentagon, which allows pre-emptive nuclear strikes against countries such as Iraq.³⁶ This in turn needs to be seen within the context of the National Security Strategy issued in September 2002.

F. UNDERSTANDING THE NATURE OF US POWER

22. US foreign policy since 1945 has been dominated by the twin strategies of containment and neo-liberal economics, both of which have given rise to an impressive array of international institutions such as the UN, NATO, the Bretton Woods institutions and the WTO. America’s realist strategy of containment was aimed at countering Soviet aggrandisement through a policy of nuclear deterrence backed up by a framework of agreements to accommodate interests and resolve tensions. The US policy of neoliberal economics with its emphasis on free trade aimed to avoid the re-run of the 1930s where regional trade blocs undermined prosperity and threatened democracy. Both strategies are essentially internationalist, even Wilsonian in flavour, and have led to a rule based international order, which has provided the bedrock for peace and stability since 1945. The projection of US power has been synonymous with a deepening of the international community.

23. The National Security Strategy amounts to a comprehensive revision of post 1945 strategy. It is the clearest articulation yet of the US strategic thinking following the end of the Cold War. The strategy has four key elements. First, its basic premise is that “the US possesses unprecedented and unequalled strength and influence in the world.” The primary thrust of American foreign policy is to maintain this hegemony by “dissuading future military competition, deterring threats against US interests and decisively defeating any adversary if deterrence fails.”³⁷ The document states the “US does not seek to use its strength to press for unilateral advantage”, but “to create a balance of power that favours human freedom in which all nations and all societies can choose for themselves the rewards and challenges of political and economic liberty.”³⁸ Despite this reassurance there remains anxiety as to how American power and influence will be deployed. Will it lead to either a renewed form of Wilsonianism or will it amount to nothing more enduring than the preservation of American security?³⁹ The psychological trauma experienced by the United States of America on 11 September 2001 risks leading it into a form of unilateralism akin to isolationism. This is both the challenge and the danger of the current debate regarding Iraq.

24. Second, it provides a new analysis of global threats. “The gravest danger lies at the crossroads of radicalism and technology” with terrorist organisations acquiring WMDs from rogue regimes.⁴⁰ This leads to the conclusion that “traditional concepts of deterrence will not work against a terrorist enemy whose avowed tactics are wanton destruction” or “where our enemies see weapons of mass destruction as a matter

³¹ A convincing case could be made to suggest this policy occurred much earlier, even as early as 1991, when the previous Bush administration encouraged the Kurds and the Shi’ites to rise up against Saddam Hussein.

³² Richard Wolffe, “Powell’s New Doctrine”, *Financial Times*, 14 February 2002, p 3.

³³ James Risen, “Iraqi Terror Hasn’t Hit US in Years, CIA Says”, *New York Times*, 6 February 2002, p 5.

³⁴ Interview given by FCO Parliamentary Under-Secretary, Ben Bradshaw, for Al Mushahid Al Siyasi, 27 September 2001.

³⁵ Marie Colvin, “Saddam’s Arsenal Revealed”, *The Times*, 17 March 2002, p 2.

³⁶ Edward Helmore, “Outrage as Pentagon Nuclear Hit List Revealed”, *The Observer*, 10 March 2002, p 2.

³⁷ *The National Security Strategy of the United States of America*, September 2002, p 29.

³⁸ *Ibid*, pp 1–2.

³⁹ Micahel Hirsch, Bush and the World, *Foreign Affairs*, Sept/Oct 2002, pp 18–43, p 21.

⁴⁰ *The National Security Strategy of the United States of America*, September 2002, p 2.

of choice.”⁴¹ The strategic thinking behind the phrase “our best defence is a good offence”, means the US “must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries.”⁴² The document gives reassurance “the US will not use force in all cases to pre-empt emerging threats, nor should nations use pre-emption as a pretext for aggression”, rather it should only be used where a “common assessment of the most dangerous threats exist.”⁴³ Despite this comfort it is easy to envisage the destabilising effects of such a policy in the hands of Russia, China, India or Pakistan. Unless the US shows restraint, it will become increasingly hard to ask it of others.

25. Third, “while the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self defence by acting pre-emptively against such terrorists, to prevent them from doing harm.”⁴⁴ This implies the US will only participate in those multilateral organisations or alliances, which enhance rather than limit its power. The mission should determine the coalition rather than the other way around. This could lead to a general depreciation of those international rules and agreements that have underpinned the international community since 1945. There is evidence of this trend in America’s repudiation of the Kyoto Protocol, the International Criminal Court, the Comprehensive Test Ban Treaty and the Biological Weapons Convention. This trend might lead to the erosion of those non-proliferation regimes, which remain essential to managing the WMD threat. Despite America’s unrivalled political power it remains dependent, as the war on terrorism suggests, on the co-operation of other powers. From this perspective America’s military supremacy contrast with its economic and political dependency in other areas, especially trade. This interdependence could provide sufficient checks and balances to the disparities of military power.

26. Fourth, the whole tenor of the document is on tackling the immediacy of current threats (ie terrorists, rogue regimes, WMDs etc) rather than providing for long term international stability. The US will only become involved in those conflicts, which threaten its vital national interests. Despite its hegemony the US will remain “realistic about its ability to help those who are unwilling or unready to help themselves”, which means a greater emphasis on “conflict management” rather than “conflict resolution”.⁴⁵ A similar approach influences their overseas development strategy. “Decades of massive development assistance have failed to spur economic growth in the poorest countries.”⁴⁶ This leads to the conclusion: “Where governments have implemented real policy changes, we will provide significant new levels of assistance.”⁴⁷ Additionally, while the document is preoccupied with spelling out future threats, and how they will be resolved, there is no elaboration on tackling either the causes of terrorism or a commitment to any peace keeping or nation building exercise following conflict, both of which are vital to international stability.

27. It is too early to judge the long-term impact of this doctrine. However one international policy expert has already stated that it amounts to a new neoimperial vision which ultimately will prove to be unsustainable and self defeating:

The strategy calls for American unilateral and pre-emptive, use of force, facilitated if possible by coalitions of the willing—but ultimately unconstrained by the rules and norms of the international community. At the extreme, these notions form a neoimperial vision in which the United States arrogates to itself the global role of setting standards, determining threats, using force and meeting out justice. It is a vision in which sovereignty becomes more absolute for America even as it becomes more conditional for countries that challenge Washington’s standards of internal and external behaviour. It is a vision made necessary—at least in the eyes of its advocates—by the new and apocalyptic character of contemporary terrorist threats and by America’s unprecedented global dominance.⁴⁸

G. IRAQ—THE APPLICATION OF STRATEGY

28. The application of this new strategic doctrine has become increasingly evident in the US approach to Iraq, both in terms of the US’s threat assessment of Iraq as well as the tensions between unilateral and multilateral action. Over the summer of 2002 the discourse supporting the US foreign policy objective of regime change in Iraq was increasingly sharpened in favour of unilateral pre-emptive military action. The US Vice President, Dick Cheney’s speech to the Veterans of Foreign Wars national convention in Nashville, Tennessee, 27 August 2002, was one such example. The influence of last year’s terrorist action on US foreign policy was clear. The Vice President stated:

Old doctrines of security do not apply. In the days of the Cold War, we were able to manage the threats with strategies of deterrence and containment. But it is a lot tougher to deter enemies who have no community to defend. And containment is not possible when the dictators obtain weapons

⁴¹ Ibid, p. 15.

⁴² Ibid, p 6 & p 15.

⁴³ Ibid, pp 15–16.

⁴⁴ Ibid, p 6.

⁴⁵ Ibid, p 9.

⁴⁶ Ibid, p 26.

⁴⁷ Ibid, p 27.

⁴⁸ G John Ikenberry; *America’s Imperial Authority*, *Foreign Affairs*, Sept/Oct 2002, pp 44–60, p 44.

of mass destruction, and are prepared to share them with terrorists who intend to inflict catastrophic casualties on the United States.⁴⁹

The Vice President argued that while the weapons inspectors had been partially successful in their efforts to disarm Iraq and that high-level defections from Iraq during the 1990s showed that “we often learned more as the result of defections than we learned from the inspection regime itself”. To merely insist on getting weapons inspectors back into Iraq would “provide false comfort that Saddam was somehow ‘back in his box’.”⁵⁰ The implications of such a scenario were evident to the Vice President:

Should all his ambitions be realised, the implications would be enormous for the Middle East, for the United States, and for the peace of the world. The whole range of weapons of mass destruction then would rest in the hands of a dictator who has already shown his willingness to use such weapons, and has done so, both in his war with Iraq and against his own people. Armed with an arsenal of these weapons of terror, and seated atop 10 per cent of the world’s oil reserves, Saddam Hussein could then be expected to seek domination of the entire Middle East, take control of a great portion of the world’s energy supplies, directly threaten America’s friends throughout the region, and subject the United States or any other nation to nuclear blackmail.

Simply stated, there is no doubt that Saddam Hussein now has weapons of mass destruction. There is no doubt that he is amassing them to use against our friends, against our allies, and against us. And there is no doubt that his aggressive regional ambitions will lead him into future confrontations with his neighbours—confrontations that will involve both the weapons he has today, and ones he will continue to develop with his oil wealth.⁵¹

29. To Vice President Cheney, “the risks of inaction are far greater than the risk of action”. If the US could have pre-empted last year’s terrorist attacks it should have taken such steps. *Ipsa facto*, the US and the international community should take such pre-emptive steps as are necessary to avoid a much more devastating attack by Iraq in the future. The danger of inaction and waiting until Iraq crossed the threshold of possessing nuclear weapons would result in devastating consequences for many countries. Similarly those who counselled caution would then argue that the US couldn’t act because he possessed a nuclear weapon which could result in a nuclear holocaust.

30. President Bush articulated further these concerns in his Presidential address to the United Nations General Assembly in September 2002. To President Bush, America’s “greatest fear is that terrorists will find a shortcut to their mad ambitions when an outlaw regime supplies them with the technologies to kill on a massive scale”. He believed this scenario was most real when seen vis-à-vis Iraq:

We know that Saddam Hussein pursued weapons of mass murder even when inspectors were in his country. Are we to assume that he stopped when they left? The history, the logic, and the facts lead to one conclusion: Saddam Hussein’s regime is a grave and gathering danger. To suggest otherwise is to hope against the evidence. To assume this regime’s good faith is to bet the lives of millions and the peace of the world in a reckless gamble. And this is a risk we must not take.

Events can turn in one of two ways: If we fail to act in the face of danger, the people of Iraq will continue to live in brutal submission. The regime will have new power to bully and dominate and conquer its neighbours, condemning the Middle East to more years of bloodshed and fear. The regime will remain unstable—the region will remain unstable, with little hope of freedom, and isolated from the progress of our times. With every step the Iraqi regime takes toward gaining and deploying the most terrible weapons, our own options to confront that regime will narrow. And if an emboldened regime were to supply these weapons to terrorist allies, then the attacks of September 11 would be a prelude to far greater horrors.

Iraq’s continued defiance of the United Nations resolutions was not just a threat to the international community but also a threat to the authority of the United Nations, which if left unchallenged would lead to the UN’s marginalisation and irrelevance within US foreign policy calculations.

31. By addressing the UN, President Bush tied himself into the multilateral process. However the tenuous nature of this commitment was underlined following Iraq’s subsequent offer of allowing the weapons inspectors back into Iraq⁵². Subsequent negotiations in Vienna between representatives of Iraq, UNMOVIC and the IAEA concluded with Iraqi officials declaring that “Iraq accepts all the rights of inspection provided for in all the relevant Security Council resolutions.”⁵³ The statement by Hans Blix, the Chairman of UNMOVIC went so far as to say:

It has been found that many practical arrangements followed between 1991–98 remain viable and useful and could be applied. On the question of access, it was clarified that all sites are subject to

⁴⁹ Speech by US Vice President Dick Cheney to the Veterans of Foreign Wars national convention in Nashville, Tennessee, 27 August 2002, p 2.

⁵⁰ *Ibid*, p 4.

⁵¹ *Ibid*, p 2.

⁵² United Nations, *Letter dated 16 September 2002 from the Secretary General addressed to the President of the Security Council*, S/2002/1034, 16 September 2002. It is worth noting that in the Secretary General’s letter, Kofi Annan stated: “This decision by the Government of Iraq is the indispensable first step towards an assurance that Iraq no longer possesses weapons of mass destruction and, equally important towards a comprehensive solution that includes the suspension and eventual ending of the sanctions that are causing such hardship for the Iraqi people and the timely implementation of other provisions of the relevant Security Council resolutions”.

⁵³ <http://www.un.org/Depts/unmovic>.

immediate, unconditional and unrestricted access. However, the memorandum of understanding of 1998 establishes special procedures for access to eight presidential sites.⁵⁴

The prospect of UNMOVIC being allowed back into Iraq before a new UNSC resolution appeared to thwart the US strategy. As a result of intense diplomatic pressure from the US and the UK there was not the necessary unanimity within the UNSC, which was needed to authorise the inspectors to return to Iraq. It is clear that what might have been acceptable to the UNSC at the beginning of the year had become unacceptable to the UNSC by October.

32. Whilst any offer by Iraq needs to be placed within the context of Iraq's past behaviour, many countries such as Russia and France argued that Iraq's offer had defused the situation. To these countries the priority of any further UN Security Council resolution should be the setting of a timeline for the work of a strengthened UNMOVIC. The issue of using military action if Iraq failed to comply should be left to subsequent resolutions. In contrast America argued for a composite resolution combining both a timeline as well as the authority to use military action if compliance was not forthcoming. In addition America has sought new ground rules underpinning the UNMOVIC both in terms of its composition and mandate.⁵⁵ As some commentators have pointed out America's draft UNSC resolution seems designed to make Iraq an offer it can only refuse.⁵⁶ President Bush suggested that if the appropriate UNSC resolution was not forthcoming the issue would be resolved unilaterally, with the proper authority supplied by the US Senate and Congress. The UK has sought to mediate between these two camps by encouraging Russia, China, and France to accept the need for one resolution, while persuading the US to tone down its bellicose language.

33. Some commentators have seen the US's behaviour as tantamount to blackmail. Others have seen it as a welcome opportunity for the international community to shape and restrain America's policy towards Iraq. Indeed the very fact that Bush has sought UN authorisation is seen as a success in and of itself, and a slight redressing of the imbalance of political power within the Bush Administration in favour of the doves. If this is the case then this is in no small part due to the moderating influence exerted by the UK Prime Minister.

H. EXAMINING IRAQ'S WMD THREAT

34. The UN negotiations suggest that building an international coalition in favour of military action against Iraq will prove considerably harder to achieve than the coalition building exercise over Afghanistan, or even the Gulf War coalition of 1990–1991. In both these instances there was clear evidence of external aggression whether that be to the USA or to Kuwait, which needed to be countered, ultimately by military force. Without clear and compelling evidence setting out the need for further military action against Iraq serious doubts will persist as to the morality and legality of any such action. To date there have been only two reports published which attempt to analyse the threat in any serious depth. The first, a September 2002 report by the International Institute for Strategic Studies, *Iraq's Weapons of Mass Destruction: A Net Assessment*. The second, a dossier by the UK Government, *Iraq's Weapons of Mass Destruction: The Assessment of the British Government*, published on 24 September 2002. Analysis of these documents, especially the latter, provides evidence as to the speed and depth by which Iraq has been able to reassemble its WMD programme since 1998. Militarily a threat assessment requires evidence both of capability and intent.

i. *Capability Assessment*

35. The main conclusions of the Government's dossier regarding Iraq's WMD capacity are that:

- Iraq has a useable chemical and biological weapons capability, in breach of UNSCR 687, which has included recent production of chemical and biological agents;
- Saddam continues to attach great importance to the possession of weapons of mass destruction and ballistic missiles, which he regards as being the basis for Iraq's regional power. He is determined to retain these capabilities;
- Iraq can deliver chemical and biological agents using an extensive range of artillery shells, free-fall bombs, sprayers and ballistic missiles;
- Iraq continues to work on developing nuclear weapons, in breach of its obligations under the Non-Proliferation Treaty, and in breach of UNSCR 687. Uranium has been sought from Africa that has no civil nuclear application in Iraq;
- Iraq possesses extended-range versions of the SCUD ballistic missile in breach of UNSCR 687, which are capable of reaching Cyprus, Eastern Turkey, Tehran and Israel. It is also developing longer-range ballistic missiles;

⁵⁴ Ibid.

