THE CHAIRMAN: I am very grateful to everyone for being so punctual.

We ought to start by a welcome to Sir Michael Wood. You are very welcome, Sir Michael, as legal adviser to the Foreign and Commonwealth Office from, I think, 1999 to 2006, so covering most of our period.

I said at the beginning of the day that the objectives for the day were to start to build a picture and set the context, and the recent history of Iraq policy, which is complex, is an important part of that understanding.

We spent the morning on the evolution of that policy in 2001. This afternoon, we are going to focus more closely on two subjects within that broad set of
policies, the No Fly Zones and sanctions. It is not entirely clear to me how long we shall need for this afternoon’s session. If it looks as though it is going to run on for quite a long time, we will take a break half way through, but if we are getting closer to the end by mid-afternoon, we will run straight on and close when we close.

Can I just remind the witnesses, because Sir Michael is new to the witness table, that they will be asked later to sign a transcript of their evidence to the effect that the evidence they give is truthful, fair and accurate.

Thank you.

With that, can I turn to Sir Roderic Lyne to open the questions?

SIR RODERIC LYNE: I'm conscious that this is a very long day for the two of you. Thank for coming back. In particular, we are asking Simon Webb to dig back into detailed matters that you dealt with, not one but two incarnations ago in your official life.

What we would like to do at this stage is to establish in more detail than we did this morning, when we touched on the subject of the No Fly Zones, how they were established and what their basis was. So I would like to ask you, and then I will ask Sir Michael, some
questions about the origins of the No Fly Zones. We will then turn to the way that they evolved and the situation in 2001.

So perhaps, Mr Webb, you could just start off by telling us what was the original purpose of having the northern and southern No Fly Zones and was it the same purpose for the north and the south or were there differences between them?

MR SIMON WEBB: Thank you. To begin with, the northern No Fly Zone, because that was the historical sequence, this was a response to humanitarian crisis. I should perhaps say that I was private secretary to the Secretary of State for Defence during the Gulf War and in this period immediately after it, and, therefore, I was directly involved in the establishment of the northern No Fly Zone, and, indeed, visited it with, then, Tom King, now, Lord King. So I do remember.

The exegesis of it was that, after Iraqi forces were ejected from Kuwait, there was within a few weeks an uprising by the Kurds to try to achieve more autonomy in the northern part of Iraq. Saddam Hussein responded by sending his forces in to crush them. The evidence was quite clear that he had over 20 divisions on the move towards the Kurdish area.

That triggered massive refugee movements. I have
been trying to check the figures and I will be a bit careful about this, but the numbers I got were about 400,000 refugees ended up on the Turkish/Iraq border, Turkey being reluctant to let that many into their country, and an even larger number, I believe, went over into Iran, so it was a massive movement of people, and although it was -- I suppose we were in sort of mid March by this time -- it was still winter there. It was cold and wet.

We were concerned about that in its own right but also by the history that there had been of Saddam Hussein's atrocities towards the Kurds, and, of course, there was evidence of that from the 1980s in Halabja and elsewhere. So we were very anxious that a major humanitarian crisis was in being.

After a rapid discussion with the United States, and it rose very rapidly to Prime Minister/President level, I think I recall, it was decided that we needed to take some action to deal with the humanitarian issues. In a way, from the point of view of the Defence Department, this was kind of the last thing we wanted. We had concluded the campaign to eject Iraq from Kuwait. We had decided very specifically not to put forces into Iraq, and now we had this crisis; but Ministers reacted to that situation and it was decided that we should take
action. There was a Security Council Resolution --
I think it is -- excuse me a moment -- 688 was passed on
5 April and a deployment took place the following day.
It was led by the United States, called
Operation Provide Comfort, and within that we
deployed the Royal Marine Commando Brigade, who, by good
fortune, had not been involved in the invasion of
Kuwait and were mountain warfare trained. So they had
the equipment and the training to go and operate
comfortably there.

To provide protection against the Iraqi air forces,
an air detachment was deployed to Turkey which provided
top cover so that both the protection force, and,
indeed, the refugees, couldn't be attacked from the air,
and to allow us to conduct some humanitarian operations
by air drop. There were Hercules C130 aircraft dropping
food supplies and so on.

From that point, what became clear was that this
stopped the Iraqi advance. As they started to get up
toward the mountains, they stopped in the face of seeing
organised forces and this air cover.

The idea emerged from that that perhaps it was the
air cover which would allow the Kurds to be able to look
after themselves without western forces having to be
present. We were extraordinarily reluctant to depart

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from the traditional desire of any defence department not to get yourself committed with a ground force deployment on an enduring basis. We felt uncomfortable in a way being back in that region. There was a lot of history about Britain, Kurds, Turkey from the 1920s, and we didn't really want to be there for any longer than we needed to be.

In the discussion with the Kurds, although I don't think I participated in that, the idea came that we could stabilise the situation on that basis. So the justification for it was humanitarian and the legal basis was humanitarian, and I will leave Michael to talk about the developments that of later. I'm sure you will want to get into that.

The air cover was, if you like, the residual operation which provided safety for the Kurds.

In the south, I was less directly involved in that, but, again, there was an operation -- there was an uprising by Shias, which was, I think, very brutally suppressed by Saddam Hussein, and he was using attack helicopters to help with that persecution, and, again, the No Fly Zone was a humanitarian reaction, having seen the success in the north, not to eliminate it in the south but to reduce its impact on local populations.

I think that's essentially where -- how we got
started and, in a way, how it remained. There were lots -- I think the Ministry of Defence has given you a paper which explains some of the subsequent development of the zones, but, essentially, that was -- that was the position that we started from and stayed with.

SIR RODERIC LYNE: Thank you. In a few minutes we will leap forward ten years from 1991 to 2001 and see whether the purposes still held good then or what had changed, but before we do that, Sir Michael, can you tell us a little bit more about the legal basis for the No Fly Zones, how strongly this was established and whether it was a legal basis that was widely acknowledged, particularly by members of the United Nations Security Council going beyond the United Kingdom and the United States?

SIR MICHAEL WOOD: Certainly, Sir Roderic.

I should make clear at the outset that, in fact, I was not personally involved in 1991. I went to New York, to the Mission in New York, as legal adviser and was there from 1991 to 1994. So I wasn't involved in these things in London, but, of course, subsequently I have looked at it very closely because I was involved with the No Fly Zones later.

I think it is very important at the outset to make it clear that there is a distinct legal basis,
a separate legal basis for the No Fly Zones. The legal basis for the No Fly Zones has nothing whatsoever to do with the legal basis for the 2003 invasion of Iraq.

The legal basis for the No Fly Zones was based upon an exceptional right to take action to avert an overwhelming humanitarian catastrophe, whereas the legal basis for the invasion of Iraq was Security Council authorisation.

Perhaps it would help if very briefly I just set out the law, the international law on the use of force. It consists firstly of a prohibition of the use of force in international relations, set out in Article 2(4) of the Charter. The charter then has two express exceptions. The first of these is self-defence, recognised in Article 51 of the Charter, and the second of these is authorisation by the Security Council acting under Chapter VII.

Now, in the case of extreme humanitarian catastrophe, the need to avert an extreme humanitarian catastrophe, this is not referred to in the Charter. It is regarded by the British Government as being derived from customary international law, and the essence of it, I think, is that if something like the Holocaust were happening today, if the Security Council were blocked, you couldn't get an authorisation from it, then it
simply cannot be the law that states cannot take action

to intervene in that kind of a situation, an emergency

of that scale.

The British Government's view has been set out

often, but perhaps most authoritatively just before

Kosovo, by Baroness Symons, and if it will help, I'll

just read out the couple of sentences that she said in


She made it clear that there may be cases where, in

the light of all the circumstances, a limited use of

force may be justifiable in support of purposes laid

down by the Security Council but without the

Security Council's express authorisation when that is

the only means to avert an immediate and overwhelming

humanitarian catastrophe.

