

(The short adjournment)

10 (2.00 pm)

11 SIR MICHAEL WOOD, SIR WILLIAM PATEY and MR SIMON WEBB

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

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

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

23 We spent the morning on the evolution of that policy
24 in 2001. This afternoon, we are going to focus more
25 closely on two subjects within that broad set of

1 policies, the No Fly Zones and sanctions. It is not
2 entirely clear to me how long we shall need for this
3 afternoon's session. If it looks as though it is going
4 to run on for quite a long time, we will take a break
5 half way through, but if we are getting closer to the
6 end by mid-afternoon, we will run straight on and close
7 when we close.

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

13 Thank you.

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

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

21 What we would like to do at this stage is to
22 establish in more detail than we did this morning, when
23 we touched on the subject of the No Fly Zones, how they
24 were established and what their basis was. So I would
25 like to ask you, and then I will ask Sir Michael, some

1 questions about the origins of the No Fly Zones. We
2 will then turn to the way that they evolved and the
3 situation in 2001.

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

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

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

25 That triggered massive refugee movements. I have

1 been trying to check the figures and I will be a bit
2 careful about this, but the numbers I got were about
3 400,000 refugees ended up on the Turkish/Iraq border,
4 Turkey being reluctant to let that many into their
5 country, and an even larger number, I believe, went over
6 into Iran, so it was a massive movement of people, and
7 although it was -- I suppose we were in sort of mid March
8 by this time -- it was still winter there. It was cold
9 and wet.

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

16 After a rapid discussion with the United States, and
17 it rose very rapidly to Prime Minister/President level,
18 I think I recall, it was decided that we needed to take
19 some action to deal with the humanitarian issues. In
20 a way, from the point of view of the Defence Department,
21 this was kind of the last thing we wanted. We had
22 concluded the campaign to eject Iraq from Kuwait. We
23 had decided very specifically not to put forces into
24 Iraq, and now we had this crisis; but Ministers reacted
25 to that situation and it was decided that we should take

1 action. There was a Security Council Resolution --
2 I think it is -- excuse me a moment -- 688 was passed on
3 5 April and a deployment took place the following day.

4 It was led by the United States, called
5 Operation Provide Comfort, and within that we
6 deployed the Royal Marine Commando Brigade, who, by good
7 fortune, had not been involved in the invasion of
8 Kuwait and were mountain warfare trained. So they had
9 the equipment and the training to go and operate
10 comfortably there.

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

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

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

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

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

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

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

25 I think that's essentially where -- how we got

1 started and, in a way, how it remained. There were
2 lots -- I think the Ministry of Defence has given you
3 a paper which explains some of the subsequent
4 development of the zones, but, essentially, that was --
5 that was the position that we started from and stayed
6 with.

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

16 SIR MICHAEL WOOD: Certainly, Sir Roderic.

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

24 I think it is very important at the outset to make
25 it clear that there is a distinct legal basis,

1 a separate legal basis for the No Fly Zones. The legal
2 basis for the No Fly Zones has nothing whatsoever to do
3 with the legal basis for the 2003 invasion of Iraq.

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

9 Perhaps it would help if very briefly I just set out
10 the law, the international law on the use of force. It
11 consists firstly of a prohibition of the use of force in
12 international relations, set out in Article 2(4) of the
13 Charter. The charter then has two express exceptions.

14 The first of these is self-defence, recognised in
15 Article 51 of the Charter, and the second of these is
16 authorisation by the Security Council acting under
17 Chapter VII.

18 Now, in the case of extreme humanitarian
19 catastrophe, the need to avert an extreme humanitarian
20 catastrophe, this is not referred to in the Charter. It
21 is regarded by the British Government as being derived
22 from customary international law, and the essence of it,
23 I think, is that if something like the Holocaust were
24 happening today, if the Security Council were blocked,
25 you couldn't get an authorisation from it, then it

1 simply cannot be the law that states cannot take action
2 to intervene in that kind of a situation, an emergency
3 of that scale.

4 The British Government's view has been set out
5 often, but perhaps most authoritatively just before
6 Kosovo, by Baroness Symons, and if it will help, I'll
7 just read out the couple of sentences that she said in
8 Parliament in November 1998.