⁵⁵ As part of the new ground rules, the US and the UK want to give the UN inspectors new power such as no drive zones around inspectors sites, the taking of Iraqi officials and their families outside the country for debriefing and the options of allowing UNSC members to provide additional personnel to the UNMOC team. Finally, the 1998 Memorandum of Understanding would also be ignored.

⁵⁶ Robert Fisk, "Nato used the same old trick when it made Milosevic an offer he could only refuse", *The Independent*, 4 October 2002, p 7.

- Iraq's current military planning specifically envisages the use of chemical and biological weapons;
- Iraq's military forces are able to use chemical and biological weapons, with command, control and logistical arrangements in place. The Iraqi military are able to deploy these weapons within 45 minutes of a decision to do so;
- Iraq has learnt lessons from previous UN weapons inspections and is already taking steps to conceal and disperse sensitive equipment and documentation in advance of the return of inspectors;
- Iraq's chemical, biological, nuclear and ballistic missiles programmes are well funded.⁵⁷

Although these are disturbing conclusions, they fail to capture the complexity of Iraq's WMD capacity.

36. Since 1998 Iraq has rebuilt its chlorine and phenol plant at Fallujah near Habbaniyah. Both of these substances can be used for precursor chemicals, which contribute to the production of chemical agents. Parts of the al-Qa'ad chemical complex damaged during Operation Desert Fox have been rebuilt, while new chemical facilities have been built like the Ibn Sina Company at Tarmiyah. Similarly a new chemical complex, Project Baiji, has been built at al-Sharqat. The dossier recognises however, that "without UN weapons inspectors it is very difficult to be sure about the true nature of many of Iraq's facilities."⁵⁸ Many petrochemical or biotech industries, as well as public health organisations, have legitimate need for most materials and equipment required to manufacture chemical and biological weapons. A similar pattern marks Iraq's biological capacity. The Castor Oil Production Plant at Fallujah, damaged during Operation Desert Fox has been rebuilt. Residue from castor bean pulp can be used in the production of the biological agent ricin. Iraq has expanded the Amariyah Sera and Vaccine Plant at Abu Ghraib. Once again, without proper inspection it is difficult to know for what purpose. Recent intelligence also suggests that Iraq has developed mobile facilities so as to protect biological agent production from military attack or UN inspection.

37. Although the extent of Iraq's ability to deliver chemical and biological weapons remains in question, the means at Iraq's disposal include: free fall bombs, artillery shells and rockets; aircraft borne sprays; ballistic missiles and remotely piloted vehicles. Of particular importance is Iraq's ballistic missile capacity, permitted by the UN but limited to a range of 150 kilometres. Intelligence indicates that while Iraq has produced at least 50 short-range missile with a range of up to 150 kilometres, it is also working on extending its range to at least 200 kilometres. It has also retained up to 20 al-Hussein missiles, which could be used with conventional, chemical or biological warheads, with a range of up to 650 kilometres. Intelligence also confirms that Iraq wants to extend the range of its missile systems to over 1,000 kilometres. The Government's dossier acknowledges however that the success of UN restrictions means the development of these longer range missiles is likely to be a slow process. It warns that Iraq has managed to rebuild much of the missile production infrastructure destroyed in the Gulf War and in Operation Desert Fox. While sanctions have "succeeded in blocking many attempts to acquire additional production technology, we know from intelligence that some items have found their way to the Iraqi ballistic missile programme. More will inevitably continue to do so."⁵⁹ The dossier concludes: "Saddam remains committed to developing longer-term missiles. Even if sanctions remain effective, Iraq might achieve a missile capacity of over 1,000 kilometres within five years".⁶⁰

38. With regard to Iraq's nuclear capability, the dossier acknowledges the work of the IAEA in dismantling the physical infrastructure of Iraq's nuclear weapons programme. But, Iraq retains many of its experienced scientists who are specialised in the production of fissile material. Intelligence reports suggest that Iraq has sought to purchase a number of components vital to the production of fissile material. This includes 60,000 specialised aluminium tubes to assist in the construction of gas centrifuges used to enrich uranium. While these efforts are alarming, the dossier provides no evidence that these attempts have been successful. The dossier goes on to state:

The Joint Intelligence Committee judged that while sanctions remain effective Iraq would not be able to produce a nuclear weapon. If they were removed or proved ineffective, it would take Iraq at least five years to produce sufficient fissile material for a weapon indigenously. However, we know that Iraq retains expertise and design data relating to nuclear weapons. We therefore judge 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 capability in between one and two years.⁶¹

The dossier indicates that, in this respect uranium has been sought from Africa that has no civil application in Iraq.

⁵⁷ *Iraq's Weapons of Mass Destruction: The Assessment of the British Government*, September 2002, p 17.

⁵⁸ *Ibid*, p 21.

⁵⁹ *Ibid*, p 30.

⁶⁰ *Ibid*, p 30.

⁶¹ *Ibid*, pp 26–27.

ii. *Assessment of Intent*

39. In addition to providing a capability assessment the dossier gives some indication as to Iraq's intent to use this capability. The dossier's assessment is based on Iraq's past behaviour both internally to its own people and externally to its neighbours. It is important, however, to distinguish between the differing components of Iraq's capabilities (ie chemical, biological, ballistic and nuclear) and Iraq's intent to use them.

40. There is little within the dossier concerning Iraq's motives in manufacturing and acquiring WMDs. The only real elaboration is provided in connection to chemical and biological weapons. According to the dossier, intelligence indicates "Saddam attaches great importance to the possession of chemical and biological weapons which he regards as being the basis for Iraqi power. He believes that respect for Iraq rests on its possession of these weapons and the missiles capable of delivering them."⁶² Saddam Hussein's possession reflects in part his thinking that without them Iraq's own political weight would be diminished. However, intelligence indicates "that as part of Iraq's military planning Saddam is willing to use chemical and biological weapons, including against his own Shia population."⁶³ The dossier indicates that while ultimate authority for their use rests with the President, authority in operational circumstances has been delegated to specific elements within the Iraqi military.

41. Apart from these details there is little to suggest Iraq intends to use WMDs. The absence of any WMD seepage from Iraq to terrorist organisations is also striking. As a result the dossier falls back on providing a substantial account of Saddam Hussein's regime both internally and externally. The use of chemical weapons against the Kurds of Halabja in 1988, the brutal suppression of the Shia dominated south following an uprising in 1991 is all spelt out. Similarly Iraq's aggression towards Iran in 1980 and the use of chemical weapons from 1984 which left some 20,000 Iranians killed are all documented as are the human rights abuses committed by Iraq during and following its invasion of Kuwait in 1990. The dossier's unwritten conclusion is clear, allowing Iraq to further develop its WMD programme would be irresponsible given its past behaviour.

42. A central tenet within the defence of preventative action against Iraq rests on Iraq's behaviour over the last twenty years. The evidence is at one level compelling. The use of chemical and biological weapons against his own people as well as during the Iraq-Iran war all drive home the conclusion that Saddam Hussein is a brutal and evil despot who has frequently flouted the laws of war. Yet it can be equally argued that the west was in part complicit in such actions, by supplying Iraq with the necessary means to conduct the war with Iran and by its failure to intervene over the gassing of the Kurds.⁶⁴ Iraq's war against Iran served the west's interest following the overthrow of the Shah. The west's appeasement of Iraq during this period has been seen as one reason why Iraq thought it could get away with the invasion of Kuwait in 1990. The west's intervention in the 1990-91 Gulf War quite rightly showed the limits beyond which its policy of appeasement was not prepared to go. To build a case for pre-emptive action today on the grounds that containment and deterrence haven't worked would appear to be erroneous. If the west had adhered to a policy of containment and deterrence prior to August 1990 then it is possible, although not certain, that much of the human suffering could have been avoided.⁶⁵ Indeed in 1961 when Kuwait was thought to be at risk from Iraqi attack, the UK sent forces to Kuwait to deter this eventually. In that instance the policy of deterrence worked.

iii. *Implications for UK Foreign Policy*

43. The dossier amounts to a repositioning of UK foreign policy towards Iraq. Up to the time when the Prime Minister visited President Bush at Camp Crawford, Texas, in March 2002, British foreign policy towards Iraq reflected the twin strategies of containment and deterrence. The objective was to apply diplomatic pressure on Iraq to force compliance with the UN, whilst relying on sanctions to deny Iraq the means to rebuild its WMDs. In a letter to the Roman Catholic Bishop of Leeds, the Rt. Rev David Konstant, in November 2000, Peter Hain, the former Minister of State with responsibility for Iraq wrote: "Sanctions have not been counterproductive to the disarmament objective. On the contrary, sanctions have kept a brutal dictator contained for ten years and have blocked his access to equipment and parts to rebuild his WMD arsenal."⁶⁶ From this perspective sanctions effectively restrained Iraq's capacity for military expansion. Although the dossier does not suggest that sanctions have been useless the implication is that they can't be relied on in the future. The Government has never denied the potential for seepage but in the past it has always directed its efforts to making the sanctions regime as watertight as possible. Similarly it has never argued that Iraq poses an immediate threat to international peace and security. In a reply to a Parliamentary Question by Jim Cunningham on 11th June 2002, Geoff Hoon, the Defence Secretary stated: "We assess that there is no immediate threat of military attack by Iraq, although Iraq threatens RAF aircraft patrolling the Iraqi No Fly

⁶² Ibid, p 18.

⁶³ Ibid, p 19.

⁶⁴ Indeed the west continued to sell Saddam Hussein chemical agents for a further 20 months after the massacre at Halabja. In February 1989 the US Assistant Secretary of State, John Kelly, visited Saddam Hussein in Baghdad and is quoted as saying: "You are a force for moderation in the region. The US wants to broaden its relationship with Iraq".

⁶⁵ Dan Keohane; "The Rules of Propriety", in Dan Keohane (ed); *International Perspectives on The Gulf Conflict, 1990-91*, St Martins Press, Oxford, 1993, p xii..

⁶⁶ Letter from Minister of State Peter Hain to the Rt Revd David Konstant, 16 November 2000.

Zones.”⁶⁷ To argue now against sanctions in favour of military action against some threat, which might or might not materialise constitutes not only a U-turn in Government policy but suggests the past twelve years amount to “an impressive policy failure.”⁶⁸

44. It is difficult to understand the U-turn within UK foreign policy without recourse to the events of 11th September 2001 or the subsequent re-evaluation of US foreign policy. The need to stand shoulder to shoulder with the US following last year’s terrorist attacks remains a priority within UK foreign policy. Just as the UK moderated America foreign policy in the immediate aftermath of the terrorist attacks, so the British Government hopes to influence US policy to Iraq. As previously stated President Bush’s decision to initially resolve this issue through the UN is generally seen as a vindication of the UK approach. Given the unilateral tendencies within the Bush administration, as illustrated by the National Security Strategy, such pressure as the UK Government is able to bring to bear on both the principles underlying US foreign policy in general and its policy to Iraq in particular needs to be encouraged. As the Archbishop of Canterbury has stated: “I think Tony Blair has been trying to help the American government to realise that an isolationist policy is doomed. Reading between the lines, I think he’s been playing his cards very skilfully.”⁶⁹ The question, of course remains: what are the limits of British foreign policy? Put another way will the UK Government’s policy of standing shoulder to shoulder with the US extend to supporting military action without the explicit support of the UNSC?

I. THE LEGALITY OF WAR AGAINST IRAQ

45. The legal basis for any attack on Iraq would depend on the circumstances in which such action was taken. The UK Government regards the use of force against any state as lawful if it has been authorised by the United Nations Security Council, or where in exercise of the inherent right of individual or collective self-defence, or exceptionally, where carried out to avert an overwhelming humanitarian catastrophe. With respect to Iraq, the Foreign and Commonwealth Office submitted evidence to the House of Commons Foreign Affairs Committee’s inquiry into terrorism, setting out its legal thinking.

As to relevant resolutions, following Iraq’s invasion and annexation of Kuwait, the Security Council authorised the use of force in resolution 678 (1990). This resolution authorised coalition forces to use all necessary means to force Iraq to withdraw, and to restore international peace and security in the area. It provided a legal basis in addition to the right of collective self defence for Operation Desert Storm, which was brought to an end by the cease-fire set out by the Council in resolution 687 (1991). The conditions for the cease-fire in that resolution (and subsequent resolutions) imposed obligations on Iraq with regard to the elimination of WMD and monitoring of its obligations. Resolution 687 (1991) suspended but did not terminate the authority to use force in resolution 678 (1990).

A violation of Iraq’s obligations which undermines the basis of the cease-fire in resolution 687 (1991) can revive the authorisation to use force in resolution 678 (1990). Most recently, in resolution 1205 (1998) the Council condemned Iraq’s decision to cease co-operation with UNSCOM as a flagrant violation of resolution 687 (1991). This had the effect of reviving the authorisation to use force in resolution 678 (1990), which provided the legal basis for our participation in Operation Desert Fox.

We do not rule out the need to take further military action in future. Whether further action by the Security Council was needed would depend on the circumstances at the time. But as we have always made clear, any military action the UK undertakes anywhere in the world will be carried out in accordance with international law.”⁷⁰

The UK’s position, therefore, can be summarised as follows: an attack against Iraq could be justified under international law in response to Iraqi aggression or to prevent Iraqi aggression. The Government would be justified in arguing that Iraq’s failure to comply with United Nations Security Council resolutions constitutes a violation of the cease fire arrangements and that due authority exists within resolution 678 to justify further military action.

46. According to some legal experts the trigger mechanism for such a scenario rests on a judgement as to whether Iraq’s contravention of the cease-fire agreement constitutes an imminent threat to regional and international security. If it does, no further UNSC resolutions would be required. This could be supported both on the grounds of the authority provided within existing UNSC resolutions and Article 51 of the UN Charter, which allows a country to take pre-emptive action when faced with an imminent threat. The UK dossier suggests Iraq presents a growing rather than an imminent threat, and to argue that resolution 678 or Article 51 provides appropriate authority to launch a preventative war against a threat, which has yet to materialise, would be hard to square with existing resolutions or the UN charter. Until such time as Iraq poses

⁶⁷ Hansard, 11 June 2002, 1164W.

⁶⁸ Jackie Ashley, “Support for a US Assault on Iraq Could Rip Labour Apart”, *The Guardian*, 27 February 2002, p 20.

⁶⁹ Interview with the Archbishop of Canterbury, Dr George Carey, for Broadcast on the Australian Broadcasting Corporation, 25 September 2002.

⁷⁰ House of Commons Foreign Affairs Committee; *Foreign Policy Aspects of the War on Terrorism*, Seventh Report of Session 2001–02, p 57.

an imminent threat to international security, the international community must focus its efforts on getting the weapons back into Iraq to help facilitate Iraq's disarmament. In this respect it is crucial to distinguish between pre-emptive action or anticipatory self-defence which are provided for under the UN charter and preventative wars which are prohibited.

47. An alternative trigger mechanism for military action without further UN sanction would rest on the argument that intervention is needed to avert an impending humanitarian disaster. The evidence presented within the UK's dossier spells out the past atrocities of the Iraqi regime. The dossier suggests Iraq is more likely to use chemical and biological weapons against his own people than against the west. The Parliamentary Under Secretary of State, Lord Bach, has stated: "A judgement is made in the dossier that Iraq has military plans for use of the chemical and biological weapons, including against its own Shia people."⁷¹ If intelligence exists to suggest such an event was imminent, then the UK could argue that preventative military intervention was necessary. This would amount to an extension of those legal principles, which were used to justify intervention in Kosovo/a.

48. These scenarios represent a strict interpretation of the UN resolutions and the UN charter. They are unlikely to find support with those who would argue that the situation currently facing the international community was not envisaged by those who drafted these earlier resolutions. Given the level of public concern about any war, as well as the current state of confusion surrounding the aims of any military operation (regime change V disarmament) many have argued that it would be helpful if any military activity against Iraq had explicit as well as implicit UN authorisation. Seeking further UN authorisation would clarify both the grounds on which force was being used and the nature of the desired peace settlement. It would also go some way to allaying the public's fear as to the legitimacy of any such action.