Now, what we had in the case of the No Fly Zones was

Security Council resolution 688, which Simon just

referred to, and I don't think I need read out large

parts of that, but that resolution stated very clearly

that the Security Council was gravely concerned by the

repression of the Iraqi civilian population in many

parts of Iraq, including, most recently, the Kurdish

populated areas. It said the Council was deeply

disturbed by the magnitude of the human suffering

involved, and then went on to condemn the repression of
the Iraqi civilian population, to demand that Iraq
immediately end this repression, to insist that Iraq
allow immediate access by humanitarian organisations and
then it requested the Secretary-General to do his best
to use all the resources at his disposal to alleviate
the humanitarian crisis, and it appealed to member
states to assist him in doing that.

SIR RODERIC LYNE: Can I just interrupt you at this point?

The Security Council Resolution supported the
British Government's argument that this was a situation
of extreme humanitarian distress or need or catastrophe.
But it did not specifically authorise the establishment
of No Fly Zones.

That was action taken by the British and American --
and I believe French -- Governments, based on, as you
say, customary international law as its justification.

To what extent was the interpretation of customary
international law by these three governments more widely
shared by other governments? Was this a controversial
step for them to take or was it broadly agreed in the
international community?

SIR MICHAEL WOOD: It was a very controversial step and,
indeed, I would not say that it was shared by all three
governments. The United States Government, I think, was
very careful to avoid taking any real position on the
law. If anything, the United States Government tended
to rely upon Security Council resolution 688 as somehow
giving an authorisation.

SIR RODERIC LYNE: You say somehow, but 688 did not refer to
No Fly Zones, so what was the essence of the American
argument?

SIR MICHAEL WOOD: I think you would probably have to ask
them. They never expressed it in any detail. They
probably would say it was implicit in 688 that states were
authorised to use force, but certainly that was not
the British Government's position; it was not the
British Government's position in 1991. We took the view
and said that we were acting in support of 688, but that
the authorisation to use force derived from customary
international law.

The Foreign Office -- the Research Analysts have
submitted a paper to you, the main purpose of which is
to describe the Security Council resolutions as a whole
and that does contain a sentence which I think is
misleading in paragraph 7, where they suggest that the
three countries cited 688 as the legal basis for the
establishment of the NFZs. Now certainly the
British Government did not cite it as the legal basis.
We simply said that we were acting in support of 688.

Of course, one of the main purposes of the
overflying of the No Fly Zones was to monitor
Saddam Hussein's compliance with 688, to monitor his
termination of the repression which 688 had demanded
that he end, but we at no stage argued that we were
authorised by the Security Council to impose the No Fly
Zones; we said that derived from this exceptional right
in the face of an overwhelming humanitarian catastrophe.

SIR RODERIC LYNE: Fine. Thank you very much. I think
that's fairly clear and we will come in a minute to the
question of how that policy stood the test of time.

Before we do so, I would just like to ask Mr Webb
one other question, not actually about the No Fly Zones,
but about another aspect of the military containment of
Iraq.

We did in this period have in force a naval blockade
of Iraq. Could you just very briefly describe to us
what it was doing and whether this was in any way
problematic and whether it was effective?

MR SIMON WEBB: There was a naval component of the
enforcement.

SIR RODERIC LYNE: I think "blockade" is the wrong word.
I should have said "embargo". I am told not to use the
word "blockade".

MR SIMON WEBB: I think we actually called it "maritime
interdiction operations", by which we meant that, under
the UN resolutions, which authorised the sanctions regime, there was a power for warships to stop and board ships going towards Iraq, which they did sparingly because the deterrent value of that was -- the declaration that that was in existence was very strong.

Even before that stage, the UK had actually customarily deployed a destroyer or frigate in the Gulf, called the Armilla patrol, which was actually to protect trade. So you ended up with a ship with a dual mission which was: reassurance in the region, but, also, these maritime interdiction operations to prevent goods which weren't allowed to get into Iraq.

SIR RODERIC LYNE: So it is helping to enforce sanctions?

MR SIMON WEBB: Exactly.

SIR RODERIC LYNE: The Americans were there as well doing this?

MR SIMON WEBB: Yes, it was actually run by the Americans out of Bahrain. There was an American --

SIR RODERIC LYNE: Were any other Navies involved?

MR SIMON WEBB: Yes, I believe there were, but I don't actually have the detail. I will let you have them.

I think in -- on the reverse operation of course, it was also there to stop oil being smuggled out of Iraq, outside the allowed Oil For Food programmes and so on.

It was generally, I think, pretty successful, but the
Shatt al Arab is a very large waterway and obviously there is an international border with Iran which runs through the middle of it. So there was a certain amount of success of people sneaking ships out of the Shatt al Arab and up into Iranian waters and then out. So that was more difficult to control, but I don't want to suggest that it was very large scale, and it tended to go up and down in volume, I think, frankly, depending on what the attitude of the Iranian Government of the time was, and by the time we got to 2001, which I was just checking for you, I think it was perceived that the rate of that leakage of oil out through that route was low.

SIR RODERIC LYNE: Thank you. It is just useful, in terms of painting the picture, to have that clearly on the record.

Now, I would really like to turn to the heart of the issue. I mean, our Inquiry's remit begins from the year 2001 and I wonder if you could tell us -- perhaps Sir William Patey would like to come in at this point -- what purpose in the year 2001 were the No Fly Zones serving? Were they still there for the original purpose or had these purposes, because there were two of them, evolved over time and in what way?

SIR WILLIAM PATEY: Well, they were still there for the
original purpose. Indeed, I recall the Attorney General at the time requiring us to -- we had to continually review the original purpose. So it wasn't they had been imposed and nobody looked at it. There was a continual review and I do recall, in early 2001, I think, the Attorney General asking for a review of the original purpose.

So we had to give, from time to time, assurances to the law officers that the original humanitarian purpose was still valid, and I think the last -- we gave one, I think, December 1999. I don't know the exact dates but we provided a statement to the Attorney General that we believed the -- what we thought would be the humanitarian consequences of unwinding the No Fly Zones and then, subsequently, at the beginning of 2001, we had to come again at that because the Attorney General, while accepting our assurances in respect of the northern No Fly Zone, was less -- was more -- was less clear about the southern No Fly Zone. So we had, at the beginning of 2001, quite a series of exchanges with the Law Officers, between the MoD and the --

SIR RODERIC LYNE: Can I just interrupt you? We want to come back to that in a minute, but you are talking about the justification of the No Fly Zones but not necessarily their purposes.
Now, the original purpose of the southern No Fly Zone was to prevent Saddam Hussein from continuing his repression of the population in the south. By 2001, was it not the fact that a large part of the reason for maintaining the southern No Fly Zone was to protect Kuwait, as Mr Webb was rather suggesting this morning, as an alternative means to us having to deploy us and the Americans, larger elements of land forces into Kuwait to protect Kuwait?

SIR WILLIAM PATEY: It was a subsidiary benefit, but it was never the purpose.

SIR RODERIC LYNE: That's a neat bit of Mandarinese, if I may say so.

Did you consider that it was still necessary to maintain these No Fly Zones?

SIR WILLIAM PATEY: We did.

SIR RODERIC LYNE: Essential?

SIR WILLIAM PATEY: We concluded that, if we did not maintain them, that maintaining -- the southern No Fly Zone had become inextricably linked with the northern No Fly Zone and our conclusion was that we would not be able to sustain the northern No Fly Zone without the southern No Fly Zone. The humanitarian case for the northern one was much stronger, clearly, than the southern one, but there remained a humanitarian case for
THE CHAIRMAN: Sorry to interrupt you, Sir Roderic, but what was the nature of the linkage then between the southern and the northern No Fly Zones in terms of purpose? Was it that Saddam would have greater freedom to manoeuvre more troops to the northern edge or what.

SIR WILLIAM PATEY: Our conclusion was that, politically, the northern No Fly Zones would become unsustainable, that we were dependent on Saudi Arabia and Kuwait to sustain the No Fly Zones. Had we abandoned the southern No Fly Zone, it would have been more difficult to maintain the northern one.

So in a sense they became inseparable. Indeed, that was the conclusion that the Defence and Foreign Secretary came to when put to the Attorney General in February.

SIR RODERIC LYNE: Why had the French dropped out of the No Fly Zones by this stage?