9 She made it clear that there may be cases where, in
10 the light of all the circumstances, a limited use of
11 force may be justifiable in support of purposes laid
12 down by the Security Council but without the
13 Security Council's express authorisation when that is
14 the only means to avert an immediate and overwhelming
15 humanitarian catastrophe.

16 Now, what we had in the case of the No Fly Zones was
17 Security Council resolution 688, which Simon just
18 referred to, and I don't think I need read out large
19 parts of that, but that resolution stated very clearly
20 that the Security Council was gravely concerned by the
21 repression of the Iraqi civilian population in many
22 parts of Iraq, including, most recently, the Kurdish
23 populated areas. It said the Council was deeply
24 disturbed by the magnitude of the human suffering
25 involved, and then went on to condemn the repression of

1 the Iraqi civilian population, to demand that Iraq
2 immediately end this repression, to insist that Iraq
3 allow immediate access by humanitarian organisations and
4 then it requested the Secretary-General to do his best
5 to use all the resources at his disposal to alleviate
6 the humanitarian crisis, and it appealed to member
7 states to assist him in doing that.

8 SIR RODERIC LYNE: Can I just interrupt you at this point?
9 The Security Council Resolution supported the
10 British Government's argument that this was a situation
11 of extreme humanitarian distress or need or catastrophe.
12 But it did not specifically authorise the establishment
13 of No Fly Zones.

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

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

22 SIR MICHAEL WOOD: It was a very controversial step and,
23 indeed, I would not say that it was shared by all three
24 governments. The United States Government, I think, was
25 very careful to avoid taking any real position on the

1 law. If anything, the United States Government tended
2 to rely upon Security Council resolution 688 as somehow
3 giving an authorisation.

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

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

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

25 Of course, one of the main purposes of the

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

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

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

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

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

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

24 MR SIMON WEBB: I think we actually called it "maritime
25 interdiction operations", by which we meant that, under

1 the UN resolutions, which authorised the sanctions
2 regime, there was a power for warships to stop and board
3 ships going towards Iraq, which they did sparingly
4 because the deterrent value of that was -- the
5 declaration that that was in existence was very strong.

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

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

14 MR SIMON WEBB: Exactly.

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

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

19 SIR RODERIC LYNE: Were any other Navies involved?

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

22 I think in -- on the reverse operation of course, it
23 was also there to stop oil being smuggled out of Iraq,
24 outside the allowed Oil For Food programmes and so on.
25 It was generally, I think, pretty successful, but the

1 Shatt al Arab is a very large waterway and obviously
2 there is an international border with Iran which runs
3 through the middle of it. So there was a certain amount
4 of success of people sneaking ships out of the Shatt al
5 Arab and up into Iranian waters and then out.

6 So that was more difficult to control, but I don't
7 want to suggest that it was very large scale, and it
8 tended to go up and down in volume, I think, frankly,
9 depending on what the attitude of the Iranian Government
10 of the time was, and by the time we got to 2001, which
11 I was just checking for you, I think it was perceived
12 that the rate of that leakage of oil out through that
13 route was low.

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

17 Now, I would really like to turn to the heart of the
18 issue. I mean, our Inquiry's remit begins from the year
19 2001 and I wonder if you could tell us -- perhaps
20 Sir William Patey would like to come in at this point --
21 what purpose in the year 2001 were the No Fly Zones
22 serving? Were they still there for the original purpose
23 or had these purposes, because there were two of them,
24 evolved over time and in what way?

25 SIR WILLIAM PATEY: Well, they were still there for the

1 original purpose. Indeed, I recall the Attorney General
2 at the time requiring us to -- we had to continually
3 review the original purpose. So it wasn't they had been
4 imposed and nobody looked at it. There was a continual
5 review and I do recall, in early 2001, I think, the
6 Attorney General asking for a review of the original
7 purpose.

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

22 SIR RODERIC LYNE: Can I just interrupt you? We want to
23 come back to that in a minute, but you are talking about
24 the justification of the No Fly Zones but not
25 necessarily their purposes.