49. Recent political discussions have questioned whether or not the UNSC should set a deadline for Iraq to comply with relevant UNSC resolutions. Failure to meet the deadline would in turn provide both just cause as well as sufficient authority for the UN members to force Iraqi compliance. This approach has increasingly shaped the UK's approach to the issue. Significantly, it also has parallels with the UN's handling of the 1990–91 Gulf War. While it would be difficult to argue against such a deadline, especially since weapons inspectors have been denied access for some four years, it would make the prospect of war more real.

J. THE CHURCH OF ENGLAND AND IRAQ

50. Iraq has been a recurring issue on the Church of England's agenda since the end of the Cold War. It is important, for the sake of consistency, to keep in mind past Church statements and positions on Iraq, when considering how the Church should respond to the current crisis. On past occasions the Church has used that tradition of moral thinking associated with the idea of "just war" to guide its deliberations. Any analysis of just war thinking needs to distinguish between *jus ad bellum* and *jus in bello*. *Jus ad bellum* requires judgements to be made about aggression and self-defence, while *jus in bello* is concerned with the observance or violation of the customary and positive rules of engagement.

i. The 1991 Gulf War

51. Although Iraq's invasion of Kuwait in August 1990 was met by universal condemnation by all Church leaders, there was significant disagreement within and between Churches as to how this aggression should be reversed. The then Archbishop of Canterbury, Dr Robert Runcie, made a Presidential Address to the November General Synod following Iraq's invasion. He stated: "While we must use every means short of war to enforce UN policy, it would be foolish to rule out the use of force in the last resort".⁷² He accepted that while war would inevitably result in civilian and non-civilian casualties the risk of doing nothing was not a viable option. There was significant debate within the Church as to whether or not further time should have been given for sanctions to have worked. Similar concerns were also raised as to whether or not the military build up in the Gulf prejudiced a diplomatic solution. On 15 January 1991 on the day when the deadline set by UN Security Council resolution 678 ran out, the House of Bishops issued a statement. "While in the last resort military action may be the only option, the consequences in terms of human suffering on all sides would be immense, and that consideration of these consequences should be central to all political and military thinking."⁷³ The cost of military activity was a central theme in the sermon preached by the Archbishop of York, the Rt Revd John Hapgood, at the Gulf War Service of Remembrance and Thanksgiving at St Mungo's Cathedral, Glasgow, 4 May 1991.⁷⁴

⁷¹ House of Lords Official Report, Parliamentary Debate, Tuesday 24 September 2002, Vol 638, Col 1021.

⁷² General Synod, November Group of Sessions, report of Proceedings, Vol 21, no 3, 1040.

⁷³ *The Gulf Crisis: Statement by the House of Bishops of the Church of England*, 15 January 1991, p 2.

⁷⁴ It is worth quoting the relevant section in full. "That is why our solemn act of remembrance before God of the appalling suffering which war and its aftermath have actually brought in their train: the losses of human life and the devastation in Iraq itself, still locked into an oppressive and evil dictatorship; the dreadful plight of the Kurds and Shi'ites, innocent victims not just of war itself, but of the false hopes of successful rebellion it raised in their minds; the black clouds over Kuwait, and the oil sodden Gulf. And we think of the fearful and intractable political problems which still remain, not least in securing the future for Palestinians and Israeli's alike. How do we measure all these against what has actually been achieved?" John Hapgood; *Making Sense*, SPCK, London, 1993.

ii. *Sanctions*

52. Since the end of the Gulf War the Church of England's concern over Iraq has related to the perceived humanitarian impact of sanctions. The Director of Coventry Cathedral's Centre for International Ministry has visited Iraq several times over the last few years. The Centre's work has focused on retraining Iraqi doctors in the latest techniques surrounding bone marrow transplants. Many of these humanitarian concerns were evident in the General Synod Debate on Iraq in November 2000. The debate was informed by a report prepared by the Board for Social Responsibility, which reflected the experiences gained by its Assistant Secretary for International and Development Affairs following a six-week secondment to the United Nations Development Programme in Iraq.⁷⁵ The resulting General Synod motion encouraged the Government to introduce a smarter sanctions regime, which would target Iraq's ruling elite rather than the mass of the population.⁷⁶ Security Council resolutions 1284 and 1382, signalled a more targeted sanctions policy.

iii. *Jus ad Bellum*

53. The threat of further military action against Iraq forces the Church and Christians to grapple with whether or not any war could be considered a just war, or more specifically under what conditions might war be considered just. In its modern form *jus ad bellum* raises four questions: just cause, proper authority, right intent and last resort. It is important before applying these criteria to the specifics of Iraq to examine how these criteria relate to the broader concepts of preventive or pre-emptive action.

54. Traditionally just war theory allows countries to use force to repel an act of aggression. However, both St Augustine and Thomas Aquinas did not restrict the meaning of "justness" to wars of self-defence where it was necessary to repel a foreign force.⁷⁷ The use of force was considered justified as a form of anticipatory self-defence. In short, if an attack from an outside aggressor looked imminent then a state was entitled to take such proportionate action as was necessary to prevent such an attack. Both St Augustine and Thomas Aquinas made clear that anticipatory self defence could only be used when a threat looked imminent (ie the mobilisation of troops on the border etc...), and not when a threat had yet to materialise. Morally a distinction is made between anticipatory self-defence, which is morally justified and preventive war, which is morally prohibited. To argue in favour of preventive action would be to undermine the need for war to be used as a last resort and would prejudice alternative efforts at conflict prevention and resolution. Preventive wars against a perceived future threat would invariably raise questions as to the motive or intent behind the action.

55. The just war tradition provides an appropriate moral framework through which to evaluate the 2002 US National Security Strategy. The decision to "adapt the concept of imminent threat to the capabilities and objectives of today's adversaries" is morally as well as politically hazardous.⁷⁸ The collapsing of the boundaries between preventive and pre-emptive action runs the risk of opening a "Pandora's box", which once opened will be difficult to close.⁷⁹ The National Security Strategy recognises this by indicating that "the US will not use force in all cases to pre-empt emerging threats, nor should nations use pre-emption as a pretext for aggression."⁸⁰ While the lack of clarity however as to which preventive wars are legally and morally justifiable is inarticulately spelt out in the document, the document leaves little doubt that the objective is the maintenance of a unipolar world with the US at its helm. The subsequent weakening of America's commitment to the multilateral process suggests the moral, political and legal threshold for war has been substantially lowered. While preventive action against those terrorist organisations not tied to a nation state might legitimately be seen as a form of police enforcement, it remains problematic as a mechanism for resolving those tensions between nation states. Without this distinction the doctrines of containment and deterrence, and with it the commitment to resolve and accommodate international tensions through multilateral institutions could give way to a doctrine of unilateral preventive action, which nullifies the just war criteria of force as a last resort. In its application, questions will always be asked as to the US's motive in using force.

56. The US National Security Strategy and its application to Iraq are matters of grave concern to the Church. These concerns were articulated by a number of Bishops during the Parliamentary debate on 24 September 2002 following the publication of the Governments dossier. As the Bishop of Oxford made clear: "The Christian tradition has never confined the question of just cause purely to self defence. If a threat is real, serious and immediate, there might indeed be a proper moral reason for pre-emptive action."⁸¹ The use of pre-emptive action where a well proven threat exists should not, *a priori* be ruled out. Indeed as the Bishop of Rochester has argued this should also include intervention "to prevent large-scale human suffering, perhaps even genocide."⁸² Yet, as the Bishop of London indicated the process leading to such interventions are all important:

One of the conditions of stability in the modern world is predictability. It is imperative that we have an international process to judge which instances . . . demand the intervention of outside powers.

⁷⁵ General Synod, *Iraq: A Decade of Sanctions. A Report by the Board for Social Responsibility*, GS1403, November 2000.

⁷⁶ See Annex 1.

⁷⁷ James Turner Johnson; *Morality and Contemporary Warfare*, Yale University Press, 2000, pp 41–70.

⁷⁸ *The National Security Strategy of the United States of America*, September 2002, p 15.

⁷⁹ Rt Revd Dr Rowan Williams, as quoted in *The Guardian*, 25 September 2002, p 3.

⁸⁰ *The National Security Strategy of the United States of America*, September 2002, p 15.

⁸¹ House of Lords Official Report, Parliamentary Debate, Tuesday 24 September 2002, Vol 638, Col 897.

⁸² Jonathan Petre, "Bishop says Attack would be Justified" *The Telegraph*, 5 September 2002, p 1.

No state however, powerful, should be left as judge and jury. There is only one institution remotely capable of helping to form such judgements and that is the United Nations.⁸³

The challenge from this perspective is to reinvigorate the United Nations with the necessary capability to respond to new threats such as terrorism and to provide the appropriate investment in the tools necessary for nation building and peace keeping.

57. There was general agreement between those bishops speaking in the Parliamentary debate that the evidence presented within the Government's dossier did not constitute an imminent threat or just cause in support of military action at this juncture. The Church is under no illusion as to the nature of the Iraqi regime or of its attempts to acquire WMDs, but as the Bishop of Southwark argued:

The policy of containment—sanctions, no fly zones and so on—has worked well enough for 12 years. As the dossier shows that policy is certainly effective in preventing the development of a nuclear capability. It is too soon to judge that that policy might not continue to work”.⁸⁴

In other words:

Although the situation has obviously changed somewhat since the UN inspectors left, it has not despite Saddam Hussein's efforts, changed enough to justify the hugely dangerous critical threshold of military action”.⁸⁵

The effectiveness of sanctions to date and the timeline provided by the Government's dossier as to when Iraq will be able to acquire further WMDs provides sufficient room for manoeuvre to find alternative methods of resolving the current stalemate without recourse to war. The priority must be to get the UN weapons inspectors back into the country so facilitating the identification and destruction of Iraq's WMD programme in accordance with relevant UNSC resolutions. Iraq's offer of allowing the UN inspectors back in needs to be accepted, even if past experience suggests he might seek to thwart their effectiveness. Yet, it is important not to prejudice the potential provided by this offer by talk of regime change.

58. Until such time as Iraq complies with the UN resolutions or until such time as military action becomes the last resort, the international community needs to take steps to reverse the *de facto* erosion of the UN sanctions regimes. This means giving greater financial assistance and even compensation to those countries neighbouring Iraq whose economies have been negatively affected by the corruption of established patterns of trade resulting from 12 years of sanctions. Similarly it means reinvigorating international non-proliferation regimes as well as those international rules by which countries buy and sell arms. As the Bishop of Manchester asked: “Who is continuing to sell and make available the material, the know-how, that will allow Saddam to develop these weapons of mass destruction. Is it already all there in Iraq, or are there others who are playing hooky round the world?”⁸⁶ It is worth remembering that the 2002 Export Control Act grew out of the Scott Report and the arms to Iraq affair during the early 1990s.

iv. *Jus in Bello*

59. Christians often rely on the *jus in bello* tradition of just war theory to inform their thinking as to whether or not any war is being waged justly. *Jus in bello* raises concerns such as a realistic chance of success, proportionality and civilian casualties. *Jus in bello* considerations only become relevant once the *jus ad bellum* concerns have been addressed. Any decision as to the suitability of an instrument of warfare remains secondary to the *a priori* decision as to whether or not a legitimate case exists. If the recourse to armed force fails to satisfy the *jus ad bellum* criteria then the question of *jus in bello* remains academic.

60. While details of any military campaign are uncertain, the options range from a full military invasion of Iraq to an Afghanistan type of operation involving heavy aerial bombardment allied to the support of key opposition groups. It is unlikely that a Desert Fox type campaign would be any more successful now than it was in 1998 in convincing Iraq to co-operate with UNMOVIC, while a Desert Storm approach aimed at overthrowing President Saddam Hussein would be fraught with operational difficulties. Recent military strategies employed in Kosovo/a and Afghanistan have relied on the combination of heavy air bombardment in support of opposition groups on the ground, finally backed up with significant allied ground forces. The absence of a recognisable opposition inside Iraq means that such a strategy would prove immeasurably harder to achieve in Iraq.

61. The efficacy of such a military strategy would also be in doubt. The experience of Kosovo/a has shown that aerial bombardments targeted the country's economic and industrial infrastructure as well as military targets. A similar strategy underpinned the success of Operation Desert Storm. According to former US Attorney General Ramsey Clark, by the end of the five-week air campaign in 1991 “110,000 aircraft sorties had dropped 88,500 tons of bombs on Iraq, the equivalent of seven and a half atomic bombs of the size that

⁸³ House of Lords Official Report, Parliamentary Debate, Tuesday 24 September 2002, Vol 638, Col 886–887. It is worth remembering that when Israel bombed Iraq's nuclear capability in 1981 on the grounds that such pre-emptive action was necessary to guarantee its future security, Russia, the USA, UK, and China all condemned it. It was also condemned by the UNSC.

⁸⁴ Ibid, Col 911.

⁸⁵ Ibid, Col 897.

⁸⁶ Ibid, Col 971.

incinerated Hiroshima.”⁸⁷ A report by UN Under-Secretary-General Martti Ahtisaari following the Gulf War described the “near apocalyptic destruction” and observed that war damage had relegated Iraq to a “pre-industrial age in which the means of modern life have been destroyed or rendered tenuous”.⁸⁸ Twelve years of sanctions have done nothing to help redevelop Iraq’s infrastructure. The UN’s humanitarian aid programme, the oil for food programme, is a humanitarian relief programme rather than a development programme. Any military operation risks further damage to the already precarious situation in Iraq and deterioration in the living conditions of the average Iraqi. As the Bishop of Chelmsford asks: “How can we contemplate unleashing more misery upon them?”⁸⁹

62. If military action against Iraq does occur then there will undoubtedly be casualties involving combatants and non-combatants alike. Despite the sophistication of modern weaponry and talk of smart bombs, war remains a messy and deadly business. It is important however to balance the inevitable human tragedy of war against the justness of the cause. In short, states must ensure that greater evil does not arise out of war than the war would avert. “Without persuasive, preferably incontrovertible evidence”, that the “threat posed by Iraq is both grave and imminent”, such calculations are impossible to make.⁹⁰ However, the consequences of using overwhelming force are horrifying in the short term. As Sir Michael Quinlan stated in an article in *The Financial Times* on 7th August 2002: “To pre-empt the use of biological or chemical weapons by adopting the one course of action most apt to provoke it seems bizarre.”⁹¹

v. *Just Peace*

63. If the aim of war is peace then the nature of this peace, which is implicit within the just war tradition needs to be spelt out. Yet little international consideration appears to have been given to any post war settlement that might emerge following military action. If the genuine goal of US policy is to replace the current Iraqi government with a government respectful of human rights and other internationally agreed standards, then it is important to see serious and therefore realistic attention given to the business of helping to build an alternative regime. The experience of military intervention in Somalia, Kosovo/a and Afghanistan is hardly encouraging. The experiences reinforce the perception that the USA has very little interest in engaging in nation building following conflict. Without this commitment, however, there are serious doubts as to whether simply removing Saddam Hussein will achieve the purported end, namely Iraq’s reintegration into the international community. If this is the case then the removal of Saddam Hussein becomes an end in and of itself. Until greater clarity exists as to the nature of the peace for which war will be fought, then the present policy of containment might be preferable to the risks and uncertainty of military action.

64. If the purpose of any military action is regime change, questions need to be asked as to how the legitimacy of that government can be assured. The fragmented nature of Iraqi society and the diverse and competing array of Iraqi opposition groups in exile mean the move to a constitutional settlement is likely to be protracted. There is a real danger that American occupation will be followed by a spate of revenge killings against Saddam’s henchmen. Until agreement is reached as to a constitutional settlement, security will depend on the presence of occupying forces. Yet while the removal of Saddam Hussein and his regime is something that is supported amongst many Iraqis there is likely to be considerable opposition to the American peace. It is difficult to fathom the degree of anti-americanism in the region, often expressed in popular language in terms of opposition to ‘crusaders’, with the implications to Christianity that this involves. Indeed this language, often framed as a reaction to western policies to Iraq and Israel/Palestine dominates much of the rhetoric of Al-Qaeda and other extremist groups. The imposition of a *pax americana* could have important implications for the welfare and security of Christian communities in the region.