SIR WILLIAM PATEY: In 1996, they dropped out of the northern one, claiming it was no longer serving its humanitarian purpose. Rather amazingly, they stayed in the southern one until 1998, when they decided to withdraw following Operation Desert Fox.

So I can't -- I don't know what the French logic is,
actually, that, in 1996, the northern one was no longer sustainable, but the southern one was.

SIR RODERIC LYNE: So they parted company with us. What about the states in the region? If you go round the borders of Iraq, to what extent did the neighbouring states support the No Fly Zones and join in our justification of them?

SIR WILLIAM PATEY: The Kuwaitis and the Saudis provided us with logistic support to be able to sustain the no-fly zones. I think the Syrians and the Jordanians would not have been very supportive and I think the Turks were ambivalent.

SIR RODERIC LYNE: Were Saudi Arabia comfortable with this, or were there times when the Saudi support went a bit this way or that?

SIR WILLIAM PATEY: The Saudis are always uncomfortable when allied military operations are going on. I wouldn't say they were comfortable, they accepted the logic of the strategic alliance and of the necessity of logistic support.

SIR RODERIC LYNE: So they didn't at any point inhibit coalition forces from using bases in Saudi Arabia to enforce the No Fly Zones?

SIR WILLIAM PATEY: In this period, I don't think so. There were, at different periods, discussions about our
ability to operate against targets in southern Iraq.
I'm looking at Simon here for some help.
I'm not clear whether it is in this period, because it certainly didn't come in my reading of the papers,
but I'm conscious, because I have been covering Saudi Arabia for quite a long time, that there have been periods when the Saudis have imposed some restrictions on the nature of operations into Iraq.

SIR RODERIC LYNE: While you are looking at Mr Webb for help and he is consulting the paper, I should perhaps mention for the record that the Ministry of Defence have provided us with a detailed background paper, which you have in front of you and we have in front of us, on the No Fly Zones, and I understand that this is an unclassified paper which will be published also on the Inquiry's website for the benefit of people who want to get the detail of this very intricate subject.

Finally, before I hand over to Professor Sir Lawrence Freedman, I wonder, Sir Michael Wood, if I can just ask you whether, in 2001, when you were the senior legal adviser at the Foreign and Commonwealth Office, you were comfortable that the legal justification for the No Fly Zones, which had been established at least by the British Government ten years earlier, still held good?
SIR MICHAEL WOOD: Before I answer that, Sir Roderic, could I make one point, since Sir William has talked about the involvement of the Attorney General in this matter?

As you may be aware, members of the Inquiry, there is a convention of neither confirming nor denying whether the Law Officers have advised on an issue. However, the Attorney General has said that she is content for us to give evidence today, notwithstanding that convention, but she has also asked that we stress that this is an exception to the convention, that is being made deliberately.

THE CHAIRMAN: We know that.

SIR MICHAEL WOOD: In terms of the legal basis which was established in 1991, the question you have asked, whether it was equally strong in 2001, as you have heard, the Attorney General, in fact both Lord Williams of Mostyn and then Lord Goldsmith, gave the most anxious consideration to this and they pressed officials very hard indeed to explain why it was still as a matter of -- as a factual matter, the case that, were the No Fly Zones in either the north or the south terminated, there would be a severe risk or a risk of a humanitarian catastrophe.

The assessment that came back -- and it came back repeatedly, it wasn't just a one-off, it was reviewed
from time to time -- was very clear, that, without the
No Fly Zone in the north and without the No Fly Zone in
the south, there was a severe risk that Saddam Hussein
would recommence his attacks and the repression.

That was the assessment that came back after very
careful consideration by officials in Whitehall, and the
Law Officers, government lawyers generally pressed for
this and they were satisfied with what came back from --
I think from the Cabinet Office ultimately.

So I think --

SIR RODERIC LYNE: But the implication of what you say is
that the legal case was under pressure at this stage.

SIR MICHAEL WOOD: Well, I think the legal case had always
been a controversial one, as I said at the beginning.
It is not generally accepted that there is this legal
basis, but it was the legal basis which the
British Government took back in 1991, which continued to
be their position, to be the position of successive
Attorneys General.

The factual basis of course, had to be kept under
review. One had to be assured that the threat remained,
and that assurance was given.

SIR RODERIC LYNE: Were you advising that this policy was
likely to be sustainable over the long-term or were you
concerned that we wouldn't be able to hold this line for
very much longer?

SIR MICHAEL WOOD: I think I was just concerned with what
the position was when I was looking at it.

SIR RODERIC LYNE: Perhaps you would like to comment, in
that case, on whether your view, based on the advice of
your legal colleagues in the Foreign Office, was that
the No Fly Zones looked sustainable over the long-term
at least in legal terms.

SIR WILLIAM PATEY: Probably I had some worries
around February 2001, when we had the -- when we had the
debate. Once we had been around the course, as it were,
and I think the Law Officers were looking for a repeat
of the assurance that we had given in 1999 -- since then
there have been some developments and the JIC, indeed,
had made an assessment in December 2000 on the very
question, and we in the Foreign Office stood by the
assessment, the JIC assessment.

That, initially, was not enough for the Attorney, to
satisfy him. So we went round the course a few times
before the Attorney was satisfied. In terms of
sustainability, once we had got -- once the Attorney had
decided that he could -- he did conclude that the -- the
operations were legal, we reviewed it again five or six
months later and nothing had changed.

So I don't recall beyond that point,
beyond June 2001, whether there was any real legal
challenge from the Law Officers.

THE CHAIRMAN: Just as a postscript -- this risks being an
oversimplification, but in essence, I think the evidence
we have been hearing is that the legal basis, although
not without challenge from its inception, remained the
same. It is the circumstantial support for the use of
that legal basis which is the thing being reviewed in

Just as a postscript to that, was it the
circumstances or was it the law that led the French to
part company?

SIR WILLIAM PATEY: I feel sure it was the circumstances.
The French pulled out in 1998 after the bombing,
Operation Desert Fox, which did not change the
circumstances on the ground. So I think the problem for
us is we were continually being asked to make an
assessment on the humanitarian consequences of the
No Fly Zone stopping. So the legal basis didn't change,
it was the assessment of the humanitarian consequences
that was constantly under review.

THE CHAIRMAN: Can I just check with Sir Michael? Is that
correct? Right. Thank you very much.

MR SIMON WEBB: Can I answer Sir Roderic's question about
Saudi Arabia? I have refreshed my memory.
Saudi Arabia didn't permit offensive aircraft to
participate in the operation at the end of 1998, which
I talked about this morning and we have just mentioned.

From that time, it wouldn't allow offensive aircraft
to be used from Saudi Arabia to deal with bombing of
threats to -- to the patrolling aircraft, but other
types of aircraft, and in particular the aircraft which
were patrolling to try and produce the air defence, in
the first round, if you see what I mean, that were
keeping fending off Iraqi aircraft from getting into the
zone and so on, did continue to be based in
Saudi Arabia, as was the headquarters for the operation,
as was the headquarters for the British component.

So the operation ended up being spread, with the
Tornado F3, if you like, what we might call the air
defence fighters, in Saudi Arabia, and the offensive
aircraft moved to Ali al Salem airbase in Kuwait, and
the tankers were in, as I recall it, Bahrain, it was
a complicate piece of work.

BARONESS USHA PRASHAR:  I just want to seek some
clarification from Sir Michael.

When you were describing the legal basis of the UK,
you were saying that it was in support of 688, but it
was the customary international law, and the USA you
said that it -- this was implicit in 688, but you did
not describe what was the basis on which the French were part of this, because, in a way, I would just like clarification on that one.

SIR MICHAEL WOOD: I really don't know what the French basis was, I am afraid. I do not have that information.

THE CHAIRMAN: If I may say so, I think that's an entirely understandable and satisfactory answer. Thank you.

SIR LAWRENCE FREEDMAN: We are now into 2001. But I want to go back to 1998 and Desert Fox, which was the operation in December 1998.

Mr Webb, you said something rather interesting this morning, which was that there was an evaluation of the effects of Desert Fox, which suggested that it hadn't really been successful in degrading -- which I think was the word that was used at the time -- the Iraqi WMD capability.