1 Now, the original purpose of the southern No Fly
2 Zone was to prevent Saddam Hussein from continuing his
3 repression of the population in the south. By 2001, was
4 it not the fact that a large part of the reason for
5 maintaining the southern No Fly Zone was to protect
6 Kuwait, as Mr Webb was rather suggesting this morning,
7 as an alternative means to us having to deploy us and
8 the Americans, larger elements of land forces into
9 Kuwait to protect Kuwait?
10 SIR WILLIAM PATEY: It was a subsidiary benefit, but it was
11 never the purpose.
12 SIR RODERIC LYNE: That's a neat bit of Mandarinese, if
13 I may say so.
14 Did you consider that it was still necessary to
15 maintain these No Fly Zones?
16 SIR WILLIAM PATEY: We did.
17 SIR RODERIC LYNE: Essential?
18 SIR WILLIAM PATEY: We concluded that, if we did not
19 maintain them, that maintaining -- the southern No Fly
20 Zone had become inextricably linked with the northern
21 No Fly Zone and our conclusion was that we would not be
22 able to sustain the northern No Fly Zone without the
23 southern No Fly Zone. The humanitarian case for the
24 northern one was much stronger, clearly, than the
25 southern one, but there remained a humanitarian case for

1 the southern one, but that was weaker in 2001, I would
2 concede, than it was --

3 THE CHAIRMAN: Sorry to interrupt you, Sir Roderic, but what
4 was the nature of the linkage then between the southern
5 and the northern No Fly Zones in terms of purpose? Was
6 it that Saddam would have greater freedom to manoeuvre
7 more troops to the northern edge or what.

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

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

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

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

25 So I can't -- I don't know what the French logic is,

1 actually, that, in 1996, the northern one was no longer
2 sustainable, but the southern one was.

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

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

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

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

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

24 SIR WILLIAM PATEY: In this period, I don't think so. There
25 were, at different periods, discussions about our

1 ability to operate against targets in southern Iraq.

2 I'm looking at Simon here for some help.

3 I'm not clear whether it is in this period, because
4 it certainly didn't come in my reading of the papers,
5 but I'm conscious, because I have been covering
6 Saudi Arabia for quite a long time, that there have been
7 periods when the Saudis have imposed some restrictions
8 on the nature of operations into Iraq.

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

18 Finally, before I hand over to Professor
19 Sir Lawrence Freedman, I wonder, Sir Michael Wood, if
20 I can just ask you whether, in 2001, when you were the
21 senior legal adviser at the Foreign and Commonwealth
22 Office, you were comfortable that the legal
23 justification for the No Fly Zones, which had been
24 established at least by the British Government ten years
25 earlier, still held good?

1 SIR MICHAEL WOOD: Before I answer that, Sir Roderic, could
2 I make one point, since Sir William has talked about the
3 involvement of the Attorney General in this matter?

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

12 THE CHAIRMAN: We know that.

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

24 The assessment that came back -- and it came back
25 repeatedly, it wasn't just a one-off, it was reviewed

1 from time to time -- was very clear, that, without the
2 No Fly Zone in the north and without the No Fly Zone in
3 the south, there was a severe risk that Saddam Hussein
4 would recommence his attacks and the repression.

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

10 So I think --

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

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

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

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

1 very much longer?

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

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

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

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

25 So I don't recall beyond that point,

1 beyond June 2001, whether there was any real legal
2 challenge from the Law Officers.

3 THE CHAIRMAN: Just as a postscript -- this risks being an
4 oversimplification, but in essence, I think the evidence
5 we have been hearing is that the legal basis, although
6 not without challenge from its inception, remained the
7 same. It is the circumstantial support for the use of
8 that legal basis which is the thing being reviewed in
9 2001.

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

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

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

24 MR SIMON WEBB: Can I answer Sir Roderic's question about
25 Saudi Arabia? I have refreshed my memory.

1 Saudi Arabia didn't permit offensive aircraft to
2 participate in the operation at the end of 1998, which
3 I talked about this morning and we have just mentioned.

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

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

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

22 When you were describing the legal basis of the UK,
23 you were saying that it was in support of 688, but it
24 was the customary international law, and the USA you
25 said that it -- this was implicit in 688, but you did

1 not describe what was the basis on which the French were
2 part of this, because, in a way, I would just like
3 clarification on that one.

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

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

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

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

17 Is that correct, from what you said?

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

25 I would just like to introduce that gem. It hasn't

1 been part of the discussion.