65. A constitutional settlement underpinned by an American or international presence is unlikely to provide a long-term solution. If the new regime fails to survive then Iraq faces a long-term emergency, with localised conflicts, considerable internal displacements and further destruction of its national infrastructure. If the regime survives, its legitimacy, as a creation of western policy, will remain in question. Whatever the morality or legality underpinning any military action against Iraq, these post conflict issues need to be factored into the decision-making process. Similarly, although there is little love lost between Iraq and its neighbours the spectre of Iraq fracturing along ethnic or religious lines into three separate statelets (Sunni, Shiite, and Kurd) raises concern that military action could lead to fragmentation so destabilising the region. For instance, the Turkish Prime Minister, Bulent Ecevit, a long time ally of the US, has grave doubts about an American attack on Iraq, fearing that the result would be a Kurdish state.

66. It is possible that Arab support for military action could be secured by US promises of mediating the Israel/Palestine conflict.⁹² Yet Arab confidence in the US as an honest broker in the Middle East has been seriously undermined by the perceived hardening of attitudes within the Bush administration and the

⁸⁷ Ramsey Clark, *Challenge to Genocide: Let Iraq Live*, International Action Centre, 1998.

⁸⁸ United Nations Security Council, *Report to the Secretary-General on Humanitarian Needs in Kuwait and Iraq in the Immediate Post-Crisis Environment by a Mission to the Area Led by Mr Martti Ahtisaari, Under Secretary-General for Administration and Management*, 10–17 March 1991, S/22366, 20 March 1991, par 8.

⁸⁹ House of Lords Official Report, Parliamentary Debate, Tuesday 24 September 2002, Vol 638, Col 940.

⁹⁰ Cardinal Murphy O’Connor, “The Standards by which War with Iraq must be Judged”, *The Times*, 5 September 2002, p 14.

⁹¹ Sir Michael Quinlan, “War on Iraq: A Blunder and a Crime”, *Financial Times*, 2 September 2002, p 7.

⁹² Julian Borger, “Envoy’s Role Linked to Arab Backing on Iraq”, *The Guardian*, 9 March 2002, p 4.

perception that the terrorist attacks of last year have made the US administration increasingly sympathetic to Israel's predicament. Similarly, the experience of Arabs states during the 1990–1991 Gulf War where they lent political support to Operation Desert Storm in support for restarting the Middle East Process has not borne the desired end.⁹³ Whatever the legitimacy of this perception, the combination of the humanitarian suffering in Iraq, Arab hostility to the UN sanctions policy in general and anger at the renewed violence in Israel/Palestine in particular has given rise to a popular anti-Americanism in the region, which could easily spill over if war occurred. The Egyptian President, Hosni Mubarak has warned: "If you strike at the Iraqi people because of one or two individuals and leave the Palestinian issue unsolved, not a single Arab ruler will be able to curb the popular sentiments. We fear a state of disorder and chaos may prevail in the region".⁹⁴

vi. *Inter Faith Considerations*

67. In the aftermath of the terrorist attacks last year and the subsequent military action in Afghanistan, the Church of England at every level has been actively engaged in meetings, dialogues and shared activities with Muslim communities throughout the UK. These inter faith relationships have provided one way in which Muslims have been able to relate their anxieties and concerns to wider society at a very difficult time for them. Despite the insistence of the UK and US Governments that the 'war on terrorism' is not directed against Islam, Muslims have felt that their identity as British citizens has been questioned; they have also been subject to verbal abuse, and in some cases physical attack. Most Muslims, while appalled by the September 11 attacks, have felt deeply unhappy with the bombing campaign in Afghanistan, and many have been prominent in anti-war protests.

68. There can be no question that British involvement in any military action against Iraq would multiply the problems faced by Muslim communities here, and could severely destabilise inter faith relations, even though Iraq has a staunchly secular ruling ideology.⁹⁵ An attack on another Muslim country—particularly one with no proven link to the September 11 atrocities—would be taken by many as evidence of an in-built hostility to the Islamic world. From this perspective the "Stop the War" march in London on 28 September 2002 was remarkable for the degree to which it mobilised Muslim communities within the UK. At a grassroots level, there is little sense that the presence or absence of UN authorisation would make much difference to the way Muslims would view an attack on Iraq.

69. All minority communities can feel very vulnerable at times of international conflict, and Muslims in particular would fear a further wave of anti-Islamic sentiment and activity. In an atmosphere of heightened rhetoric and deepened suspicion, extremist and exclusivist attitudes are likely to grow, not least among disaffected young people, and those committed to dialogue and bridge-building will find their task made much more difficult. This sense of anxiety is not however confined to the Muslim communities, since the rise in reports of anti-semitic incidents post 11 September 2001 have heightened the security within the Jewish community. This trend could continue with an attack against Iraq. The consequences for inter faith relations of an attack on Iraq must therefore be of grave concern for a Church with a responsibility for the spiritual well being of the whole nation.

K. CONCLUSION

70. Politicians, trade union leaders and other sections of civil society have welcomed the Church's contribution to the present debate about the use of force against Iraq. It is the privilege of individual Christians to campaign one way or another for or against military action and if war does occur then it is likely that Christians, like the nation at large, will be divided on the issue. However, it is the role of the national Church to raise those moral and ethical questions, which the Government needs to address before there is any recourse to war. In responding to this challenge the Church draws on the resources of scripture, tradition and reason, which have shaped the just war thinking. This report by the Church of England's House of Bishops has sought to use this thinking to ask those questions which it feels need to be addressed. In doing so the House of Bishops draws the following conclusions:

- We affirm the Government's stated policy of disarming Iraq of its weapons of mass destruction (WMDs). Unfettered and unhindered access must be gained for the UN weapons inspectors, in order to facilitate the identification and destruction of Iraq's WMD in compliance with all relevant UNSC resolutions.
- We hold that the primary international concern remains Iraq's blatant disregard of the UN and its authority as expressed in relevant United Nations Security Council resolutions (UNSC). Any unilateral action to enforce Iraq's compliance with such resolutions risks further undermining the credibility and authority of the UN.

⁹³ The Madrid Conference that started the Middle East peace process over a decade ago was convened after the Gulf War was over. George Giacaman (ed); *After Oslo: New Realities, Old Problems*, Pluto Press, London, 1998.

⁹⁴ Brian Whitaker, "Attack on Iraq would Create Chaos in Middle East, Egypt cautions US", *The Guardian*, 28 August 2002, p 1.

⁹⁵ House of Lords Official Report, Parliamentary Debate, Tuesday 24 September 2002, Vol 638, Col 911.

- We recognise that in those instances where diplomatic and economic pressure fail to ensure compliance with UNSC resolutions, military action can sometimes be justified as a last resort to enforce those resolutions.
- We nonetheless hold that to undertake a preventive war against Iraq at this juncture would be to lower the threshold for war unacceptably.
- We believe that if military action were to be considered as a last resort, the outcome in terms of suffering on all sides could be immense, with widespread and unpredictable environmental, economic and political consequences. There would also be implications for inter faith relations. We therefore urge that these concerns should be central to all political and military planning.
- We support and encourage the Prime Minister in his efforts to press for a new international conference to revitalise the middle east peace process, based on the twin principles of a secure Israel and a viable Palestinian state. We believe such a conference has an important role in trying to promote the wider stability of the region at a time of widespread suspicion and insecurity.

*The House of Bishops
The Church of England*

9 October 2002

Annex

November 2000 General Synod Motion

That this Synod, noting with deep sympathy the suffering of the Iraqi people:

- (a) hold that the ongoing humanitarian crisis in Iraq is a consequence of Iraq's invasion of Kuwait in 1990 and the continued failure by the Government of Iraq to comply with relevant UN Security Council Resolutions;
- (b) recognise that after ten years sanctions have failed to achieve their purpose and that continuing with the present sanctions policy is unlikely to yield further political dividend without creating additional human suffering;
- (c) call on HMG to work to ensure that the price of securing peace and stability in the region is paid by the leadership of Iraq rather than the most vulnerable Iraqi people;
- (d) encourage the Board for Social Responsibility to work with Christian Aid, Coventry Cathedral's Centre for Reconciliation and other bodies working in this area, in raising awareness of the humanitarian situation in Iraq and the underlying causes of conflict in the Middle East;
- (e) encourage the Board for Social Responsibility to report back to the General Synod after the CTBI delegation has visited the Middle East next year.

APPENDIX 11

Memorandum from Charles Tripp, Reader in the Politics of the Middle East, School of Oriental and African Studies, University of London

REPORT ON THE FUTURE OF IRAQ

1. Current speculation about US-led military action to overthrow Saddam Husain, suggests that regime change in Baghdad is more likely to be brought about in the near future by external intervention than by internal conspiracy. What might follow from such a military action is the subject of this report. Obviously, there is much that may occur that cannot be predicted. However, the occupying power would still have to work through the existing forces of Iraqi political society, some openly opposed to the current regime, some closely allied to it and others deeply ambivalent about the kind of regime Saddam Husain has constructed in Iraq.

2. The idea that the current regime in Baghdad can only be overthrown by a US-led military invasion is a testimony to the weakness of those Iraqi forces opposed to the current regime. The failed popular uprisings of 1991, the failed assassination attempts and military conspiracies during the 1990s and the parochial concerns of the Kurdish Regional Government in the north have shown the limits of opposition within Iraq.

3. In the event of a full-scale US-led invasion of Iraq, could one expect things to be very different? An invasion could act as a catalyst for disaffected officers in Iraq's security forces to turn on the regime of Saddam Husain. Given their history and their situation within the present regime, successful action is most likely to come from within the elite forces of the Republican Guard. Recruited largely from the tribal groupings of the Sunni Arab northwest and officered in large part by men drawn from allied clans of the al-Bu Nasir (Saddam Husain's tribe) from the region of Tikrit, these formations are very much part of the regime they are expected to overthrow.

4. However, they are also riven by the factionalism, personal and clannish rivalries and jostling for advantage that have been so characteristic of this regime's patronage system. They are also aware that they are better placed than others to bring about change. A US-led invasion—or possibly even the threat of such an invasion—promising an outcome as devastating for the Iraqi armed forces as that which they endured in Kuwait, could lead senior officers to act.

5. They might act to prevent the regime from unleashing weapons of mass destruction, as it would certainly be tempted to do if the heart of power was in danger. However, they would also be acting to ensure that they and their kind—officers and the networks of the Sunni Arab elite—would continue to have a decisive role in Iraqi politics. Their action would therefore be pre-emptive, underlining their utility to the new occupying power and preventing the dominance of those Iraqis whom successive US administrations have been courting for the past few years: the Kurds, some of the Shi'a, self-declared liberals, democrats and communists, exiled military officers with their own agendas and networks.

6. Whether such a last minute revolt does take place or whether US-led forces occupy Baghdad unaided, the occupying power would face similar problems. In essence, these would come down to two related questions:

- (1) how far could the US and its allies, or indeed the United Nations, go in refounding the Iraqi state and its politics ?
- (2) on which existing Iraqi actors could outside forces rely in seeking to implement its project ?

7. Actual outcomes will depend upon any number of factors which cannot sensibly be predicted at this point. However, it is worth considering the dilemmas that will face an occupying force as it vacillates between two positions best characterised as "micro-management" and "laissez-faire", respectively.

8. "Micro-management" would entail a sustained effort on the part of the occupying power to refound Iraqi politics. This would have to involve not simply the public state institutions, but also the notorious "shadow state" of Iraq—that is, the networks of power, patronage, and expectation which lie behind and operate through the public institutions. It would mean bringing new values into Iraqi public life and backing these with power sufficient to ensure that they were seen to work at all levels over a period of some five to ten years.

9. Two immediate problems become apparent in such a scenario. First, there is the absence of Iraqi allies with sufficient social clout and determination to carry such a project through. None of the present Iraqi opposition forces is suited for this role. The Kurdish Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) can command considerable numbers, but only in Kurdistan where their rivalry and their political methods stand in stark contrast to their declarations in support of open government. The Shi'i Islamist parties al-Da'wa and those grouped around Sayyid Bakr al-Hakim in the Supreme Council for Islamic Revolution in Iraq (SCIRI) enjoy a certain following within Iraq, but their advocacy of political leadership by clerics has alienated many among the majority Shi'a. The other smaller parties associated with the opposition, both within the Iraqi National Congress (INC) and outside it—leftists, constitutional monarchists, liberals and others—have little or no following in Iraq and some have shown a weak attachment to the idea of democratic accountability.

10. Adherence to the rules of a distinctively Iraqi political game by virtually all players provides the second major challenge to the occupying power. The hostility of those threatened by the abandonment of the old rules could lead to formidable resistance. This would come not simply from the residual elites of the state over which Saddam Husain had presided, but also from those who feared that a new order would turn their worlds upside down. For some, the fear would be domination by the majority Shi'a of Iraq. Ironically, for many of the most organised amongst the Shi'a—the Islamist parties—the danger would be the introduction of a secular politics in which they would have little say. For others, transparency, accountability and the idea of truly public service would carry the threat that accumulated privileges would be stripped from them and their patrons.

11. Resistance would not necessarily be violent, at least not initially. It is more likely to take the form of subversion of the "democratising project", if that is what the occupying power truly seeks to create. This could be subverted in any number of ways. Opening out the political space in Iraq after decades of oppression will lead to the paying off of old scores and to a revival of sharply opposed views of Iraq's future. The risk of open conflict in such a heavily armed society will tend to privilege the role of the security forces.

12. The US and its allies will need to train and arm security forces to maintain order, almost certainly building on the existing overdeveloped structures of the Iraqi state. This will reinforce the informal networks which already bind many of these individuals to each other, making them representative of a certain sector of society—generally the Sunni Arab northwesterners—and a certain authoritarian disposition. It will underline, once again, the indispensable nature of the security forces in the governance of Iraq.

13. In addition, there are also the corrosive effects of Iraq's political economy on forms of democratic accountability. Here, the role of Iraq's oil income will be decisive. It constitutes the prize for those competing for power, under American protection or otherwise. It also reinforces the centralising, authoritarian aspects of the economy, as well as the development of forms of patronage which grant to those disbursing the oil revenues enormous political power.

14. In the face of this reassertion of many characteristic features of Iraqi political society—clannishness, patron-clientelism, coercive intimidation—the occupying power may find itself with allies in Baghdad who are no more than clients. Ironically, the occupying power would have been manoeuvred into playing a role which would be functionally not far removed from that of the present regime in Iraq. It would be the patron, armed with overwhelming coercive force and financial resources, which would be relying upon its subordinates to ‘deliver’ social order in Iraq.

15. This could invite two kinds of response. Domestically, there will be a temptation either to eliminate or intimidate the chief clients of the occupying power. Competition for the favour of the centre would be no less fierce than it has always been, with rival factions—for the most part bearing little resemblance to the organisations formed in exile during the past decades—jostling for position and for a chance to exercise power. Violence would be part of the game, directed both at the occupying power and its clients.

16. Regionally, such a situation would invite intervention by various regional states. Some, such as Iran, would be concerned about the very presence of the US in Iraq. Others, such as Turkey or Saudi Arabia or Syria would be concerned about the influence exercised by regional rivals or, in the case of Turkey in particular, by developments in Kurdistan. This is unlikely to lead to conventional intervention (except perhaps in the case of Turkey) nor to the break up of the state of Iraq. More probable is the development of proxy conflicts and the sponsorship of individuals and parties in the Iraqi political game to ensure that regional states’ interests would be protected and that the ambitions of their regional rivals, or indeed of the US could be held in check. For Iraqis already weakly attached to the idea of a national politics, the temptation to look to regional powers for such sponsorship would be great, in part to counter the influence of the occupying power and its clients. The ‘spoiler’ role played by such proxy conflicts could be harmful to any idea of reconstruction.

17. In such circumstances, it is more than likely that the occupying power will veer towards a ‘laissez-faire’ role in which it will accept *de facto* the power structures of Iraqi political society, many of which would be recognisable from Iraq’s recent past. Thus, the armed forces and security services which can guarantee order would be recognised. With this would come recognition of much of the informal politics of Iraq—communal, tribal and ethnic—which has exercised such power over Iraqi society and which might be able to find more open expression under the relaxed rules of an initially tolerant military oligarchy. A number of the political organisations which have given expression to such politics—Kurdish, Turcoman, Assyrian, Shi’i—would play prominent roles, competing with each other for communal representation, rather than seeking to dominate the state.

18. As in previous eras, the state would become the arena for uneasy competition between newly founded coalitions combining both civilian interests and factions operating within the armed forces. Proclaiming the ideals of an Arab and an Iraqi nationalism, the struggle would be, as ever, for control of the state and its massive resources. How the competition develops will depend upon a number of unknowable factors.