Is that correct, from what you said?

MR SIMON WEBB: Not conclusively ineffective, but it hadn't achieved a result of which one felt assured. It didn't feel, after you had done this, there wasn't a problem. So with that qualification, yes. It did have a very useful effect on reducing the capacity of the Iraqi integrated air defence system, which was posing a threat to the aircraft.

I would just like to introduce that gem. It hasn't
been part of the discussion.

At periods, but particularly from 1998 onwards, the Iraqis mounted a continuous campaign to try to shoot down one of the patrolling aircraft. We can get into that in more detail, if you wish, because how we dealt with that actually affected the way some of the campaign was --

THE CHAIRMAN: I do want to come on to that in a second. It is one of -- before December 1998, we had containment working in a number of ways, all possibly with some difficulty. In substance, the Iraqis tolerated the No Fly Zones, but, as I recall, they withdrew whatever toleration they had afterwards and, as you have described, they tried to knock down US and UK aircraft.

We have heard that the French opted out completely at this point and, of course, the inspectors were pushed out forever. UNSCOM's work was done.

Actually, December 1998 seems like quite a pivotal decision, so it was quite interesting to query whether it had achieved quite as much as we might have hoped through Desert Fox.

If we can then just follow through in terms of the consequences of that, as you have described it, we are now into a situation where Iraqi aircraft or Iraqi air defences, missiles, artillery presumably, are trying to
knock down our aircraft. This was happening how often?

On a regular basis?

MR SIMON WEBB: I think it is described in the MoD paper as "most flying days". It went up and down a bit, but I think we were looking at numbers of, you know, three or four a week, and we couldn't fly every day because of weather constraints. So most days is a good description.

That's not just -- that was either penetrations by Iraqi aircraft which would have had air-to-air missiles and anti-aircraft artillery and surface-to-air missiles. Those were the principal three.

SIR LAWRENCE FREEDMAN: Over this period, were they also flying into the No Fly Zones themselves to demonstrate their ability to do so?

MR SIMON WEBB: Yes, and had to be chased out. There was a sort of cat and mouse game where they would penetrate for a bit, and then, as the fighters came up close to them, they would withdraw again.

THE CHAIRMAN: As in luring our planes on to their air defences?

MR SIMON WEBB: Yes.

SIR LAWRENCE FREEDMAN: Is this when they are starting to change the question -- indeed of the legal basis. We accept that the underlying legal basis is as described,

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1 The MOD paper in fact says “a common occurrence”.

but there is now a question of the self-defence of our aircraft. Is that correct, Sir Michael?

SIR MICHAEL WOOD: I think, as you have rightly put it, there are two separate legal questions.

The first one is the underlying legal basis for establishing the No Fly Zones and the need for patrolling with allied aircraft within the No Fly Zones.

The second separate legal issue is, if they come under attack or if there are threats of attack, what action can they take in self-defence? What targets are appropriate, et cetera, et cetera. That's also ultimately a legal question, which the government lawyers looked at with great care during this period.

SIR LAWRENCE FREEDMAN: We have heard reference to February 2001. Now, again, this was really quite an important event, 16 February 2001. The importance of the attack -- I mean, this was the largest ever attack since Desert Fox and it took place outside the area of the No Fly Zone, quite close to Baghdad, in fact.

MR SIMON WEBB: Perhaps I can just get on to that.

Actually, before I do that, Chairman, would you give me a moment just to share what -- a tribute I would like to make as one defence person to some others about the incredible professionalism and fortitude of the air component of the coalition who conducted this operation?
I mean, they were under pretty continuous attack while doing their duties on a humanitarian mission, and I would like particularly to mention the Royal Air Force and the Royal Navy air crew and also their ground staff, who managed to sustain these aircraft flying reliably so that there was not -- few and far between were serious equipment failures. As I think people know, we didn't lose any air crews throughout the operation.

THE CHAIRMAN: Thank you. That will go on to the record of the Inquiry.

MR SIMON WEBB: To come back to late -- the story begins in late 2000 when the Iraqis perfected something that they had been trying to do for a while, which was to be able to control their anti-aircraft artillery and surface-to-air missiles remotely. I think it will help if we get on to the map at this stage. At some point all defence briefings end up on the map.

SIR LAWRENCE FREEDMAN: We have got one. The audience can see behind you.

MR SIMON WEBB: Good. The No Fly Zone, which had been extended to up to 33 degrees north, is the area within the dotted line. Within that there would be surface-to-air missiles and anti-aircraft artillery basically moving about and being ready to engage.

For quite a long time, the radars which you needed
to control those, so if they had any chance of
successfully shooting down a modern aircraft, were
reasonably close by. So when you were illuminated by
a radar, you knew where the radar was and that would
tell you that the attacking instruments were also quite
close and you could deal with it in that way. What they
perfected was to move the radars back north of
33 degrees north, so you are above the line like this,
up around Baghdad, and then to provide information to
the surface-to-air missiles and the anti-aircraft
artillery by fibre-optic links, in other words
underground cabling.

What that meant was that there was a risk that the
aircraft would find themselves patrolling and, suddenly,
instead of being illuminated by a radar close to them
that they could identify, something much further back
would be controlling a missile which would suddenly come
their way.

This made the operation of considerably more risk
and obviously -- so the conclusion was -- and -- that we
should -- and this was looked at in terms of
self-defence and, indeed, was specifically, you know,
the subject of very senior legal advice, but if you
think about it in that way, in legal terms there was no
difference between the fact that we are attacking
a radar which was some distance away from the one which
was close to you, threatening you and then attacking
you. So the operation which was -- I can't think --
I think it was on 16 February 2001, was the first major
operation to try to knock down both some of those radars
but also some of the communications links. You also get
a node in the communications links.

That target set was very, very carefully considered
for, not only the basic legality, but there were also
questions about proportionality and risk to civilian
casualties and so forth, which we can talk about some
more if you want to.

I don't think we did a very good job of explaining
what was going on, in public. We certainly probably
didn't help out what was then the new US administration
to do a very good job of explaining it to them together.
But let's take the rap for ourselves in part as well.
We needed to.

As you describe it, what it looked like from the
point of view of people, I think particularly in the
region, was that suddenly, you know, we pushed the
campaign north, we were up around Baghdad and it
appeared something had happened and was that presaging
something they, too, had been reading about, regime
change.
So there was a bit of a flurry -- was there not, William -- and anxiety in the region. That was partly, I think, inevitable because we couldn't avoid it if we were going to keep the operation safe and partly because I don't think we had explained ourselves as well as we might have done.

SIR LAWRENCE FREEDMAN: You have given us what the good explanation might have looked like. Perhaps Sir William might explain how it was received in the area, because it did get a rather negative press, I believe.

SIR WILLIAM PATEY: I think when the MoD first proposed this operation, there was really the odd frisson in the Foreign Office, not because of its legality, we understood, because we had been closely engaged with the MoD in what Iraq was doing in terms of trying to knock down their aircraft. We were worried about the scale of the operation could be misinterpreted. Here we had a new American administration coming in that at least had a history of a more aggressive stance towards --

SIR LAWRENCE FREEDMAN: Quite a short history at the time.

SIR WILLIAM PATEY: The figures were well-known in the lead-up to the election. The prominent figures who were now being appointed had well-known views on Iraq. So I think in the Foreign Office we were worried that this might be misinterpreted as a sort of military assault on
Iraq, and that was not the intention. So we were worried about explaining it in the region in terms of the ramifications of --

SIR LAWRENCE FREEDMAN: What was the response in the region?

SIR WILLIAM PATEY: I think we did manage to convince our key players, key allies, that it was what we said it was, an attempt to suppress an increasingly sophisticated anti-aircraft system.

THE CHAIRMAN: But for the Arab street -- a term that's been used already today -- incomprehensible in those terms.

SIR MARTIN GILBERT: Were the security reasons for not explaining it full enough for the Arab street?

MR SIMON WEBB: It is easy to do it now it is all over, but at the time it was a risky operation altogether and -- would I have pressed the operational commanders to have given more detail in order to justify it at the end of the day? I wouldn't. I think we asked, "How much can we say?" and they said say something fairly general, and basically we would support them.