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

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

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

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

22 If we can then just follow through in terms of the
23 consequences of that, as you have described it, we are
24 now into a situation where Iraqi aircraft or Iraqi air
25 defences, missiles, artillery presumably, are trying to

1 knock down our aircraft. This was happening how often?

2 On a regular basis?

3 MR SIMON WEBB: I think it is described in the MoD paper as
4 "most flying days"¹. It went up and down a bit, but
5 I think we were looking at numbers of, you know, three
6 or four a week, and we couldn't fly every day because of
7 weather constraints. So most days is a good
8 description.

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

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

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

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

22 MR SIMON WEBB: Yes.

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

¹ The MOD paper in fact says "a common occurrence".

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

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

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

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

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

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

21 Actually, before I do that, Chairman, would you give
22 me a moment just to share what -- a tribute I would like
23 to make as one defence person to some others about the
24 incredible professionalism and fortitude of the air
25 component of the coalition who conducted this operation?

1 I mean, they were under pretty continuous attack
2 while doing their duties on a humanitarian mission, and
3 I would like particularly to mention the Royal Air Force
4 and the Royal Navy air crew and also their ground staff,
5 who managed to sustain these aircraft flying reliably so
6 that there was not -- few and far between were serious
7 equipment failures. As I think people know, we didn't
8 lose any air crews throughout the operation.

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

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

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

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

25 For quite a long time, the radars which you needed

1 to control those, so if they had any chance of
2 successfully shooting down a modern aircraft, were
3 reasonably close by. So when you were illuminated by
4 a radar, you knew where the radar was and that would
5 tell you that the attacking instruments were also quite
6 close and you could deal with it in that way. What they
7 perfected was to move the radars back north of
8 33 degrees north, so you are above the line like this,
9 up around Baghdad, and then to provide information to
10 the surface-to-air missiles and the anti-aircraft
11 artillery by fibre-optic links, in other words
12 underground cabling.

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

19 This made the operation of considerably more risk
20 and obviously -- so the conclusion was -- and -- that we
21 should -- and this was looked at in terms of
22 self-defence and, indeed, was specifically, you know,
23 the subject of very senior legal advice, but if you
24 think about it in that way, in legal terms there was no
25 difference between the fact that we are attacking

1 a radar which was some distance away from the one which
2 was close to you, threatening you and then attacking
3 you. So the operation which was -- I can't think --
4 I think it was on 16 February 2001, was the first major
5 operation to try to knock down both some of those radars
6 but also some of the communications links. You also get
7 a node in the communications links.

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

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

19 As you describe it, what it looked like from the
20 point of view of people, I think particularly in the
21 region, was that suddenly, you know, we pushed the
22 campaign north, we were up around Baghdad and it
23 appeared something had happened and was that presaging
24 something they, too, had been reading about, regime
25 change.

1 So there was a bit of a flurry -- was there not,
2 William -- and anxiety in the region. That was partly,
3 I think, inevitable because we couldn't avoid it if we
4 were going to keep the operation safe and partly because
5 I don't think we had explained ourselves as well as we
6 might have done.

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

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

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

21 SIR WILLIAM PATEY: The figures were well-known in the
22 lead-up to the election. The prominent figures who were
23 now being appointed had well-known views on Iraq. So
24 I think in the Foreign Office we were worried that this
25 might be misinterpreted as a sort of military assault on

1 Iraq, and that was not the intention. So we were
2 worried about explaining it in the region in terms of
3 the ramifications of --

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

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

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

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

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

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

23 The Ministers would have talked, but they would have
24 always concluded that they would defend their -- you
25 know, we were sending these crews out there, we had to

1 back them up when they got into trouble.

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

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

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

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

25 SIR WILLIAM PATEY: There was never any doubt in our minds

1 that what the military was proposing was necessary for
2 the wellbeing of our pilots and the continuing safe
3 coverage of the No Fly Zones.

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

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

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

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

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

22 MR SIMON WEBB: It was a while. There were various
23 different types of responses and so it was always
24 possible if you saw a threat, as it were, immediately in
25 front of you to respond to it. You don't need to ring

1
under attack

up the Ministry of Defence to get permission to respond when
immediately.