19. However, the advantage will tend to lie with those who can command the military. Apart from having the means of coercion in their hands, they could also claim to bring a certain order to Iraq out of the potentially fractious scrum of communal politics—a communal politics that could lend itself, as ever, to regional interference by Iran and Turkey in particular. They would also have the advantage that they too might be able to rely on social networks of solidarity particular to the tribal identities so heavily represented within the Iraqi security forces. As ever, they could present a plausible façade of stability, at least in the short-term, and appear to guarantee the independence of the state from regional intervention.

20. For the occupying power, losing patience with the turmoil and unpredictability of Iraqi politics and uneasy about the scale of resistance it might encounter in trying to refound the state, recognition of such a government could be a welcome relief. The fact that it would look remarkably like one of the precursors to the regime which produced Saddam Husain—and would emerge out of similar circumstances—might only cause a momentary twinge of concern.

Charles Tripp
School of Oriental and African Studies
University of London

November 2002

APPENDIX 12

Memorandum from the Center for Constitutional Rights, New York

THE DETENTION OF BRITISH NATIONALS IN GUANTÁNAMO BAY, CUBA

INTRODUCTION

1. Since the terrorist attacks of September 11 2001 and the subsequent military operations in Afghanistan, over six hundred individuals, including seven British nationals, have been detained by the United States government in Guantánamo Bay, Cuba and classified as “enemy combatants”. The detainees have not been charged, tried or given access to lawyers. This memorandum summarizes the very grave concerns raised by

this situation, and the legal efforts in the United States, United Kingdom and international courts to challenge it. As legal remedies are proving increasingly unsuccessful for the detainees, political or diplomatic efforts British and other governments appears to be the only manner in which their position might be addressed.

AFFILIATION

2. I write this memorandum as an Attorney and President of the Center for Constitutional Rights (“CCR”). CCR is a non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. CCR has been at the forefront of the campaign against the rollback of civil liberties by the United States government since the terrorist attacks of September 11, 2001. As part of this work we are co-counsel in cases before the US Federal Court and the Inter-American Commission on Human Rights on behalf of the Guantánamo detainees, including the British nationals. We have also been monitoring the legal challenges related to the Guantánamo situation which have been brought in the British and other courts. I have been assisted in writing this memorandum by Henrietta Hill, a Barrister from Doughty Street Chambers in London, who has been a Fellow at CCR for the last three months, before returning to her practice in the UK.

FACTUAL BACKGROUND

3. On September 11, 2001 members of the al Qaida terrorist network attacked the United States. Shortly thereafter, United States armed forces were deployed in Afghanistan to debilitate the al Qaida terrorist network and the Taliban regime that allegedly harbored it.⁹⁶ As part of this effort, the United States provided military assistance to the Northern Alliance, a loosely knit coalition of Afghani and other military groups opposed to the Taliban. In the course of those military operations the United States with the assistance of the Northern Alliance captured or secured the surrender of a large number of individuals. Since around January 11, 2002, several hundred of these have been transferred by the United States military to Camp X-Ray, part of the United States Naval Base in Guantánamo Bay, Cuba. Individuals who may well not be enemy combatants have also been seized from areas other than the battlefield in Afghanistan or Pakistan, and from areas further afield such as Bosnia, and taken to Guantánamo.

4. The United States has occupied Guantánamo since 1903 under a lease continued in effect by a 1934 Treaty.⁹⁷ Under this lease the United States maintains “complete jurisdiction and control” over the base. It has repeatedly declared its intention to remain there indefinitely, while resisting claims of national sovereignty made by Cuba over the area. The Naval Base is a self-sufficient and essentially permanent city with approximately 7,000 military and civilian residents, occupying nearly 31 square miles of land (an area larger than Manhattan and nearly half the size of the District of Columbia). It has its own schools, generates its own power, provides its own internal transportation, and supplies its own water. It has developed into a fully American enclave with all the residential, commercial and recreational trappings of a small American city. Offenses committed by both civilians and foreign nationals living in Guantánamo are brought before Federal Courts on the mainland, where defendants enjoy the full panoply of constitutional rights. Guantánamo has been described by the United States Navy as “for all practical purposes. . . American territory”⁹⁸.

5. As at October 28, 2002 official figures indicated that there were 625 detainees at Guantánamo, representing 42 nationalities, including seven who are British.⁹⁹ At least one detainee who is a US national, Yaser Esam Hamdi, has been removed from Guantánamo and transferred to US soil. He is currently being held incommunicado in an American military prison.¹⁰⁰ Official figures also indicate that 150 individuals remain in the custody of the United States in Afghanistan, although the total of these figures does not account for the “thousands” of individuals the United States asserts it has taken control of during the hostilities.¹⁰¹

6. Although the United States will not release the names or nationalities of specific prisoners, I know the following about the British detainees. Shafiq Rasul (acting via his mother Skina Bibi as Next Friend) and Asif Iqbal (via his father Mohammed Iqbal) are petitioners in *Rasul et al v. Bibi et al.* (“*Rasul*”), a habeas corpus application filed in the United States District Court for the District of Columbia. David Hicks (via his father, Terry Hicks) and Mamdouh Habib (via his wife Maha Habib), Australian citizens detained in Guantánamo

⁹⁶ See Joint Resolution of Congress 23, Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 dated September 18, 2001, authorizing the President to use force against the “nations, organizations, or persons” that “(planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or [that] harbored such organizations or persons”.

⁹⁷ see Lease of Lands for Coaling and Naval Stations, Feb. 16-23, 1903, US-Cuba, T.S. No. 418, 6 Bevans 1113 and Treaty on Relations with Cuba, May 29, 1934, US-Cuba, art. III, 48 Stat. 1682, 1683, T.S. No. 866.

⁹⁸ The History of Guantanamo Bay: An Online Edition (1964), available at <http://www.nsgtmo.navy.mil/history.htm>.

⁹⁹ ‘US releases four prisoners from Guantanamo detention’, Agence France-Presse, October 28, 2002

¹⁰⁰ Mr Hamdi’s has father filed a habeas corpus petition on his son’s behalf. Despite the fact that Mr Hamdi is a United States citizen the government is arguing that the war on terrorism is at least equivalent to a conventional war, and that the military’s judgment that he is an enemy combatant should be upheld. Accordingly it is argued that he is not entitled to the rights available to citizens in relation to ordinary criminal prosecutions, such as the right to counsel and the right to be brought before a court and charged within a reasonable time are not applicable. On October 24, 2001 CCR lodged an amicus curiae brief in the case.

¹⁰¹ United States Government’s Motion to Dismiss in *Rasul*., dated March 18, 2002, p.4.

and the co-petitioners in the case.¹⁰² CCR and other US-based lawyers are working with Gareth Peirce of Birnberg Peirce Solicitors in London on this case. Ferroz Ali Abbasi and Zumrati Zaitun Juma are the claimants in R (on the application of Abassi & Anor) v. Secretary of State for Foreign and Commonwealth Affairs and Secretary of State for the Home Department, an attempt by judicial review proceedings in the British High Court to compel the Foreign Secretary to make further representations or other appropriate action on the detainees' behalf, or at least explain why this has not been done. Louise Christian of Christian Fisher Khan Solicitors represents Mr Abbasi and Mr Juma¹⁰³.

7. In Rasul, the United States' government has claimed that the individuals detained in Guantánamo were fighting as part of the al Qaida terrorist network or to support, protect or defend the al Qaida terrorists¹⁰⁴. For their part, all the petitioners in Rasul state that they are not, and never have been, enemy aliens or unlawful combatants; that they have never been members of al Qaida or any other terrorist group; had not prior to their capture committed any violent act against any American person or property; had no involvement, direct or indirect, in the terrorist attacks on September 11, 2001 or any other act of international terrorism; and had no military or terrorist training. Rather, they state that they were visiting Pakistan or Afghanistan entirely innocently when they were captured at some point in early December 2001¹⁰⁵. The United States has itself acknowledged that at least "some [of the detainees] were 'victims of circumstance' and probably innocent"¹⁰⁶. Other leaked reports to the press suggest that many of the detainees are low and middle-level fighters and supporters of al Qaida, not the more senior members who may know enough about the group's workings to provide information about its cell-based structure¹⁰⁷.

8. Since gaining control of the detainees, the United States military has held them virtually *incommunicado*. They have been or will be interrogated repeatedly by agents of the United States Departments of Defense and Justice, though they have not been charged with an offense, nor have they been notified of any pending or contemplated charges. They have made no appearance before either a military or civilian tribunal of any sort, nor have they been provided with counsel or the means to contact counsel. Ms Peirce set out in the Rasul petition the efforts she had made to seek access to Mr Rasul and Mr Iqbal in order to provide them with legal advice, but how these requests had been refused. Their ability to contact their families has been severely restricted. For example, messages which Mr Rasul sought to pass to his family via the Red Cross were intercepted by the United States, who only permitted a summary to be passed to his mother, indicating that he was well, and wished to have legal representation. Attempts by their Members of Parliament to secure greater access to them by their families have failed. The detainees have not been informed of their rights under the United States Constitution, the regulations of the United States Military, the Geneva Convention, the International Covenant on Civil and Political Rights, the American Declaration on the Rights and Duties of Man, or customary international law. Indeed, the United States has taken the position that the detainees should not be told of these rights, or indeed the lawsuits pending on their behalf.

9. There are very grave concerns at the manner in which the detainees have been treated. We understand that detainees Iqbal, Rasul and Hicks were kept blindfolded and sedated against their will for lengthy periods while they were taken involuntarily to Guantánamo. On arrival, they were forced to provide involuntary statements to United States' agents. Since then, they have been held under conditions which violate their international and constitutional rights to dignity and freedom from cruel, unusual and degrading punishment. They have been kept in cells measuring 2.5 metres by 2 metres (8ft by 6ft 8in) which do not have proper walls. They have been forced to use a bucket for a toilet, and have not been provided with basic hygienic facilities. They are given just two 15-minute exercise sessions a week. They have not been provided with the opportunity fully to exercise their religious beliefs. They are also subjected to regular interrogations. They have been exposed to the indignity and humiliation of the cameras of the national and international press, brought to Guantánamo with the express consent and control of the United States government. Anyone who has seen them has been under instructions not to tell them even where they are being held. Part of Mr Abbasi's complaint before the High Court was also that he was unfairly interrogated by British security service officials without legal representation and in violation of international law¹⁰⁸. About 200 inmates temporarily staged a hunger strike in the spring of 2002, and US military authorities have said that 30 other

¹⁰² A similar case on behalf of relatives of twelve Kuwaiti nationals also detained at Guantánamo—*Odah et al. v United States of America et al.*—was filed on May 1, 2002 and was also consolidated with Rasul.

¹⁰³ An attempt was also made by Skina Bibi and Mohammed Iqbal to intervene in the Abbasi case, together with Sally Begg (the wife of a British man alleged to have been arrested in Pakistan and handed over to American forces, and now being held at a military camp somewhere in Afghanistan) and Sharon Fiddler (on behalf of fifth British detainee at Guantanamo). These applications were declined on 10 September 2002, see R (on the application of Abassi & Anor) v. Secretary of State for Foreign and Commonwealth Affairs and Secretary of State for the Home Department, and Begg, Bibi, Iqbal and Fiddler (Proposed Interveners) [2002] EWCA Civ 1316.

¹⁰⁴ United States Government's Motion to Dismiss in Rasul, dated March 18, 2002, p.4

¹⁰⁵ Shafiq Rasul was taking time off from his computer engineering degree in Britain and visiting his family in Pakistan, as well as exploring computer courses there which might be more reasonably priced than those in Britain. Asif Iqbal had traveled from Britain to Pakistan after September 11, 2001 solely for the purpose of participating in an arranged marriage. We understand that both Iqbal and Rasul were captured and kidnapped by groups working in opposition to the United States in Afghanistan and Pakistan.

¹⁰⁶ "A Nation Challenged: Captives", *New York Times*, March 16, 2002, and United States Department of Defense News Transcript, Rumsfeld Interview with KTSP-ABC, St. Paul, Minnesota, February 27, 2002 at 2.

¹⁰⁷ "Call for release of 'low-level' Guantanamo inmates", *The Guardian*, August 20, 2002

¹⁰⁸ Abbasi Court of Appeal judgment, para. 6

incidents of “self-harm” have been registered, four of which were suicide attempts. The conditions of detention have been decried by the International Red Cross and other humanitarian groups.

10. According to evidence submitted in Abbasi, officials of the Foreign and Commonwealth Office and members of the security services have been permitted to visit the detainees on three occasions, between 19 and 20 January, 26 February and 1 March and 27 and 31 May 2002. They state that by the time of the last visit, they were satisfied that he was being well treated and appeared to be in good health. By that stage facilities had been purpose built to house detainees and each was in an individual cell with air ventilation, a washbasin and a toilet. It was not argued in the subsequent legal proceedings on Mr Abbasi’s behalf that he was not being treated humanely¹⁰⁹. Even if these improved conditions now also apply to the petitioners in Rasul, this does not detract from the inhumane treatment they initially received.

11. The United States Government proposes to try terrorism suspects before military tribunals with grossly distorted standards of criminal jurisprudence. The right to choose an attorney, to have a jury trial and to appeal will all be eliminated under the proposed tribunal system, in which the death penalty will be available¹¹⁰. Ad hoc military tribunals of this nature have been unauthorized by various human rights Conventions since World War II. Article 102 of the Third Geneva Convention requires prisoners of war to be tried by the same court as would be used for domestic soldiers, namely court martials; civilians are of course entitled to regular criminal trials. Both of these would have significantly greater protections than would be available under the tribunals proposed by the United States. There is no reason at this stage for confidence that this grossly unfair criminal medium and the risk of the death penalty might not be imposed on the British detainees.

12. There continue to be new arrivals at Guantánamo. 30 more people, the status of whom remains completely unclear, were flown from Afghanistan to Guantánamo on October 28, 2002 and the United States has recently announced the opening of 204 new cells in addition to the 612 cells already in place¹¹¹. It has previously described Camp X-Ray as “work in progress” and that there are plans to build “a more permanent prison exactly in accordance with federal prison standards”¹¹².

13. The only detainees released from Guantánamo so far are a mentally ill inmate who was returned to Afghanistan on May 1, 2002 and four detainees (two of whom were over 80 years old) who were returned to Afghanistan and Pakistan on October 28, 2002. Officials have stated that the detainees were released after investigators concluded they had little information of value either to US intelligence or to prosecutors, and that there was little risk they would take up arms again upon their release. CCR believes that had fair procedures been applied to these individuals, namely access to a tribunal to review their detention, they would have been released many months earlier, as it would have been apparent that they posed no risk. Aside from individuals released in this way, the United States has said that it has “no choice” but to detain the prisoners in Guantánamo as long as “the conflict” or “their capabilities and intentions continue”¹¹³.

Legal issues arising from the Guantánamo detentions and attempts to litigate them

14. There have been widespread expressions of concern, both within and outside the United States, in respect of the stand the Bush administration is taking in relation to Guantánamo. CCR, like many other organizations, believes that the United States’ actions with regard to the Guantánamo detainees manifests numerous violations of domestic and international law. In particular, we believe that (i) the detentions are unlawful, arbitrary and indefinite contrary to the Fifth and Fourteenth Amendments of the United States Constitution and customary international law, specifically Articles 9 and 14 of the International Covenant on Civil and Political Rights, and Articles 18, 25 and 26 of the American Declaration on the Rights and Duties of Man¹¹⁴; and (ii) that the detainees’ rights as persons seized in times of armed conflict, as established under, *inter alia*, the regulations of the United States Military, Articles 4 and 5 of Geneva Convention III, Geneva Convention IV, and customary international law have been violated. We also believe that the ancient writ of *habeas corpus* should be available to the detainees to challenge their detention.

15. There have been various attempts to challenge the Guantánamo detentions via legal proceedings, but for the reasons which follow, the United States’ actions in regard to each of these means that the prospect of the detainees seeking redress through the law is diminishing rapidly.