I think, if I may say so, the attitude of our Ministers was to say, "If it is necessary to defend our troops, then ..."

The Ministers would have talked, but they would have always concluded that they would defend their -- you know, we were sending these crews out there, we had to
back them up when they got into trouble.

SIR LAWRENCE FREEDMAN: In overcoming these doubts within the Foreign Office, was the fact that this was perhaps the first major operation within the new administration and that, therefore, you didn't want to be seen to be backing off. The first time we had, in a sense, been tested by the Bush administration.

MR SIMON WEBB: I don't think it was, if you like, particularly an operation that was proposed by the United States. It was a joint -- we had a joint headquarters planning of these things. As I remember the proposition coming up, it was just a straightforward, "This is what the joint command think is necessary to keep this operation. Please will you authorise it?"

SIR WILLIAM PATEY: From a Foreign Office point of view, we would have restrained ourselves, I think, from arguing that we shouldn't take part in it, because I think that would have sent a signal to an incoming US administration that we were somehow no longer reliable allies on Iraq. I think that might have been a consideration.

THE CHAIRMAN: But it originates as a military proposal from the joint headquarters?

SIR WILLIAM PATEY: There was never any doubt in our minds
that what the military was proposing was necessary for
the wellbeing of our pilots and the continuing safe
coverage of the No Fly Zones.

SIR LAWRENCE FREEDMAN: But there was some doubt in the
Attorney General's mind at the time that this was
absolutely necessary or did he require convincing.

SIR WILLIAM PATEY: He required convincing about the
continued underlying basis for the southern No Fly Zone,
not for the operation itself, as I recall.

SIR LAWRENCE FREEDMAN: So the self-defence point he
accepted, but the self-defence point was consequential
on the underlying point?

SIR MICHAEL WOOD: That's certainly my recollection. Having
said that, Attorneys General looked very closely at
targeting and required very careful explanations to
ensure that they were consistent with necessity and
proportionality. That would certainly have been done on
this occasion as well.

SIR LAWRENCE FREEDMAN: After this event, were there similar
ones or was it a while before we did this sort of thing
again?

MR SIMON WEBB: It was a while. There were various
different types of responses and so it was always
possible if you saw a threat, as it were, immediately in
front of you to respond to it. You don't need to ring
up the Ministry of Defence to get permission to respond when
under attack immediately.

So some of that continued. But this sort of -- if
you like, a pre-planned reduction of the Iraqi air
defence system -- there was a degree of caution that set
in during the spring of 2001, and the -- I'm not sure
necessarily these were brought up to Ministers but,
sensing that there had been this reaction in the region,
I think the senior commanders didn't want to propose
more of that if they didn't have to. As a result, some
of the patrolling reduced; in other words, a decision
was taken that if we didn't know where we might face
this risk over part of the southern No Fly Zone, we
wouldn't patrol there for a while.

So the operation of commanders, if you like, reduced
the scope of the operation under their discretionary
authority and with, obviously, our support, rather than
proposing a repeat of those situations. And that went
on for a few months.

SIR LAWRENCE FREEDMAN: So, you are saying that we were
trying not to be too provocative within the area?

MR SIMON WEBB: We just didn't -- judging that there wasn't
anything happening on the humanitarian side in certain
areas at that particular moment, particularly the bits
which are in, you know, rather blank spaces of desert,
consistent with the mission, they just decided -- and

given the risk levels were up -- to just not fly there

so much.

SIR LAWRENCE FREEDMAN:  Just one final point on this in
terms of the risk level. Obviously, you have spoken
already about the risks British and American
pilots/crews were taking over the No Fly Zones. What
would have been the consequence if one of them had been
actually shot down? What would have been the policy
response?

MR SIMON WEBB:  We had a -- obviously, we had a contingency
plan for that situation, which was run from the joint
headquarters in Saudi Arabia. The objective would have
been the safety of the air crew. I mean, quite a good
chance that they might have been shot down but they
might have been ejected and that they might be wounded,
and so we had a plan, which was to basically go and get
them back if wounded on the ground inside Iraq, whether
or not the Iraqis tried to stop us doing it.

So there were components -- it is called "combat
search and rescue" in the business, and some helicopters with
air crew -- it was on stand by all the time these
operations were being flown and it didn't need
ministerial authorisation to go out and do that, and, as
I'm implying, as well as just getting in there and
picking up the air crew and looking after them medically, if necessary, we would have kept the Iraqi forces away from that at the same time.

SIR LAWRENCE FREEDMAN: But if the crew had been killed?

MR SIMON WEBB: Or captured.

SIR LAWRENCE FREEDMAN: Or captured. Was the American response measured -- were to be measured. Would you have discussions with the Americans about what sort of -- let's assume that there had been --

MR SIMON WEBB: We did. We did. And you could get to a -- you know, there was a debate to be had in this area of, you know, what's necessary to keep the -- if I might put it like this, keep the Iraqi force's head down while we went and recovered the crew, as opposed to also signalling that we wished they would not do it again.

Some of the detail of that, I'm getting up near to where I would rather not talk about it because the Ministry of Defence may still have to do that kind of operation, and you can see why you wouldn't necessarily want people to know what our best practice was.

SIR LAWRENCE FREEDMAN: I fully understand.

MR SIMON WEBB: Obviously, the Inquiry can obviously have whatever it wants and pick it up in private and I'm happy to talk about it some more. I'm sorry, that's why I have got a little slower.
SIR LAWRENCE FREEDMAN: That's okay.

Can I just then wrap up on the No Fly Zones themselves? This is another part of the general containment strategy; correct? But it has similar sorts of problems to the other parts of the containment strategy, in that, so long as Saddam was in power, it is hard to see how you could ever stop patrolling the No Fly Zones. Is that fair? Sir William is nodding.

MR SIMON WEBB: I think that's probably true, though perhaps I can make a couple of points. One was, I should just complete the story. I should say that after that period of pause that we talked about, we got concerned that they were really getting quite close. We had some near misses by the time of the end of July and August, so further operations were then authorised, similar to the one which we've done (inaudible). I think your basic point is right, but, as it happens, as I think I said this morning, the Iraqis actually did cease to try and penetrate the zone after 9/11 -- for a while at least. I think there was a debate to be had about changing the way the operation was conducted, and you could say -- I think I mentioned earlier on this morning that there was some discomfort on the part of the new US administration about how the operation was being
conducted. Another way of doing it, if you like, would
have been to react less frequently but to have heavier
responses when you did react, and we had some quite, you
know, sensible discussions about all that, and --
SIR LAWRENCE FREEDMAN: But that's all about sort of keeping
the policy in place. I mean, the question --
MR SIMON WEBB: The thought was that maybe, if you made it
sufficiently unpleasant for the Iraqis as they attacked
you -- you know, if they attacked you, you responded --
SIR LAWRENCE FREEDMAN: But this could be in some way quite
escalatory.
MR SIMON WEBB: It could be, and when I mentioned this
morning that we had had propositions -- we hadn't had
any -- certain propositions we hadn't had from the
Americans, I think I said that we had had some
propositions from the Americans and there was indeed one
of those kind about changing the nature of the No Fly
Zone, quite a lot of which we were persuaded about but
which a part of we weren't persuaded about as
a contingent operation and stood aside from.
   But, getting back to your question, I think the
difficulty we had between us of actually finding
something which broke the mould here on the No Fly Zones
rather validates your point that there was no obvious
end point.
SIR LAWRENCE FREEDMAN: Sir William, would you like to --

SIR WILLIAM PATEY: Yes, I think there is a very fair point that there was a level of discomfort within the Foreign Office on that very point, that we were maintaining the No Fly Zones, it didn't actually lead anywhere, other than providing reassurance to the people who would otherwise be subject to the wrath of Saddam Hussein, and that in itself -- but it wouldn't take us anywhere, and the longer it went on, the increasing possibility that we would lose a pilot, we would lose a plane. There was a sense, I think, that if that happened, there might be a game changer. We did have a sense that serious losses could lead to an escalation, and that was out there and we didn't have any answer for it.