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

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

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

22 MR SIMON WEBB: We just didn't -- judging that there wasn't
23 anything happening on the humanitarian side in certain
24 areas at that particular moment, particularly the bits
25 which are in, you know, rather blank spaces of desert,

1 consistent with the mission, they just decided -- and
2 given the risk levels were up -- to just not fly there
3 so much.

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

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

20 So there were components -- it is called "combat
21 search and rescue" in the business, and some helicopters with
22 air crew -- it was on stand by all the time these
23 operations were being flown and it didn't need
24 ministerial authorisation to go out and do that, and, as
25 I'm implying, as well as just getting in there and

1 picking up the air crew and looking after them
2 medically, if necessary, we would have kept the Iraqi
3 forces away from that at the same time.

4 SIR LAWRENCE FREEDMAN: But if the crew had been killed?
5 MR SIMON WEBB: Or captured.

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

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

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

21 SIR LAWRENCE FREEDMAN: I fully understand.

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

1 SIR LAWRENCE FREEDMAN: That's okay.

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

9 MR SIMON WEBB: I think that's probably true, though --
10 perhaps I can make a couple of points. One was, I
11 should just complete the story. I should say that after
12 that period of pause that we talked about, we got
13 concerned that they were really getting quite close. We
14 had some near misses by the time of the end of July and
15 August, so further operations were then authorised,
16 similar to the one which we've done (inaudible).

17 I think your basic point is right, but, as it
18 happens, as I think I said this morning, the Iraqis
19 actually did cease to try and penetrate the zone after
20 9/11 -- for a while at least.

21 I think there was a debate to be had about changing
22 the way the operation was conducted, and you could
23 say -- I think I mentioned earlier on this morning that
24 there was some discomfort on the part of the new US
25 administration about how the operation was being

1 conducted. Another way of doing it, if you like, would
2 have been to react less frequently but to have heavier
3 responses when you did react, and we had some quite, you
4 know, sensible discussions about all that, and --

5 SIR LAWRENCE FREEDMAN: But that's all about sort of keeping
6 the policy in place. I mean, the question --

7 MR SIMON WEBB: The thought was that maybe, if you made it
8 sufficiently unpleasant for the Iraqis as they attacked
9 you -- you know, if they attacked you, you responded --

10 SIR LAWRENCE FREEDMAN: But this could be in some way quite
11 escalatory.

12 MR SIMON WEBB: It could be, and when I mentioned this
13 morning that we had had propositions -- we hadn't had
14 any -- certain propositions we hadn't had from the
15 Americans, I think I said that we had had some
16 propositions from the Americans and there was indeed one
17 of those kind about changing the nature of the No Fly
18 Zone, quite a lot of which we were persuaded about but
19 which a part of we weren't persuaded about as
20 a contingent operation and stood aside from.

21 But, getting back to your question, I think the
22 difficulty we had between us of actually finding
23 something which broke the mould here on the No Fly Zones
24 rather validates your point that there was no obvious
25 end point.

1 SIR LAWRENCE FREEDMAN: Sir William, would you like to --

2 SIR WILLIAM PATEY: Yes, I think there is a very fair point

3 that there was a level of discomfort within the

4 Foreign Office on that very point, that we were

5 maintaining the No Fly Zones, it didn't actually lead

6 anywhere, other than providing reassurance to the people

7 who would otherwise be subject to the wrath of

8 Saddam Hussein, and that in itself -- but it wouldn't

9 take us anywhere, and the longer it went on, the

10 increasing possibility that we would lose a pilot, we

11 would lose a plane. There was a sense, I think, that if

12 that happened, there might be a game changer. We did

13 have a sense that serious losses could lead to an

14 escalation, and that was out there and we didn't have

15 any answer for it.

16 SIR LAWRENCE FREEDMAN: Thank you very much.

17 MR SIMON WEBB: We did lose some drones, just to be clear

18 about that, some unmanned aircraft (inaudible).

19 THE CHAIRMAN: Thank you. I wonder, before we leave the

20 subject of No Fly Zones, do any of my colleagues want to

21 raise particular points on them.