¹⁰⁹ Abbasi Court of Appeal judgment, para. 5

¹¹⁰ see Military Order concerning the “Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism,” 66 Fed. Reg. 57, 831, dated November 13, 2001 and Military Commission Order No. 1, dated March 21, 2002

¹¹¹ “US releases four prisoners from Guantanamo detention”, Agence France-Presse, October 28, 2002

¹¹² Report of Lynne Sladky, Associated Press, January 22, 2002

¹¹³ “Early release of Guantanamo suspects ruled out”, Dawn, September 11, 2002

¹¹⁴ The same principle can be found in Article 9 of the United Nations Declaration of Human Rights and Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

(i) *The United States is disregarding the international law requirement to refer the issue of the legal status of the detainees to a competent tribunal*

16. The most fundamental issue relating to the Guantánamo detentions is that the United States has unilaterally determined the legal status of the detainees, and created a status for them hitherto unknown, and from which, according to the United States, no legal rights flow.

17. It classifies the detainees as “enemy combatants” being held “in accordance with the laws and customs of war”, and asserts that this does not afford them a right to counsel or the courts to challenge their detention, which protections would only be triggered if and when a detainee is charged with a crime. It specifically does not accept that the detainees are “lawful combatants”, entitled to prisoner of war status under humanitarian law, namely the Third Geneva Convention 1949, on the basis that “Taliban detainees....have not conducted their operations in accordance with the laws and customs of war....al Qaida is an international terrorist group and cannot be considered a state party to the Geneva Convention...”¹¹⁵. Prisoner of war status would mean that the detainees had to be released at the end of the hostilities unless they were charged with a war crime or crime against humanity. By denying them this classification, the United States opens up the possibility that their detention may be indefinite. At this stage we simply do not know how each of the detainees should be classified. As we know so little about their circumstances, there is a real risk that some of them are not “combatants” of any kind.

18. However, what we do know is that an independent, competent tribunal—and not the United States government—must make this determination. According to international norms applicable in peacetime and wartime, such as those reflected in Article 5 of the Third Geneva Convention and Article XVIII of the American Declaration of the Rights and Duties of Man, a competent court or tribunal, as opposed to a political authority must be charged with ensuring respect for the legal status and rights of persons falling under the authority and control of a state. Such a tribunal would effectively decide whether humanitarian law, which governs times of armed conflict (as opposed to international human rights law, which applies at all times), is applicable to the detentions.

19. It was on this basis that on March 12, 2002 the Inter-American Commission on Human Rights ordered the United States to adopt precautionary measures, namely to have the legal status of the Guantánamo detainees determined by a competent tribunal. This was in response to a petition which CCR had filed with other concerned organizations such as the Columbia University Law School Human Rights Clinic, some three weeks previously. The Commission accepted that there may well be doubts as to the legal status of the detainees (including the question of whether and to what extent the Third Geneva Convention and/or other provisions of international humanitarian law apply to some or all of the detainees and what implications this may have for their international human rights protections), but nevertheless held that absent any clarification of the issue, “...the rights and protections to which they may be entitled under international or domestic law cannot be said to be the subject of effective legal protection by the [United States]”. Accordingly, the precautionary measures ordered were both “appropriate and necessary”. In reaching this decision, the Commission reflected the statement made by the United Nations High Commissioner for Human Rights on 16 January 2002, that the legal status of the detainees, and their entitlement to prisoner of war status, if disputed, must be determined by a competent tribunal.

20. Members of the Organization of American States (of which the Commission is the legal branch) such as the United States are subject to an international legal obligation to comply with a request for such precautionary measures¹¹⁶. However, alarmingly, the United States has not complied with this order in relation to the Guantánamo detainees. Instead, the Bush administration by a letter to the Commission dated April 11, 2002 denied that the Commission had jurisdiction over the United States and argued that it had illegitimately applied international law beyond the scope of the Organization of American States Charters and Treaties. It relied on the argument that the detention was pursuant to the “President’s authority as Commander in Chief” in times of war. After a further exchange of comments, on July 23, 2002 the Commission reiterated its view that “...the nature and extent of the rights afforded to the detainees remains entirely at the discretion of the US government...[and]...this is not sufficient to comply with the United States’ international obligations”. The United States has given no indications that it intends to change its position.

(ii) *The United States has at present succeeded in arguing that as the detainees are held in Guantánamo they are outside the jurisdiction of any United States Court*

21. On February 19, 2002, CCR and co-counsel filed the habeas corpus application in Rasul (in which two of the petitioners are British—see above), on the basis of the various violations of domestic and international law set out above. We also sought to challenge a Military Order which President Bush has issued authorizing him to detain without trial those who he has reason to believe are members of al Qaida, or in other ways

¹¹⁵ See Press Release of United States Press Secretary, February 2, 2002, cited in Abbasi Court of Appeal judgment, para. 10. The distinctions between unlawful or enemy combatants and lawful combatants is drawn from a passage in the United States Supreme Court decision of *Ex parte Quirin* (1942) 317 U.S. 1 30-31.

¹¹⁶ See IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEASer.L/V/II.111 doc. 21 rev. (6 April 2001), paras. 71-72; *Juan Raul Garza v. United States*, Case No. 12.243, Report No. 52/01, Annual Report of the IACHR 2000, para. 117.

involved in terrorism¹¹⁷, on the basis that it violates the fundamental rights set out above; contravenes Article I of the United States Constitution to the extent that it seeks to suspend the writ of habeas corpus; and exceeds the scope of the Joint Resolution of Congress dated September 18, 2001. However, contrary to what we had understood to be the case, the United States indicated in the proceedings that the petitioners were not being detained pursuant to this Order, but to the “President’s authority as Commander in Chief”. The same appears to be true of Mr Abbasi and Mr Juma¹¹⁸.

22. On 18 March 2002 the United States government applied to dismiss our habeas petition in Rasul on jurisdictional grounds, *inter alia*, that (i) as they were aliens being held in Guantánamo, they were outwith the jurisdiction of the District of Columbia Court, or any United States court; and (ii) the detention involves political questions about the conduct of the war on terrorism which the court should not consider.

23. On 30 July 2002, considering itself bound by *Johnson v. Eisentrager*, 339 U.S. 763 (1950) and its progeny, the District Court ruled that the military base in Guantánamo is outside the sovereign territory of the United States and, because of this, and the fact that the petitioners were aliens, the Court had no jurisdiction to consider their claims. The position would have been different had they been American citizens¹¹⁹. We have appealed the decision in Rasul to the United States Court of Appeal for the District of Columbia Circuit, and oral argument in the case is due to take place on December 2, 2002. Whatever the outcome of the appeal, though, it is likely that a petition for *certiorari* will almost certainly be filed with the Supreme Court.

24. The present position, therefore, is that the United States courts are denying jurisdiction over Guantánamo and any ability to review the status of the detainees, including the Britons. Despite being held in an area which is under exclusive American jurisdiction and effective control, on which no foreign government had jurisdiction and in which no foreign courts can intervene, the detainees have therefore been excluded entirely from seeking the assistance of the American courts. For its own part the British Court of Appeal in Abbasi stated that it “...found it surprising...that the writ [of habeas corpus] of the United States courts does not run in respect of individuals held by the government on territory that the United States holds as lessee under a long term treaty”¹²⁰, but that is the stance which the United States government has persuaded the courts to adopt.

25. What is perhaps more worrying is that the District Judge in Rasul appeared to have accepted, and been influenced by, the United States government’s assurance at oral argument that “there’s a body of international law that governs the rights of people who are seized during the course of combative activities”, as she stated at the end of her Opinion that it “...should not be read as stating that these aliens do not have some form or rights under international law...”¹²¹. This is a concern when viewed in the light of the United States disregard for what that body of international law—in the form of the ruling of the Inter-American Commission on Human Rights, and views of the United Nations High Commissioner for Human Rights—has directed it to do.

26. CCR’s broader concerns are that if accepted this argument means that individuals could be detained indefinitely, at the detention of the executive, without any access to the courts, and that this could extend not only to detainees abroad but to domestic suspects. Since the detentions are not taking place within the checks and balances of the criminal justice system, this amounts to a suspension of the writ of habeas corpus and a further example of an overwhelming concentration of power in the hands of the President.

(iii) *The attempt in the British courts to compel the Foreign Secretary to take further steps on behalf of the detainees recently failed*

27. The Abbasi case was an attempt by judicial review proceedings to pressure the Foreign Secretary to intervene more forcefully on behalf of him and the other detainees. This was put on the basis that the Foreign Office was not reacting appropriately to the fact that they was being arbitrarily detained in violation of his fundamental human rights. The Court was invited to direct that the Foreign Secretary was under a duty to take all reasonable steps to require the United States government to release Mr Abbasi or to return him to the custody of the United Kingdom, or to bring him before a competent tribunal and to permit him to have access to his lawyer. It was argued that in the discharge of this duty the Foreign Secretary should make diplomatic representations to the United States authorities as appropriate to achieve these ends.

¹¹⁷ Military Order concerning the “Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57, 831, dated November 13, 2001 authorizing indefinite detention without due process of law anyone who he has “reason to believe” (i) is or was a member of al Qaida; (ii) has “engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or (iii) has knowingly harbored one or more individuals described in (i) and (ii)

¹¹⁸ See Abbasi Court of Appeal judgment, para. 11.

¹¹⁹ A similar case had been filed in the District Court for the Central District of California, purportedly on behalf of all Guantánamo detainees by a coalition of clergy, lawyers and law professors—Coalition of Clergy v. Bush 2002 WL 272428. On February 21, 2002, that case had been dismissed on the basis that the coalition lacked standing to proceed on behalf of the detainees on a next friend basis, but had found that in any event *Johnson* precluded the United States courts from having jurisdiction.

¹²⁰ Abbasi Court of Appeal judgment, para. 5

¹²¹ Judgment, pp.2 and 30

28. The Court made a clear finding that “...in apparent contradiction of fundamental principles recognised by both jurisdictions and by international law, Mr Abbasi is at present detained in a ‘legal black hole’....and [w]hat appears to us to be objectionable is that Mr Abbasi should be subject to indefinite detention in territory over which the United States has exclusive control with no opportunity to challenge the legitimacy of his detention before any court or tribunal”. This was a matter of “deep concern” to the Court, which it appeared to hope would be conveyed to the appellate courts of the United States¹²².

29. However, the Court felt it could not order the Foreign Secretary to do more than consider Mr Abbasi representations for assistance, which had been done. It would not, for example, be appropriate for the Court to order the Foreign Secretary to make specific representations to the United States, “even in the face of what appears to be a clear breach of a fundamental human right”, because of the impact this would have on the conduct of foreign policy at a particularly delicate time.

30. The reluctance of the British court to direct diplomatic activity on behalf of the detainees is in contrast to the decision of the Human Rights Chamber of Bosnia and Herzegovina delivered on 11 October 2002, in *Boudellaa, Lakhdar, Nechle and Lahmar—v—Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina*¹²³.

31. We do not yet know whether the Abbasi decision will be appealed, but at present the British courts have considered themselves unable to do more than give their admittedly damning view of the illegality of the detentions, and have not compelled the Foreign Secretary to act in a particular way.

RECOMMENDATIONS

32. It is clear from the above that the ability of the detainees to challenge their detention through any kind of legal medium is looking increasingly bleak. Further it is clear that in denying the jurisdiction of the United States courts to the detainees in *Rasul*, the Judge was influenced by the fact that “diplomatic channels remain an ongoing and viable means to address the claims raised”¹²⁴. Accordingly we would urge the British Foreign Secretary to:

- Communicate to the United States government the substance of the findings of the British the Court of Appeal in *Abbasi* as to the nature of the detentions.
- Pressure the United States government to:
- Have the legal status of the detainees determined by a competent tribunal;
- Comply with rulings of the Inter-American Commission on Human Rights;
- Permit the detainees access to their families and attorneys;
- Inform the detainees of their rights under the Geneva Convention;
- Inform the detainees of the lawsuits pending on their behalf;
- Undertake that, to the extent that any of the British detainees are to be tried, they will not be tried by ad hoc military tribunal but by regular courts.

¹²² *Abbasi* Court of Appeal judgment, paras. 64, 66 and 107

¹²³ In that case, the applicants were suspected of having planned a terrorist attack on the US and UK embassies in Sarajevo. They were ordered to be released from pre-trial detention but instead of being released they were taken into police custody and handed over the US military forces based in Bosnia and Herzegovina as part of the NATO led Stabilisation Forces. The Commission held that Bosnia and Herzegovina had, *inter alia*, failed to act in accordance with domestic law governing the expulsion of aliens and had violated their obligation under Protocol 6 Art.1 to the Convention to seek guarantees that the death penalty would be imposed. The Commission ordered Bosnia and Herzegovina to use diplomatic channels in order to protect the basic rights of the applicants and to take all possible steps to establish contacts with the applicants and to provide them with consular support. It further ordered Bosnia and Herzegovina to seek assurances from the United States via diplomatic contacts that the applicants will not be subjected to the death penalty and both respondent Parties are also ordered to retain lawyers in order to protect the applicants’ rights while in US custody and in case of a possible trial. The HRC further ordered the respondent Parties to compensate each applicant in the amount of 10,000 KM (approx. 5,000 Euros) for their suffering arising from the violations found.

¹²⁴ 29 Judgment, p.2

To the extent that the Foreign Secretary is not going to do these things, a statement to this effect would be pertinent information to place before the Rasul court on appeal.

Center for Constitutional Rights
New York

8 November 2002

APPENDIX 13

Memorandum from the Centre for European Reform

US-European co-operation among intelligence officers and police and prosecuting authorities

In the autumn of 2001, there was some grumbling among European agencies that the transatlantic intelligence flow was one-way. Despite the occasional headline in the press to the contrary, however, transatlantic co-operation in this area is now functioning well, and has produced some impressive results—leading to numerous arrests of terrorist cells in Europe and elsewhere. The initial squabbles on one way traffic in information has abated.

It is interesting to note that the Europeans initiated this co-operation immediately after September 11th, with the United States somewhat unsure how to respond. This differs from the dominant picture of the US urging, pushing, cajoling, bullying the Europeans to co-operate.

Also, the initiative to start negotiations on a streamlining of extradition procedures across the Atlantic came from the European side (under the Spanish presidency). The Danes are now pushing to bring these talks to a conclusion by year end. This account comes from well-placed US sources and has been confirmed by European sources. (Because the extradition talks essentially came out of the common EU arrest warrant agreement, it also illustrates the externalities of EU integration.)

NATO, European Security and Defence Policy

There is currently a lot of talk in Brussels about retasking NATO and, in some circles, ESDP, to tackle new security threats including international terrorism. This is controversial—many people doubt NATO's utility/relevance as a terrorist-fighting organisation. At least half the EU's member-states are sceptical, even if for different reasons, about the chances and merits of ESDP going beyond the Petersberg tasks.¹²⁵

The Centre for European Reform

November 2002

APPENDIX 14

Memorandum from Mr Brian Dawes, Montrose, Angus

THE IRAQ QUESTION AND THE QUEST FOR TRUTH AND MORALITY IN THE WORLD

AN APPENDIX TO THE GOVERNMENT DOSSIER ON IRAQ

"Untruthfulness has everywhere become a quality of the age; it is impossible to describe truth as a characteristic of our times . . . No man should make a statement, or impart anything to another until he has exhausted every means to ascertain the truth of his assertions; and it is only when he recognises this obligation that he can perceive veracity as a moral impulse . . . To this end a radical change must come about in our cultural life. The speed of travel, the lust of sensation on the part of man, everything that comes with a materialistic age, is opposed to truth."

*Rudolf Steiner*¹²⁶

The following is one person's search for much of the truth behind the evolving situation that threatens war between the United States and Britain against Saddam Hussein, albeit under the United Nations banner. It is amazing how much information *is* in the serious media that is forgotten or unheard of generally. To think clearly is the first step on the path to insight, of which a few indications are given from what has arisen in the mind of the author, but the emphasis has been to provide a wide variety of relevant information, in a condensed form.

¹²⁵ The Centre for European Reform has published two contending views on NATO's future. They are summarised at: <http://www.cer.org.uk/pdf/pr—374.pdf>

¹²⁶ *The Spiritual Foundation of Morality* Norrköping 30 May 1912, Lecture III p 67-8 Rudolf Steiner Press, transl. M Cotterell. (Gesamt Ausgabe 155 of Rudolf Steiner's published work).