SIR LAWRENCE FREEDMAN: Thank you very much.

MR SIMON WEBB: We did lose some drones, just to be clear about that, some unmanned aircraft (inaudible).

THE CHAIRMAN: Thank you. I wonder, before we leave the subject of No Fly Zones, do any of my colleagues want to raise particular points on them.

SIR RODERIC LYNE: I would just like to, to completely close of the story -- effectively, you are arguing that, as long as Saddam was there, we didn't have an alternative to continue with the No Fly Zones, but was there not
a radically different option of actually dropping the
No Fly Zones, warning Saddam Hussein that if he were
again to attack his own people, as he had done in 1991,
there would be very severe consequences to that and
deterring him, not by flying over his territory, but,
from the borders, having a deterrent force ready to
react immediately if he even started to do that, and
presumably our intelligence coverage of Iraq was such
that we would have picked it up pretty quickly if he had
started to prepare large-scale operations against either
the Shia or, more likely from what you say, the Kurds in
the north.
You were suggesting this morning, if I understood
you rightly, Mr Webb, that there was such an option but
that it would have cost a lot more money. But am
I misinterpreting you?
MR SIMON WEBB: I think you are talking about a slightly
different option. The point I was making as part of the
side or subsidiary benefits was that it did allow you to
maintain a posture -- fewer ground force deployments,
which was also cheaper.
I'm not sure that the option that you are talking
about -- and this was the sort of thing which we have
debated from time to time -- had a legal base. If you
are to say effectively, "If you persecute -- I don't
know, I look at Michael here -- he is not allowed to do speculation.

But if you were to -- I mean, we would have wondered whether we would actually have commanded support for that either in the region or in legal terms because if what you are saying is that, "If you attack/persecute your own people, we will retaliate against you," then you are going to struggle to find a legal basis.

SIR RODERIC LYNE: Would that not have been the same legal basis as the original operation, that if there is a threat of extreme humanitarian distress, you will act to prevent that? Sir Michael?

SIR MICHAEL WOOD: As Simon said, I don't like speculating about hypothetical cases, but the essence of what was done in northern Iraq and then in the south was that it was not offensive, it was defensive. We did not launch a war on Iraq, we put troops in, we said, "Don't attack us," we flew over, we said, "Don't attack us." So I think it would be a different proposition if you were going on the offensive.

Now, Kosovo is a clear example of that and we're not here to talk about that, but that was a similar legal basis, it was a very offensive action that took place, and the government was advised that that was lawful.

So I think you are right that a legal justification
could have been found but it would have required reconsideration; it would certainly have required a new assessment of the proportionality, necessity, et cetera, to have come to the conclusion that you were going to launch an attack, as opposed to engaging in essentially defensive activity.

SIR WILLIAM PATEY: Could I say, as part of the Law Officers’ review of this, we were asked a specific question: was there any other way of doing this, and we answered this, and I think you will find in your papers quite a detailed letter from me to the Law Officers examining this. But I do recall that we looked at whether you could achieve the same thing by other means, and we looked at monitors on the ground and pursuit of 688, which we concluded Saddam would never allow. We looked at further sanctions directly related to the humanitarian situation, which we ruled out, given the state of affairs in the Security Council, and we also had military advice, I seem to recall at the time. It was: if we stopped the No Fly Zones, it would take a considerable amount of time and bombing to re-establish air superiority to allow us to go in and do the alternatives.

THE CHAIRMAN: Which raises the stakes in terms of proportionality.
SIR WILLIAM PATEY: So we looked at the alternatives and concluded that the best way with the least risk was to maintain the No Fly Zones.

THE CHAIRMAN: Thank you. I don't want to ask you to go even further down the primrose path of conjecture but I'm ignorant myself about the Sierra Leone situation. Is that comparable to Kosovo or different? It's outside our remit, so don't trouble -- unless it is a clear answer.

SIR MICHAEL WOOD: I think that the legal basis for Sierra Leone was an invitation by President Kabbah. So it was based on an invitation.

MR SIMON WEBB: As it happens, I did that one as well. President Kabbah did indeed write us a letter.

THE CHAIRMAN: Thank you.

I think that brings us, probably, to the final theme of the afternoon. We had talked quite a lot about sanctions in the morning session but there are one or two things that we ought to return to or develop. Roderic, can I turn to you?

SIR RODERIC LYNE: Yes.

Perhaps I can start with Sir William and just ask if you can give us an overall view of the principal sanctions that were in force against Iraq in 2001, without having to go into all of the fine print of UN
resolutions and what was their purpose at this stage.

SIR WILLIAM PATEY: I mean, the principal sanctions were
basically arms and dual use equipment. Everything else
was permitted. So foodstuffs, civilian goods,
everything, was permitted at this point. So it was
focused on arms and dual use equipment. There was a big
debate about dual use equipment.

THE CHAIRMAN: Could you just explain for the benefit of all
of us, dual use?

SIR WILLIAM PATEY: Well, you can have a computer lathe,
which is of perfectly legitimate use in a civilian
industry but it is also required to manufacture
precision munitions. You can have chemicals which have
legitimate use in agriculture but can also be used in
biological and chemical weapons programmes. So some of
these ones were obvious but the Americans took
a slightly different view of what was dual use to the
UK, which was part of the debate about the goods control
list.

There was also control over his money. Iraq was
virtually dependent on oil exports for their revenue, so
there was an escrow account. All the oil was supposed
to go through a UN escrow account and was to be used for
legitimate purposes or for food, and there was a UN
regime that was designed to do that.
So the purpose of the sanctions was to have control over Iraq's revenue, to make sure it was only spent on legitimate purposes and couldn't be used to reconstitute his military capability or his weapons of mass destruction.

So, essentially, it was -- and it was there as an inducement for him to cooperate fully with UN Security Council resolutions.

SIR RODERIC LYNE: So the implication of this is that these sanctions were geared specifically to the question of armaments that he was believed to possess that had been prohibited in UN Security Council resolutions. If he had satisfied the international community that he no longer had those armaments, there would have been no continuing reason for the sanctions to remain in force, and there was not some secondary purpose to the sanctions.

This morning we were talking about the wider policy of containment of Iraq and of sanctions as part of that policy. Is that actually an inaccurate way of describing sanctions?

SIR WILLIAM PATEY: In the contract for Iraq we described a situation where Iraq was re-admitted into the international community. We had a law-abiding Iraq, compliant with all Security Council Resolutions, in
which all restrictions would be lifted. We never
thought that that was ever possible under Saddam, but we
were open to the possibility that it was.

So the purpose of the sanctions was to get
compliance. Had Saddam complied with all the
Security Council Resolutions, we would have been faced
with the dilemma of taking yes for an answer. But we
never got yes for an answer from Saddam.

So you may ask me to conjecture what would have
happened if he had complied, would there still have been
a constituency that said, "That's not good enough."
I suspect in parts of the US there would have been, but
there was a clear British Government policy that
compliance with Security Council Resolutions was all
that was required for all the restrictions that had been
placed on Saddam to be lifted.

SIR RODERIC LYNE: But you were pretty certain that there
were no circumstances in which he was going to comply?

SIR WILLIAM PATEY: Given the history since 1991, it was
pretty hard to see him do so.

SIR RODERIC LYNE: Would you like to say a few words about
how in practice the sanctions regime was administered
and in force, including Oil For Food and the escrow
account and so on.

SIR WILLIAM PATEY: I am afraid it is incredibly
complicated. I had whole rafts of people trying to implement it. Essentially, there was a UN inspection, a UN system. If Iraq wanted food, they were off to buy anything, they were supposed to send -- the contract was supposed to go through the UN for approval. Once the goods had been shipped to Iraq, the UN would release the money from the UN escrow account. Iraq was supposed to export all its oil through four designated areas, and all that oil was to be accounted for by a company called Cotecna, I think I seem to recall. So there was a complicated bureaucratic system designed to control everything, to ensure that what Iraq did was legitimate. The complexity of it was such that Iraq was able to evade the controls. There was illegal exports, contracts were given for political reasons, cronyism. There was -- in a sense that's what led to some of the disquiet about whether the policy was working, and equally you had a regime which was exploiting the whole system to create sympathy within the Arab world, and this was part of the pressure. You saw the Iraqis would claim that medicines weren't getting through and that children were suffering from leukaemia. There was a manipulation of the system that made it very uncomfortable for those of us in the west subject to public opinion. So that was an issue.
The Americans were able to put holds on dual use goods. So within the UN system they could say, "No, we've blocked that contract." So the blocked contracts became an issue.