22 SIR RODERIC LYNE: I would just like to, to completely close

23 of the story -- effectively, you are arguing that, as

24 long as Saddam was there, we didn't have an alternative

25 to continue with the No Fly Zones, but was there not

1 a radically different option of actually dropping the
2 No Fly Zones, warning Saddam Hussein that if he were
3 again to attack his own people, as he had done in 1991,
4 there would be very severe consequences to that and
5 deterring him, not by flying over his territory, but,
6 from the borders, having a deterrent force ready to
7 react immediately if he even started to do that, and
8 presumably our intelligence coverage of Iraq was such
9 that we would have picked it up pretty quickly if he had
10 started to prepare large-scale operations against either
11 the Shia or, more likely from what you say, the Kurds in
12 the north.

13 You were suggesting this morning, if I understood
14 you rightly, Mr Webb, that there was such an option but
15 that it would have cost a lot more money. But am
16 I misinterpreting you?

17 MR SIMON WEBB: I think you are talking about a slightly
18 different option. The point I was making as part of the
19 side or subsidiary benefits was that it did allow you to
20 maintain a posture -- fewer ground force deployments,
21 which was also cheaper.

22 I'm not sure that the option that you are talking
23 about -- and this was the sort of thing which we have
24 debated from time to time -- had a legal base. If you
25 are to say effectively, "If you persecute -- I don't

1 know, I look at Michael here -- he is not allowed to do
2 speculation.

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

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

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

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

25 So I think you are right that a legal justification

1 could have been found but it would have required
2 reconsideration; it would certainly have required a new
3 assessment of the proportionality, necessity, et cetera,
4 to have come to the conclusion that you were going to
5 launch an attack, as opposed to engaging in essentially
6 defensive activity.

7 SIR WILLIAM PATEY: Could I say, as part of the Law
8 Officers' review of this, we were asked a specific
9 question: was there any other way of doing this, and we
10 answered this, and I think you will find in your papers
11 quite a detailed letter from me to the Law Officers
12 examining this. But I do recall that we looked at
13 whether you could achieve the same thing by other means,
14 and we looked at monitors on the ground and pursuit of
15 688, which we concluded Saddam would never allow. We
16 looked at further sanctions directly related to the
17 humanitarian situation, which we ruled out, given the
18 state of affairs in the Security Council, and we also
19 had military advice, I seem to recall at the time. It
20 was: if we stopped the No Fly Zones, it would take
21 a considerable amount of time and bombing to
22 re-establish air superiority to allow us to go in and do
23 the alternatives.

24 THE CHAIRMAN: Which raises the stakes in terms of
25 proportionality.

1 SIR WILLIAM PATEY: So we looked at the alternatives and
2 concluded that the best way with the least risk was to
3 maintain the No Fly Zones.

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

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

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

15 THE CHAIRMAN: Thank you.

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

21 SIR RODERIC LYNE: Yes.

22 Perhaps I can start with Sir William and just ask if
23 you can give us an overall view of the principal
24 sanctions that were in force against Iraq in 2001,
25 without having to go into all of the fine print of UN

1 resolutions and what was their purpose at this stage.

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

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

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

20 There was also control over his money. Iraq was
21 virtually dependent on oil exports for their revenue, so
22 there was an escrow account. All the oil was supposed
23 to go through a UN escrow account and was to be used for
24 legitimate purposes or for food, and there was a UN
25 regime that was designed to do that.

1 So the purpose of the sanctions was to have control
2 over Iraq's revenue, to make sure it was only spent on
3 legitimate purposes and couldn't be used to reconstitute
4 his military capability or his weapons of mass
5 destruction.

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

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

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

22 SIR WILLIAM PATEY: In the contract for Iraq we described a
23 situation where Iraq was re-admitted into the
24 international community. We had a law-abiding Iraq,
25 compliant with all Security Council Resolutions, in

1 which all restrictions would be lifted. We never
2 thought that that was ever possible under Saddam, but we
3 were open to the possibility that it was.