KUWAIT AND THE GULF WAR

In the *New York Times* it was revealed that because of an interview with the American ambassador, April G. Glaspie, in a meeting in Bagdad on 25 July 1990, 8 days before the Iraqi invasion of Kuwait, in which “concern” was expressed “about Iraq’s military build up on its border with Kuwait”, America left Saddam Hussein free to settle his own Arab-Arab conflict with Kuwait, not anticipating it would come to him taking over its territory. Saddam Hussein, who talked of “a possible peaceful resolution”, had “warned the United States not to oppose his goal of getting economic concessions from Kuwait and the United Arab Emirates.”. The state department did not confirm, but neither did it dispute the essential message, originally from an Iraqi communiqué.¹²⁷ Reassurances to Saddam Hussein were repeated by others, notably US House of Representatives’ Foreign Affairs Commission, John Kelly.¹²⁸

Dr Francis (Iraqi Democratic Forum in exile in London) widened this picture by saying: “Twenty years of dictatorship have wiped out all traces of liberalism and democracy”¹²⁹, as exhibited by the remarks of some of those freed in the extensive amnesty of prisoners in October, this year.¹³⁰ Saddam Hussein has also perfected his dictatorship through astute manipulation of tribal loyalties.¹³¹ But “Some of Dr Francis’ fellow Iraqis in the opposition have said that they fear that if Saddam Hussein were removed, he might be replaced by Islamic fundamentalists’ (of which the Da’awa Islamic Party is a representative, who in 1990 admitted the Iraqi people were not ready for that solution then). “We’ll find ourselves facing a situation similar to the one that existed in Tehran at the start of the Iranian revolution,” they continued(7).

When the invasion on 2 August happened all “understanding” was revoked on 6 August by President George Bush (Senior), followed by the Western Coalition’s retaliation in the Gulf War of 1990, which ended with what sickened American soldiers called “a turkey shoot” of the retreating Iraqi soldiers. More recently British soldiers suffering from “Gulf War Syndrome” were also thought to be suffering, alongside their Iraqi “compatriots”, from the effects of depleted uranium on the battle fields, used to strengthen Western tanks and shells, as they were in Kosovo also. Apparently, Saddam Hussein wanted the Rumeilah oil field and the Kuwaiti islands dominating his access to the Persian Gulf and any proper port to the sea—which Saudi Arabia’s Defence Minister, Prince Sultan Ibn Abdulaziz, said they would not stand in the way of, if he withdrew from Kuwait, having given land to fellow Arab countries in the region themselves—a view echoed by both “the US and Britain”.¹³²

WEAPONS INSPECTORS

Then, this Autumn, United Nations resolutions on renewed weapons inspections picked up from the situation in 1998, when the warning of the US Ambassador to the UN to Richard Butler, the former head of the inspection team, “that his team should leave Iraq for its own safety” on 15 December 1998 (just before America started bombing Iraq), followed his report on 14th, which concluded that “no progress” had been made, even though “the majority of the inspections of facilities and sites under the ongoing monitoring system were carried out with Iraq’s co-operation”.¹³³ “Between 1991 and 1998 UN inspectors did impressive work making sure that Iraq’s nuclear programme, almost all its missiles and many of its chemical weapons were destroyed. They put in place a long-term control system, with surveillance cameras at dozens of sites”.¹³⁴ Recently on BBC Radio 4 one leader of the inspections team stated that a great number of the sites had been demolished that could produce weapons of mass destruction, and could not have been replaced in the time-lapse since the inspectors had left. Previously “both the Iraqi government and the former inspector before Butler, Scott Ritter, maintained that the weapons inspectors were joined that year by CIA covert operations specialists’ (American Intelligence) “who used the UN’s special access to collect information and encourage the republican guard to launch a coup”, first alleged by Iraq in 1966(11). Ritter was quoted in the Commons, from a 1998 letter: “The sad truth is that Iraq today is not disarmed any where near the level required by the Security Council resolutions . . . Iraq has lied to the special commission and the world since day one . . . the Commission has uncovered indisputable proof of a systematic concealment mechanism run by the Presidency of Iraq and protected by Iraqi security forces.”—“before he suddenly decided, years later that Saddam Hussein did not pose a threat from mass destruction weapons at all.”.¹³⁵ America insisted, on April 1994, that sanctions would not be lifted (which have been estimated to have killed more people than all the people than all the weapons of mass destruction in history¹³⁶), even if the inspections were completed successfully, contrary to UN Security Resolution 687, paragraph 22. This was reiterated in 30 October 1998 by its rejection

¹²⁷ *New York Times*: 23 September 1990 “U.S. Gave Iraq Little Reason Not To Mount Kuwait Assault” (Elaine Sciolino with Michael R. Gordon), from a broadcast by ABC News on September 1th (!)—see also Note 6.

¹²⁸ *Guardian Weekly (M)*: 21 October 1990 p13 “Saddam Hussein and the deaf-mutes” (Jacques Amalric).

¹²⁹ As in Note 6: “Dividend Iraqi opposition in exile” (Jean Gueyras).

¹³⁰ *Guardian Weekly (WP)*: 24 October 2002 p31 “Iraq frees thousands from prisons” (Rajiv Chandrasekaran).

¹³¹ *Le Monde Diplomatique* Oct.02 front page “How Saddam keeps power in Iraq” (Faleha Jabar).

¹³² *Guardian Weekly*: 28 October 1990, p6 “Saudi hint of Kuwait concessions to Iraq” (Hella Peck).

¹³³ George Monbiot in *Guardian Weekly*: 17 October 2002 p11 “Spoiling for a fight”.

¹³⁴ *Le Monde Diplomatique*: September 2002 (front page) “Target Baghdad” (Alain Gresh).

¹³⁵ Dr Julian Lewis: *Hansard* Col. 103.

¹³⁶ *Journal of Strategic Studies* Vol.23, No. 1 pp163–187, quoted by John Pilger: *The New Rulers of the World* 02 p60.

of the new UN Resolution of that date, insisting that Saddam must first go.¹³⁷ The latest resolution 1441, passed unanimously by the 15 present members of the Security Council—including Syria, the only Arab country present there this year (because nations other than the “big 5” attend by rotation at other than full assembly gatherings), has stiffened the odds for Iraq to comply with. Saddam Hussein has to accept the resolutions by Friday 15 November, a week after it was passed. Then a full disclosure of his weapons of mass destruction, including delivery systems, has to be given to the UN by 8 December. An advanced team arrives in Baghdad on 25 November under Hans Blitz, with 800 to 1000 inspectors starting work on 23 December with visits to “100 priority sites in a test of Iraqi cooperation”. All weapons of mass destruction have to be destroyed by February 2003. Any refusal to cooperate will result in “serious consequences”. (In the House of Lords the Bishop of Oxford said that the resolution was so strong that it could hardly be accepted by any country’s leader.) Both the US (President Bush) and Britain (Defence Secretary Geoffrey Hoon) have taken the resolution to mean that war may begin immediately any obstacles are reported, and both countries have stated that they “would not be bound by a new UN discussion”. Charles Kennedy, leader of the Liberal Party, has called for a vote at the UN before an invasion is started, which is in line with the way the French, and possibly the Russians interpret the resolution. This resolution is due to be voted on in the House of Commons shortly. Meanwhile “the strategy was for a land, sea and air force of 200,000 to 250,000 troops” senior US officials told the Associated Press Agency. “President Bush had approved tentative plans for invading Iraq in the event of a breach of the UN resolutions”.¹³⁸ This would be in order to be able to invade before the blazing Middle East summer begins at the end of February, when troop movements are made impossible. The Iraqi parliament, following a recent 100 per cent vote giving Saddam Hussein another 8 years of premiership, and in a bizarre example of Arab politics, *rejected* the UN resolution, but Saddam Hussein is expected to agree to it never-the-less (BBC Radio 4 News).

Overall, as has been said: “Truth is the first casualty in war”¹³⁹ (even if undeclared). Now we have the situation of the Russian authorities using gas to defeat Chechen hostage-takers in a Moscow theatre, only to find it was lethal to many of the hostages also. The Chechens wanted an end to the vicious war being waged against their secession from Russia.¹⁴⁰ Once weapons are made, they are inevitably used—even by mistake.

WEAPONS OF MASS DESTRUCTION

Again the use of chemical weapons by Iraq against the Kurds, whose constituents were imported from the West¹⁴¹, occurred infamously at Halabja in 1988 with up to 5,000 people killed (“according to Human Rights Watch”). (This has a precedent in British history in the then Colonial Secretary, Winston Churchill’s comment about the Kurds, then under British jurisdiction: “I do not understand this squemishness about the use of gas. I am strongly in favour of using poisoned gas against uncivilised tribes.”¹⁴²) Western intelligence reports “over a 100 tonnes of sarin” (“and other nerve agents” in the next three months) used “against Iranian troops on the Al Foa peninsular” a month later, with a total of “over 20,000 Iranian casualties; during the whole [8 year] war.”¹⁴³ The United States did not taken up the use of chemical weapons strongly with Iraq, its former ally throughout the war, even though against the Geneva Conventions. And in the Vietnam War the United States itself used napalm, a chemical weapon which burnt skin off its victims. It was also the only country to have used a nuclear weapon in war—on Hiroshima and Nagasaki.¹⁴⁴ And recently we had the headlines: “US ‘has secret bio-weapons programme’”¹⁴⁵—a programme that mocks the so-called American moral high ground. There is strong circumstantial evidence from the recently released Chinese state and army archives that America used biological weapons, following an accelerated programme of development, in the North Korean war of the 1950’s.¹⁴⁶ The war backed by the UN (due to the absence of the Soviet member of the Security Council when the vote was taken) in the van of N-S Korean hostilities.

OBFUSCATION

However, we have now reached “an ‘intelligence war’ inside the [White House and Pentagon] administration”, where “intelligence and other government employees in sensitive positions” are in “a behind-the-scenes revolt” over their “classified information about Saddam Hussein’s activities. Piece by piece the evidence against Baghdad laid out by President Bush and his senior aides has been called into question”

¹³⁷ Milan Rai: *War Plan Iraq*, quoted by George Monbiot (see Note 11).

¹³⁸ *Guardian Weekly*: 14 November 2002 front page “Iraq faces sternest test” (Patrick Wintour, Ewen MacAskill, & Brian Whitaker in Cairo).

¹³⁹ Aeschylus et al. *Penguin Thesaurus* (1998)/*Concise Oxford Dictionary of Quotations* (OUP 1993).

¹⁴⁰ *Guardian Weekly*: 31 October 2002 p14 “Words not war, in Chechnya” (Frank Judd).

¹⁴¹ *Guardian Weekly (WP)*: 23 September 1990 p17 “How everybody rushed to arm Saddam Hussein” (Glenn Frankl) & *Independent*: 12 September 1990 p9 “Terror arsenal the world ignored” (Special Correspondent).

¹⁴² John Pilger (see Note 14) p65.

¹⁴³ Tony Blair’s “Dossier”: *Iraq’s Weapons of Mass Destruction—The Assessment of the British Government*, Ch2: Iraq’s programmes 1971–98 p14/5.

¹⁴⁴ Llew Smith *Hansard* Col’s. 131-133.

¹⁴⁵ *Guardian Weekly*: 31 October 2002 front page (Julian Borger in Washington).

¹⁴⁶ *Le Monde Diplomatique*: July 1999 p14 “First Victims of biological warfare” (Stephen Endicott & Edward Hagerman).

as a “selective reading of intelligence, to say the least”¹⁴⁷(23a). Never-the-less in the face of up-coming elections, and in the perceived wake of public fear of terrorism after 11 September, The House and Senate voted by 68 per cent (31 opposed) and 77 per cent (22 opposed) respectively, to authorise the president to “use the armed forces of the United States as he determines’ to be necessary and appropriate in order to defend the national security of the United States against the continuing threat posed by Iraq” last week [before 16 October 2002] to effectively “grant President Bush the power to attack Iraq unilaterally, remove Saddam from power and abolish the country’s nuclear, chemical and biological weaponry”. The debate criticised the lack of post-Saddam plan, measures to prevent a widening of the conflict to Israel etc, and no assurance that the war against terrorism would not be compromised(22b). Of course the wavering economy, in the light of the recent corporate scandals (Enron etc), means that the economy is a very real threat, so far covered up, after the initial exposé, by concentration on a *terrorist* threat(22c). Officials gave a three phase model: “US military operation, move to a civilian occupation and shift to Iraqi control after local and national elections”, while Secretary of State Colin Powell said “the US military would likely have an extended presence in Iraq”(22d). After encouraging the Iraqis to revolt at the end of the Gulf War America failed to support them when they did, followed by fierce punishment from Saddam Hussein. However, previously rival Kurdish political groups, the Kurdistan Democratic Party (PDK), who “have governed the north and south of the region separately since 1996”, have just pledged “from now on to have a single government and a single administration”. Congratulated by Colin Powell, the two leaders “hope that the US intervention will take place” and look forward to a federal framework which includes the Shi’ites of South Iraq, who also want a regime change(22e). Now both the northern Kurdish and the southern Shi’ite sectors are the subject of no-fly zones, patrolled by the US and Britain with 36,000 sorties, including 24,000 combat missions” “during the eighteen months to 14 January 1999”¹⁴⁸ (on average, over 40 combat missions/day) and we hear of three attacks (amongst other targets) on the international airport of Basra in southern Iraq in the last two weeks, the last on 18 October 2002. “US and UK defence officials have in the past said that the targets at Basra are mobile air defence radar systems that lock on to allied aircraft”.¹⁴⁹ With such a target and a reported “sharp increase in the US-British air raids on Iraqi air defences over recent months” [on 7 September], played down by Pentagon officials, we have “what military analysts said could be preparations for a possible attack this winter”.¹⁵⁰ (The first stages of undeclared war, independent of the UN, by another name.) The same commercial interest in Afghanistan oil has been suggested as what lies behind the wish for a military “regime change” in Iraq.¹⁵¹ Iraq seems unlikely to threaten anyone in the face of American military power, short of a death-wish or miscalculation, which is also possible, though the power game followed by the West may well be the model for Saddam Hussein’s wish to have the trappings of nuclear, chemical and biological weapons leading to a dominant role in the Arab Middle East over against that of Israel (with similar weaponry).

MORALITY

One must conclude that, far from *having* the moral high ground, the governments of the United States, aided and abetted particularly by Britain, in relation to Iraq and much of the rest of the world, seem like rogues dealing with rogues, however unconsciously, to be judged by the seven deadly sins: Lust—the will for possession; Gluttony for sensation; Greed for resources and its concomitant life-style; Sloth in finding the Truth; Wrath when we are thwarted; Envy when we feel deprived; and Pride—which comes before a fall! It is precisely “Men in power today, such as Donald Rumsfeld, Dick Cheney and Paul Wolfowitz” who “worked hard to get Ronald Reagan elected” in place of Jimmy Carter—a critic of President W Bush (Junior)—who has just received the Nobel Prize for Peace. As President from 1977–81 he never sent “American soldiers into combat”, and was full of “revulsion over earlier US efforts at ‘regime change’ in which the CIA aimed to assassinate or mount coups against leaders in the developing world”—in “Chile, Congo and Cuba”¹⁵², “revealed just as Mr Carter was starting his bid for the presidency”. We must be thankful for this insight too, as for his “20 years of work in conflict resolution in Nicaragua, Haiti, North Korea and Cuba as well as funding programmes against disease in Africa.”(25f). (And Llew Smith MP) also added “We shall not forget that, since 1945, the United States has intervened in or invaded Albania, Angola, Brazil, Cambodia, China, Congo, Cuba, the Dominican Republic, East Timor, El Salvador, Grenada, Guatemala, Guyana, Haiti, Indonesia, Iran, Panama, South Korea, Nicaragua, the Philippines, Uruguay, Vietnam and Zaire(19).) However one correspondent insisted that President Carter *did* send millions in aid to El Salvador in 1980 when, according to the Council on Hemispheric Affairs, “the death toll reached almost 10,000 with the vast majority of the victims falling prey to the right wing terrorism sanctioned by key government officials”.¹⁵³ Overall we can thus realise that we are dealing with the hot-headedness of chancing a massive Muslim

¹⁴⁷ *Guardian Weekly*: 17 October 2002: (a) p6, (b) p31(WP), (c) p14, (d) p31, (e) p29 (M), (f) p3.

¹⁴⁸ John Pilger (see Note 14) quoting *The Observer*: 28 October 2001.