SIR RODERIC LYNE: Were we putting holds on --

SIR WILLIAM PATEY: We put some holds on but we were putting holds on things we genuinely believed were dual use. The Americans had a much larger list of holds and my staff spent a lot of time negotiating with the Americans to get them to reduce that. So we had a sort of impossibly complicated system, which was leaking all over the place and which people had little faith in, and our attempts to respond to the humanitarian concerns and to make it that food and everything else that was needed for the Iraqi population were having no impact. Hence the smarter sanctions. The smarter sanctions were meant to be about anything is permissible unless it is controlled, whereas the existing system was everything had to be permitted.

SIR RODERIC LYNE: An awful lot has been published since 2003 about what went wrong with sanctions and some of this is sub judice and we won't go into but a lot is in the public domain, including things like the Volcker report. But if you just try to recall your assessment at the time, as the person in charge of the relevant
department at the Foreign Office, was it so bad, this leakage of sanctions, that the policy really wasn't worth continuing at that stage? How bad was it? What was the order of magnitude?

SIR WILLIAM PATEY: It seemed bad to us administering it but I think at the end of the day it was doable. We were making progress on getting the reduction holds. We were able to counter propaganda about food not being allowed. We were able to do that.

But it was a system that looked comfortable for Saddam. He was sitting there quite comfortable in his revenue streams, quite comfortable in terms of the position of his cronies in the regime, comfortable in terms of having enough money to exercise influence over his neighbours. So it looked comfortable to him. To us, it looked a continuation of the same policy was not going to deliver our ultimate outcome, which Iraq rejoining the international community as a responsible member of that community and giving up its weapons of mass destruction programme and abiding by the Security Council Resolutions.

So it was sustainable for quite a long time but it wasn't going to deliver -- I don't think anybody thought it was going to deliver the ultimate goals of our policy.
SIR RODERIC LYNE: Sir Michael, from the legal point of view, would it be right to say that this was not problematic because it was very firmly anchored in Security Council Resolutions?

SIR MICHAEL WOOD: Yes, indeed. The whole sanctions system derived from binding resolutions of the Security Council under Chapter VII.

SIR RODERIC LYNE: Thank you.

MR SIMON WEBB: Perhaps I should just add, that there is a point you left over this morning, which was about the effectiveness on the WMD capability, which I think you were going to get into some more. You don't want to summarise, if I may say so, without getting that bit of the story, which is very important indeed.

THE CHAIRMAN: Lawrence?

SIR LAWRENCE FREEDMAN: Can I just quickly follow one of the last points that was made about illegal trade and seeing what you could do about it. Clearly, the key breakthrough for Iraq was the pipeline with Syria. Were you looking at ways to deal with that and to persuade the Syrians not to do this? Did we have leverage over the Syrians on an issue like that?

SIR WILLIAM PATEY: We had not much leverage but there was some diplomatic effort to bring the pipeline into the legal system that, therefore, controlled -- part of the
discussions about smarter sanctions were about making
the Syrian pipeline legal and bringing it into the
system. We tried to use what levers we had but the
Syrians were fairly immune to our charms.

SIR LAWRENCE FREEDMAN: That was quite a high profile
instance. Were there other successes in trying to
persuade people who might have been involved in
smuggling, countries in the region, to desist?

SIR WILLIAM PATEY: Successes? We occasionally got the
Turks to stop, to reduce the amount. We got cooperation
from the Jordanian government. So, minor successes in
an otherwise depressing picture.

SIR LAWRENCE FREEDMAN: As you have indicated, all the time
this is going on, the UN -- the US and the UK in
particular -- are getting the blame for the wretchedness
of the position within Iraq. What sort of evaluations
were going on in terms of the humanitarian position
within Iraq? There has been a lot of statements about
child mortality -- other than child mortality as well.
The country was in a bad state. What sort of
assessments were made about the effect of sanctions or
just what was going on?

SIR WILLIAM PATEY: For us it was very difficult to separate
fact from fiction. There was quite a lot of propaganda.
There were varying reports. The
World Health Organisation couldn't get access to Iraq. We tried to get the World Health Organisation into Iraq to come up with a regional assessment. Saddam wouldn't let them in.

So it was in Iraq's interest not to have a reasonable assessment because, obviously, if the picture was left to them to tell, they would exploit that picture. So there wasn't a good assessment, mainly because UN agencies couldn't get in to do it, and the claims that were coming out of Iraq were pretty spurious at best.

SIR LAWRENCE FREEDMAN: But there were a number of other claims by non-Iraqis that suggested --

SIR WILLIAM PATEY: There were lots of claims, I have to say, but in all honesty we did not have a real assessment of what -- we were pretty sure that some of the claims about medicines not being available were either false or, where we tracked them down, the medicines were in Iraq but not being distributed. So we were able to prove a number of claims being made by Iraq about the absence of medicines being put on hold to be false claims, but we weren't able to get reliable assessments on the ground of the impact on infant mortality.

But, in our assessment, it didn't really matter
because the perception was that the situation was dire
and we were responsible.

SIR LAWRENCE FREEDMAN: So we lost the perceptions battle
and very little could be done to recover it.

SIR WILLIAM PATEY: We certainly in the FCO thought we were
fighting a losing battle on this one.

SIR LAWRENCE FREEDMAN: Sanctions are a very controversial
instrument of foreign policy. Cuba's a -- Castro has
been there for 50 years in the face of sanctions, and
there is evidence they strengthen regimes, and we've
talked a bit about that.

So I appreciate that this is part of the argument
for smart sanctions but it does indicate that that other
option that you were talking about only to be dismissed
this morning -- that is just saying, well, in the end
what might be more destabilising for this regime would
be to end sanctions and just require them to engage in
some way with the rest of the world. That might have
been as destabilising as just holding on to the
position --

SIR WILLIAM PATEY: We did think about that. We used to
debate that, certainly, and I used to debate it with
some of your future witnesses. Toby Dodge -- I remember
having a discussion with Toby Dodge about this. So we
did debate it.
There was a period when, of course, Iraq wasn't subject to sanctions, when it was free to trade. It didn't lead to any real changes in the country or the destabilising of Saddam Hussein. So we rather concluded that, unlike -- the perestroika approach was the one we were always been advocated. Our assessment was that that wouldn't deliver what we needed in Iraq.

SIR LAWRENCE FREEDMAN: Thank you.

SIR MARTIN GILBERT: There are some fairly strong points on the public record, say, for example, from Kofi Annan at the United Nations, stressing the humanitarian part that the sanctions are doing, and I was wondering to what extent you were able to make some sort of counterpoints, given that, as Sir Lawrence has said, the public perception was really very negative and it was doing, I think, a lot of harm to our general policy.

SIR WILLIAM PATEY: We did our best to explain it, and indeed the evolution of sanctions policy was designed to address these very points. The Oil For Food started off so Iraq could export its oil in return for food. So the evolution of sanctions was all about focusing the impact on the areas that really mattered -- arms, weapons of mass destruction, the regime -- and alleviating to the extent you can in a generalised sanction regime the impact on the population.
So that was the genesis of Oil For Food, even before we get to 2001, and the whole genesis of smarter sanctions was designed to do that. So that was our public position. We were advocating this as a policy, to make it more sustainable, because we realised ten years on -- nobody thought in 1991 that in 2001 we would still be in the same position. I think we kind of thought something might have changed. Nobody had thought, when the sanctions regime was imposed in 1991, that it would last for ten years, or 15 years, or whatever, looking forward.

So we were adjusting to that, but when you have got a ruthless dictatorship, which Saddam undoubtedly was, who was willing to inflict almost any price on his people to survive, my own view is that it is very difficult to achieve your aims through sanctions.