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

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

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

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

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

25 SIR WILLIAM PATEY: I am afraid it is incredibly

1 complicated. I had whole rafts of people trying to
2 implement it. Essentially, there was a UN inspection,
3 a UN system. If Iraq wanted food, they were off to buy
4 anything, they were supposed to send -- the contract was
5 supposed to go through the UN for approval. Once the
6 goods had been shipped to Iraq, the UN would release the
7 money from the UN escrow account. Iraq was supposed to
8 export all its oil through four designated areas, and
9 all that oil was to be accounted for by a company called
10 Cotecna, I think I seem to recall. So there was
11 a complicated bureaucratic system designed to control
12 everything, to ensure that what Iraq did was legitimate.
13 The complexity of it was such that Iraq was able to
14 evade the controls. There was illegal exports,
15 contracts were given for political reasons, cronyism.
16 There was -- in a sense that's what led to some of the
17 disquiet about whether the policy was working, and
18 equally you had a regime which was exploiting the whole
19 system to create sympathy within the Arab world, and
20 this was part of the pressure. You saw the Iraqis would
21 claim that medicines weren't getting through and that
22 children were suffering from leukaemia. There was
23 a manipulation of the system that made it very
24 uncomfortable for those of us in the west subject to
25 public opinion. So that was an issue.

1 The Americans were able to put holds on dual use
2 goods. So within the UN system they could say, "No,
3 we've blocked that contract." So the blocked contracts
4 became an issue.

5 SIR RODERIC LYNE: Were we putting holds on --

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

20 SIR RODERIC LYNE: An awful lot has been published since
21 2003 about what went wrong with sanctions and some of
22 this is sub judice and we won't go into but a lot is in
23 the public domain, including things like the Volcker
24 report. But if you just try to recall your assessment
25 at the time, as the person in charge of the relevant

1 department at the Foreign Office, was it so bad, this
2 leakage of sanctions, that the policy really wasn't
3 worth continuing at that stage? How bad was it? What
4 was the order of magnitude?

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

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

22 So it was sustainable for quite a long time but it
23 wasn't going to deliver -- I don't think anybody thought
24 it was going to deliver the ultimate goals of our
25 policy.

1 SIR RODERIC LYNE: Sir Michael, from the legal point of
2 view, would it be right to say that this was not
3 problematic because it was very firmly anchored in
4 Security Council Resolutions?

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

8 SIR RODERIC LYNE: Thank you.

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

15 THE CHAIRMAN: Lawrence?

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

23 SIR WILLIAM PATEY: We had not much leverage but there was
24 some diplomatic effort to bring the pipeline into the
25 legal system that, therefore, controlled -- part of the

1 discussions about smarter sanctions were about making
2 the Syrian pipeline legal and bringing it into the
3 system. We tried to use what levers we had but the
4 Syrians were fairly immune to our charms.

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

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

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

23 SIR WILLIAM PATEY: For us it was very difficult to separate
24 fact from fiction. There was quite a lot of propaganda.
25 There were varying reports. The

1 World Health Organisation couldn't get access to Iraq.
2 We tried to get the World Health Organisation into Iraq
3 to come up with a regional assessment. Saddam wouldn't
4 let them in.

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

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

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

25 But, in our assessment, it didn't really matter

1 because the perception was that the situation was dire
2 and we were responsible.

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

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

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

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

21 SIR WILLIAM PATEY: We did think about that. We used to
22 debate that, certainly, and I used to debate it with
23 some of your future witnesses. Toby Dodge -- I remember
24 having a discussion with Toby Dodge about this. So we
25 did debate it.

1 There was a period when, of course, Iraq wasn't
2 subject to sanctions, when it was free to trade. It
3 didn't lead to any real changes in the country or the
4 destabilising of Saddam Hussein. So we rather concluded
5 that, unlike -- the perestroika approach was the one we
6 were always been advocated. Our assessment was that
7 that wouldn't deliver what we needed in Iraq.

8 SIR LAWRENCE FREEDMAN: Thank you.

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

17 SIR WILLIAM PATEY: We did our best to explain it, and
18 indeed the evolution of sanctions policy was designed to
19 address these very points. The Oil For Food started off
20 so Iraq could export its oil in return for food. So the
21 evolution of sanctions was all about focusing the impact
22 on the areas that really mattered -- arms, weapons of
23 mass destruction, the regime -- and alleviating to the
24 extent you can in a generalised sanction regime the
25 impact on the population.