¹⁴⁹ BBC News on-line, 18 October 2002.

¹⁵⁰ *Guardian website*: 7 September 2002.

¹⁵¹ *Guardian Weekly* (WP): 19 September 2002, p28 “Firms set for post-Saddam oil bonanza” (Dan Morgan & David B. Ottaway), s. *Independent*: 29 August 2002 p15 “Amid talk of war, only one thing is certain: fuel prices will rise” (Adrian Hamilton).

¹⁵² Jeremy Corbyn: Hansard Co., 29—incl. arms to Saudi Arabia & Iran.

¹⁵³ *Guardian Weekly*: 7 November 2002, p13 “Briefly” (Julian Volger, Santiago, Chile).

backlash and the cold calculations of “Real Politik”, in which there needs to be placed the calm of balanced compassion—compromise, which was one of the assets of the English Folk Soul, in spite of all its failings in the British Empire and since.

A LEVEL PLAYING FIELD—LEVEL-HEADEDNESS

These questions rely on insight arising out of such information as is quoted here, if we are to develop a feel for the truth. The fact is that neither the United States nor Great Britain, nor China, Russia or France, the permanent members of the Security Council, have admitted any inspections of *their* weapons of mass destruction in this situation, with the United States preferring to abrogate the anti-ballistic missile treaty on nuclear weapons, and risk a new arms race in order to build the missile defence shield (“Star Wars II”), which again is too complex to ever have its computer programme “de-bugged” from inherent mistakes, and the possibility of a fatal mistake in practice. Neither can the United States invade all the countries of Presidents Bush’s “axis of evil” (Iran and North Korea, as well as Iraq), in addition to those America has invaded anyway in the last 50 years—or do they think they can? (Do they think through the consequences?) The new American doctrine of “pre-emptive strikes”, before they are actually threatened with attack, destabilises existing international legislation, and encourages *any* state to attack anyone “at whim”. Any military attack against Iraq now, in the present state of Islamic resentment (dating back to the 1990’s¹⁵⁴) felt towards the American state—not least because of the Israeli-Palestinian violence (see “Background” below)—runs the danger of creating a Middle Eastern conflagration. (Both points—especially the former, were reflected in the Parliamentary debate on Iraq on 24 September 2002—the *Hansard* record).

THE WAY FORWARD

To admit *our* moral culpability, usually dismissed as “history” by governments, takes moral courage, but can, in the long term, open up a whole range of possibilities if we can thereby establish *trust*. Then we might move on to the seven cardinal virtues, even in our political life—between governments and the governed: Charity/Catharsis—in the face of need and crisis; Faith in the future, with Wakefulness to reality; Hope in Man’s potential, with Loving Care for humanity; Temperance in our demands; Courage in the face of evil extremes, with Guardianship of the earth; Justice based on equal worth, with Wisdom to see the way forward; and Responsibility—how do I react in my daily life?, with Understanding—empathy for the human condition. For in the end we are always dealing with human beings, however clouded *their* consciousness of truth, or *our own*.

IMMEDIATE CONSIDERATIONS

Even if this long-term stance seems hopelessly impracticable at the moment there are serious considerations in the immediate term. How much chaos and destruction is the present American administration likely to promote in the international scene out of its own idea of its own “self-interest”?—in spite of the fact that there *is* a sizeable opposition to war with Iraq there—as with the hundreds of thousands who demonstrated in London recently—as there was in New York for peace, immediately after 11 September, though hardly reported in our media. (Mostly, in my experience, on BBC Radio 4 news.) This includes what kind of head of government would be “placed” in a new Iraqi regime (favourable to America’s interests). If the spot-light were shone on other regimes—North Korea, Saudi Arabia or Egypt (let alone Israel) come to mind, as well as the renewed Pakistan military dictatorship, where nuclear weapons are also involved—would they be seen to be as *bad* as the present Iraqi regime, albeit perhaps in ways less obvious to us at present? And is the bombing of the Iraqi people for a second time *really* a price worth paying, as it was said to be with the widespread malnutrition and starvation amongst children, for instance, under sanctions—when the long-term outcome is so uncertain? Could we get to the point, by public pressure everywhere, where the Iraqi regime is reformed by “turning the other cheek” in offering *development aid* as a way towards democracy, when the Iraqi opposition could for instance come into its own. (Even now Iraq is a secular state with equality for women.) Our recent contributions to the history of Iraq hardly justifies anything else.

¹⁵⁴ *Guardian Weekly*: 14 October 1990, p8 “Divided Arabs use deaths to support their position on Iraq” (David Hirst).

Annex

BACKGROUND

Afghanistan

Many now realise, for instance, that, objectively seen, the military campaign of American bombing of Afghanistan at the end of last year intimidated local Afghan drivers of aid lorries from driving through Taliban territory, when, with the advent of the bombing, the Taliban were made more suspicious and uncooperative than they were before, followed, with the Taliban's withdrawal, by the confusion of dealing with the various military groupings which were then found on the ground. "Christian Aid said military force could only be justified as a last resort" but "in the short term it will inevitably make the humanitarian situation worse". Secure conditions were essential for the transport of supplies, which meant open [Afghan] borders¹⁵⁵ and aid convoys unmolested. "Any offensive military action or threat of military action makes it impossible to deliver these conditions" its director, Daleep Mukarjee, said. "Will Day, chief executive of Care International, said: 'Air drops make great TV, but they often represent a failure to respond to a food crisis.'"¹⁵⁶ The mixed message of bombs and food parcels from the air also confused the starving Afghans, and even then the peanut butter and serviettes in them, supplied by a Texan food company, were not their normal diet!—a tragic lack of common sense, let alone insight. Only now have estimates of '3,500 Afghan civilians . . . killed by US bombing, with up to 10,000 combatants killed and many more deaths from cold and hunger as a result of military action.' been formulated as a consensus.¹⁵⁷ 'Civilians deaths are thought to be higher than Kosovo and even the Gulf War.'¹⁵⁸ After 20 years of war and three of drought they were desperate, especially in remote mountain areas. It was the failure of the West to enable the Afghans, after the Russian withdrawal under Gorbachev, to re-instate their subsistence farming that led to wide-spread poppy growing for heroin, which would be sold to the Taliban and al Qaida to keep body and soul together.¹⁵⁹ What, as *motivation* for the war against the Taliban, is more worrying is the repeated claim that America wanted them out of the way because of their opposition to an oil pipeline across Afghanistan.

It is abstract technological thinking today that enables us to build incredibly sophisticated weaponry and to trust it implicitly. Then military thinking is reluctant to believe it is by no means infallible, and so it underestimates, the number of civilian casualties, despite the reassurances of politicians. Fake video footage is disseminated,¹⁶⁰ and the Taliban is bamed for the fact that women in Afghanistan are forced to wear the burka, which covers them in public (apart from their eyes), when, in fact, it has been enforced in Afghanistan by the War Lords of the Northern Alliance and the Pashtun in the south for a long time before the Taliban came into existence, albeit to be replaced since the latter's demise, in places like Kabul, with the hope of public education for women and girls. On television villagers were quoted as having accepted the Taliban because of the internecine fighting among the mohajedin after the Russian withdrawal. 'If the Americans had brought peace, that would have been a good thing. But instead they have just brought us war and looting and the men of Gul Agha [the former mojahedin governor of Kandahar]', said Aslan . . . [a] Pashtun refugee from Alazar-i-Sharif [who] fled his farm . . . 'They only know war. If they want to they can just kill you and go unpunished', he said.¹⁶¹ Now 'Investigators have found evidence of a mass grave at Dasht-i-Leili, close to the jail at Sherberghan'—'then under US control' in which Taliban troops 'were transported for hours in sealed metal shipping containers' after the battle of Kunduz in late November [01]. The UN investigation 'has found evidence that a leading Afghan warlord and strong ally of the United States tortured witnesses'—'up to 1,000 tortured and killed'—'to stop them testifying against him in a war crimes inquiry', a UN source said last weekend [16 November 2002]. General Abdul Rashid Dostan, an Uzbek warlord was part of the opposition Northern Alliance that overthrew the Taliban regime with US help, and has been used extensively by the US military in operations against Al Qaida and the Taliban.' 'If confirmed this would raise questions about the role of US special forces who were supervising the detention of the prisoners . . . "We have enough evidence to lead us to believe there are serious concerns," the UN official said.'¹⁶² The long term outlook in the country must remain unknown, in spite of the fledgling government that arose out of the 'gung-ho' victory attitudes of the Americans and the United Kingdom, expressed by government officials. Emergency food via the United Nations continues accompanied by a slow reconstruction of the country through the new Afghan government (Clare Short, Radio 4), but, as with Iraq, a *massive aid programme* could have brought down the Taliban by peaceful means.¹⁶³ 'Now after the war was supposed to be over, the US 82nd airborne division is reported to be alienating the population in the south and east with relentless raids and detentions, while mortar and

¹⁵⁵ *The Press and Journal* 20 September 2001 p11: "Pakistan worried as Afghans flee to border". *Guardian Weekly* 11 October 2001 p4: "Aid agencies say air drops no solution" (Jonathan Steele and Felicity Lawrence).

¹⁵⁶ *Guardian Weekly* 11 November 2001, p4: "Aid agencies say air drops no solution" (Jonathan Steele and Felicity Lawrence).

¹⁵⁷ *Guardian Weekly* 28 November 2002, p13: Seumus Milne "Reasons to be hated".

¹⁵⁸ *Guardian Weekly* 14 February 2002 front page: "Afghans still dying as air strikes go on. But no one is counting" (Ian Traynor in Kabul).

¹⁵⁹ *Guardian Weekly* 28 February 2002, p3: "Afghan's deadly crop flourishes again" (Luke Harding in Singesar).

¹⁶⁰ *Guardian Weekly* 8 November 2001 front page: "Bungled US raid came close to disaster" (Luke Harding in Quetta, Julian Borger in Washington and Richard Norton-Taylor).

¹⁶¹ *Guardian Weekly* (O) 6 December 2001 p4: "Anti-Taliban War Lords bring fresh terrors" (Paul Harris, Chaman).

¹⁶² *Guardian Weekly* 21 November 2002 "US Afghan ally 'tortured witnesses to his war crimes' (Rory McCarthy).

¹⁶³ *Guardian* 25 September 2001 George Monbiot: "A massive aid programme for Afghanistan will help bring down the Taliban".

rocket attacks on the US bases are now taking place at least three times a week. As General Richard Myers, the chairman of the US joint chiefs of staff, puts it, the military campaign in Afghanistan has “lost momentum”.¹⁶⁴ This does not bode well if it comes to war with Iraq.

Israel and Palestine

The Middle East has been continuously in the media, so that only a few points need to be made from the present but the longer perspective could be helpful.

Israel was set up after the second World War as a response to the Holocaust, following increasing Zionist activity in the early part of the 20th century. It was racially based, discriminating positively to the Jewish Diaspora who began to immigrate, especially from Russia where there was considerable anti-Semitism. These immigrants were those especially who were given cheap housing in the settlements after the 6 day war in the West Bank and Gaza strip, complete with access roads from Israel proper, carving up the Palestinian territory, which had been occupied at that point. The Arab world took the stance that it would ‘drive the Jews into the sea’, and there were various atrocities like the shooting of Israeli athletes bound for the Olympics at Munich airport. It would take an eminent historian, with direct experience to demarcate accurately the process of creating the State of Israel in Arab Palestine since the Second World War. What we all experience in the West (second hand) is the break down of the Peace process in November 2000, but also the bursting open of wounds which have been concealed from our general public here in various degrees. By now we have “grown used to”—a shock to some of us initially—Israel having troops to ‘keep the peace’ within the Palestinian areas of the West Bank and Gaza strip. We also now know for sure of the intrusion of the Jewish settlements into these areas, once designated theoretically as the basis of a Palestinian independent State in the Oslo Accords, brokered by President Clinton. New settlements have not abated, nor have the suicide bombings against them. It is this fact that has partially jettisoned any real independence for the Palestinians politically, although they are likely to remain dependent on Israel for much of their employment. After Premier Netanjahu’s back-peddalling on the Oslo Agreements, since they broke down under his successor Ehud Barak, the patience of the ordinary Palestinian has broken. In particular, after the Likud opposition leader became Prime Minister, Ariel Sharon’s visit to the Temple Mount in East Jerusalem, sacred to both Jews and Arabs. Israel is naturally afraid of Palestinian terrorists, who have reinstated the old state of war with the State of Israel, that appertained at its inception and for a long period thereafter until Anwar Sadat, President of Egypt, made a dramatic peace with them, now followed in 2002 with an offer from the Arab States of peace in exchange for land—the land occupied in the West Bank and Gaza strip by Israel ever since the 6-day war when they victoriously occupied land up to the Nile, before withdrawing to what used to be known as Palestine, pre-war. In spite of United Nations Resolutions Israel has for the last 50 years refused to withdraw from these two territories, where the Palestinians have settled exclusively (often as refugees from Israel—their former home), although there are also many Arabs resident in Israel itself, having elected to stay when the State was inaugurated. Ariel Sharon’s invasion of the refugee camp of Jenin (as with other towns including Bethlehem) to seek for terrorists has caused uproar world-wide, not to mention Palestine, by its heavy handed measures and apparent contempt for civilian life and property. An attempt by the United Nations to investigate what had been called a massacre were thwarted by the Israeli government. The hard-line orthodox Jews see Israel as the “Promised Land” of the Old Testament, initially occupied under Aaron, the successor of Moses who led the Hebrews out of captivity in Egypt and through the Sinai desert for “forty years”.¹⁶⁵ Repeated attempts at cease-fires have been made, but too often they are quickly thwarted by violence, more often than not from the Israeli side, but also from Palestinian militants like “Hamas”. We live in hope. American warnings to Israel about its behaviour from President Bush have not been consequential through the summer and autumn of 2002. The £2 billion subsidy per annum remains, though there have been periods under previous presidents when it was withdrawn, in order to call Israel “to heel”.

The support for the “War against Terrorism” by Muslims across the world will also depend on Ariel Sharon’s cessation¹⁶⁶ of this present military confrontation, since the affront to all Palestinians with the “inspection” of the Temple Mount in East Jerusalem that he must surely have expected. This led to the renewed Interfada, and the present Israeli oppression, interwoven with continued attacks on the settlements on Palestinian territory, as well as suicide bombers in Israel itself, who attack soldiers and civilians alike¹⁶⁷, despite all the extensive assassinations of Arabs suspected of terrorism, and the accompanying deaths of Arab civilians, by vastly superior Israeli weaponry. The British, French and Russians diplomatic activity needs to surface into the media, and accompany the new Labour leader in Israel, Amram Mitzna, who is prepared to remove settlements in a new Peace process. (BBC Radio 4 News) It remains to be seen if the Israel electorate will take advantage of this stance and vote his party, and not Ariel Sharon, into power in the elections next year.¹⁶⁸ The difference between Chapter VI UN resolutions which apply to the two parties Israel and Palestine

¹⁶⁴ See Seumas Milne, *Op. Cit.*

¹⁶⁵ The Old Testament: Book of Exodus Ch.6v28 ff.

¹⁶⁶ Sharon has an old feud with Arafat, s. *Le Monde Diplomatique* September 2002 p8/9: “The past is always present” (Pierre Pean).

¹⁶⁷ *Guardian Weekly (WP)* 4 October 2002 p32: “Civilians bear the brunt of Israel-Palestine fighting” (Molly Moore, I Rafah Refugee Camp).

¹⁶⁸ *Guardian Weekly* 5 December 2002 p5: “Sharon wins Likud poll—Israeli PM defeats Netanyahu to lead party unto election and dismisses ‘two states’ remark by country’s UN ambassador” (Graham Usher and Chris McGreal in Jerusalem).

and those from Chapter VII which are directives to Iraq are viewed as entirely academic by many in the West and Arab world. We need to see those on the Middle East enacted by both parties, giving security for both in their separate states. To this end the offer of peace by Saudi Arabia to Israel with the agreement of other Arab states, in exchange for a Palestinian State, needs to be taken up seriously if the “War against Terror” is to have any meaning. After that, the war in Chechnya needs to be addressed as a similar problem by the West.

Brian A Dawes

29 November 2002

*Guardian Weekly (M)/(WP) for Le Monde/Washington Post sections;
Hansard refers to the House of Commons debate on 24 September 2002.*

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