THE CHAIRMAN: Thank you. Usha?

BARONESS USHA PRASHAR: Thank you. I think Sir Lawrence Freedman asked you a question about evaluation. I really want to understand whether there was any systematic evaluation, because, you know, we saw illegal trade, we saw we were losing the humanitarian battle in terms of perceptions. Who was actually making as assessment? Was there an active approach to this? You said earlier you talked about it, you know, but was
there any active action taken, any proper assessment done?

SIR WILLIAM PATEY: The UK was the most active of the countries in the sanctions community, pressing the UN to evaluate the loopholes, evaluate what was going wrong, tightening it up, cutting out corruption. So, of all the Missions, of all the countries within the UN, I would say the UK was the most active with the UN Secretariat because we wanted the system to work. We wanted it to work effectively and we wanted it to deliver the policy aims. Now, we were variously supported to differing degrees by other countries.

BARONESS USHA PRASHAR: So this was high on your agenda? It was a high priority, and were Ministers engaged in all these discussions?

SIR WILLIAM PATEY: Yes. This sort of thing was really -- we had a heavy engagement from, usually, the Minister of state, Peter Hain or Brian Wilson at the time, because they were the ones on the front line of the sort of public campaign on this and pressing us all the time to -- we had discussions with the Americans, we went to Washington a number of times to try and understand the basis for their hold position -- why were they holding dual use goods -- and we had long discussions with them to reduce the number of the holds, get them to justify
them to us, even if they weren't prepared to justify them to anybody else, and for us to argue against them. So we had some success in getting the Americans to reduce the number of contracts they had on hold. Some contracts were put on hold, multimillion dollar contracts were put on hold, because one item within the whole contract was deemed to be dual use. So we got them to have a system: rather than put the whole contract on hold, remove the item.

So there was a constant engagement at an official level to try to make the system work.

THE CHAIRMAN: But you are engaging with a medium- to substantial-sized country and the entirety of its external economic trade. It's a very, very big thing to tackle.

SIR WILLIAM PATEY: And who had no interest in cooperating with you, who were devoting considerable efforts to get round the system.

THE CHAIRMAN: We've had a long day. I'm going to ask my colleagues for any final wrap-up questions we've got and then I will invite the witnesses if they want to make any final points.

So I think, without needing a break in this afternoon's proceedings, we will get straight to that. Martin, do you want to say anything?
SIR RODERIC LYNE: If I can just attempt to encapsulate all of this position we have got to, sanctions had not produced the intended aim of compliance with the disarmament provisions of the Security Council Resolutions. They were breaking down anyway, leaking, proving ineffective. They were being used by Saddam Hussein to his advantage. They weren't weakening his position, he was actually jerking our strings through sanctions, rather than the other way round. They were damaging the standing of the British and American governments in the region and in the international community. We were, as you said, losing the propaganda battle.

The attempt to get smarter sanctions had not succeeded. The American administration was not keen on the United Nations at all; it wasn't really enthusiastic for it.

So, effectively, we end up with the British Government almost alone in the policy it was pursuing on this. Where did that leave us in terms of policy options?

SIR WILLIAM PATEY: We were almost alone because I think the French, who had been with us for quite a lot of that and I think the European Union would have been with us for quite a lot of that -- and you missed out in your in
your -- I'm not going to disagree with your catalogue of
what was wrong.

It was actually having an impact in constraining
Saddam's military ambitions. We were pretty close --
I'm pretty sure that, had we not had sanctions, Saddam
would have been able to develop missiles -- well, he was
trying to develop missiles above 150 kilometres and he
would have succeeded in that. He would have succeeded
in making further progress with his weapons of mass
destruction programme and his rearmament and
rebuilding. So it did constrain him in that respect and
although it didn't bring him to complete fulfilment of
Security Council Resolutions, it was stopping him from
fulfilling his ambitions.

SIR RODERIC LYNE: Although nobody else seemed to be,

frankly, bothered by that.

SIR WILLIAM PATEY: Not as bothered as we were. I freely
admit that if you were sitting in the Foreign Office,
sometimes you would say, "Why are we the only ones who
bother?"

SIR RODERIC LYNE: Simon Webb made very clearly this morning
the point that, in terms of his ability to import
military equipment, he had had a very constraining
effect. So it had achieved that benefit, but nobody
else seemed to think that as important as we did.
Given this overall picture, I mean, what were our options?

SIR WILLIAM PATEY: Our options were to address some of the weaknesses in the policy and to try and restore a broader consensus in the P5, to try and get a broader international consensus, try and undermine Saddam's propaganda by having a policy that says everything is permitted except that which is controlled, to ease the sanctions but have a broader support for the remaining sanctions. That was the path we were embarked upon in the course of 2001.

SIR RODERIC LYNE: By the end of 2001 did you think we had a realistic chance of achieving any of that?

SIR WILLIAM PATEY: I don't think -- we were still trying by the end of 2001. With hindsight, I don't think we did.

SIR RODERIC LYNE: No, but let's not apply hindsight.

SIR WILLIAM PATEY: In 2001 we hadn't given up.

SIR RODERIC LYNE: We hadn't given up?

MR SIMON WEBB: I'm not sure I get quite as far as you have. I am just trying to look at what sort of things the JIC was saying in the summer of 2001. It's talking about: "On military capacity, the broad international consensus to maintain the arms embargoes severely limited Iraq's ability to ... this morning."

And this was a country --
SIR RODERIC LYNE: Could you say it a little slower because it is quite difficult for the transcribers to keep up with that pace.

MR SIMON WEBB: I beg your pardon. Okay.

This is not a direct quote from the JIC but that is sort of the gist of it.

"On military capacity, the broad international consensus to maintain the arms embargo severely limited Iraq's ability to rebuild its forces and acquire major systems, but components and spares did slip through, reflected in the increased flying by military aircraft and enhanced air defences."

And that was something which was shared as an aim by many countries, particular, I would say, NATO countries, remembering that this was a country which was adjacent to NATO's borders, if you think about somewhere like Turkey, for example. So I think there was a much wider buy-in to concerns about Iraq as a dangerous military power than the day-to-day approach to the sanctions regime, which, as William says, was not necessarily seen as -- I mean, had become overborne by this effect on the Iraqi people. But I didn't think there was a real flagging in the support for the military embargo.

SIR RODERIC LYNE: So, putting it in another way, at least in terms of the military threat, was Saddam and his
regime in a cage?

SIR WILLIAM PATEY: Yes.

SIR RODERIC LYNE: And we could have continued like that until such time as he departed?

SIR WILLIAM PATEY: Possibly.

SIR RODERIC LYNE: Thank you.

MR SIMON WEBB: Set aside the weapons of mass destruction point, which we have not talked about today, which I think -- making that point but it is difficult to generalise without that.

THE CHAIRMAN: I think I'm about to wrap up today's proceedings.

Before I do, would any of our witnesses like to make any final points or statements on what has been said so far?

Well, looking ahead then, today we have spent quite a long day already, essentially setting a detailed and a, so far as possible, factual context now and for the next few days, before we get into more analytical and perhaps challenging hearings. What I'm struck by this afternoon's, and particularly the latter part of this afternoon's, discussion is that it has centred very much on a -- in terms of Iraqi or rather Saddam's policy, a key and relatively successful deception strategy.

Tomorrow we are turning throughout the day to the
theme of weapons of mass destruction, where, of course, the deception factor, successfully practised, if you like, in the broader context of sanctions, has equal application.

I think tomorrow we will turn to the quite detailed and, in parts, quite technical, but I very much hope that members of the public and others interested won't be put off by that because I think there is very important groundwork to establish tomorrow on the theme of weapons of mass destruction, before we get into the key areas of 2003 and onwards.

So, with that, I thank our witnesses. May I thank very much the members of the public and others who have been there through the day, quite a long day, and also those at the Queen Elizabeth Conference Centre, who have helped us make the arrangements and conduct them throughout the day.

Thank you all very much. We start again at 10 o'clock in the morning here on the theme of weapons of mass destruction.

Thank you.

(3.35 pm)

(The Inquiry adjourned until 10.00 am the following day)
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