1 So that was the genesis of Oil For Food, even before
2 we get to 2001, and the whole genesis of smarter
3 sanctions was designed to do that. So that was our
4 public position. We were advocating this as a policy,
5 to make it more sustainable, because we realised ten
6 years on -- nobody thought in 1991 that in 2001 we would
7 still be in the same position. I think we kind of
8 thought something might have changed. Nobody had
9 thought, when the sanctions regime was imposed in 1991,
10 that it would last for ten years, or 15 years, or
11 whatever, looking forward.

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

17 THE CHAIRMAN: Thank you. Usha?

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

1 there any active action taken, any proper assessment
2 done?

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

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

16 SIR WILLIAM PATEY: Yes. This sort of thing was really --
17 we had a heavy engagement from, usually, the Minister of
18 state, Peter Hain or Brian Wilson at the time, because
19 they were the ones on the front line of the sort of
20 public campaign on this and pressing us all the time
21 to -- we had discussions with the Americans, we went to
22 Washington a number of times to try and understand the
23 basis for their hold position -- why were they holding
24 dual use goods -- and we had long discussions with them
25 to reduce the number of the holds, get them to justify

1 them to us, even if they weren't prepared to justify
2 them to anybody else, and for us to argue against them.
3 So we had some success in getting the Americans to
4 reduce the number of contracts they had on hold. Some
5 contracts were put on hold, multimillion dollar
6 contracts were put on hold, because one item within the
7 whole contract was deemed to be dual use. So we got
8 them to have a system: rather than put the whole
9 contract on hold, remove the item.

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

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

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

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

23 So I think, without needing a break in this
24 afternoon's proceedings, we will get straight to that.
25 Martin, do you want to say anything?

1 SIR RODERIC LYNE: If I can just attempt to encapsulate all
2 of this position we have got to, sanctions had not
3 produced the intended aim of compliance with the
4 disarmament provisions of the Security Council
5 Resolutions. They were breaking down anyway, leaking,
6 proving ineffective. They were being used by
7 Saddam Hussein to his advantage. They weren't weakening
8 his position, he was actually jerking our strings
9 through sanctions, rather than the other way round.
10 They were damaging the standing of the British and
11 American governments in the region and in the
12 international community. We were, as you said, losing
13 the propaganda battle.

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

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

22 SIR WILLIAM PATEY: We were almost alone because I think the
23 French, who had been with us for quite a lot of that and
24 I think the European Union would have been with us for
25 quite a lot of that -- and you missed out in your in

1 your -- I'm not going to disagree with your catalogue of
2 what was wrong.

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

15 SIR RODERIC LYNE: Although nobody else seemed to be,
16 frankly, bothered by that.

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

21 SIR RODERIC LYNE: Simon Webb made very clearly this morning
22 the point that, in terms of his ability to import
23 military equipment, he had had a very constraining
24 effect. So it had achieved that benefit, but nobody
25 else seemed to think that as important as we did.

1 Given this overall picture, I mean, what were our
2 options?

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

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

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

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

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

18 SIR RODERIC LYNE: We hadn't given up?

19 MR SIMON WEBB: I'm not sure I get quite as far as you have.

20 I am just trying to look at what sort of things the JIC
21 was saying in the summer of 2001. It's talking about:

22 "On military capacity, the broad international
23 consensus to maintain the arms embargoes severely
24 limited Iraq's ability to ... this morning."

25 And this was a country --

1 SIR RODERIC LYNE: Could you say it a little slower because
2 it is quite difficult for the transcribers to keep up
3 with that pace.

4 MR SIMON WEBB: I beg your pardon. Okay.

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

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

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

24 SIR RODERIC LYNE: So, putting it in another way, at least
25 in terms of the military threat, was Saddam and his

1 regime in a cage?

2 SIR WILLIAM PATEY: Yes.

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

5 SIR WILLIAM PATEY: Possibly.

6 SIR RODERIC LYNE: Thank you.

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

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

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

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

25 Tomorrow we are turning throughout the day to the

1 theme of weapons of mass destruction, where, of course,
2 the deception factor, successfully practised, if you
3 like, in the broader context of sanctions, has equal
4 application.

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

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

18 Thank you all very much. We start again at
19 10 o'clock in the morning here on the theme of weapons
20 of mass destruction.

21 Thank you.

22 (3.35 pm)

23 (The Inquiry adjourned until 10.00 am the following day)

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I N D E X

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