

War Crimes II

Macavity – Bang to rights

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Sir Menzies Campbell MP

Michael Mates MP

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Final arrangements for the Iraq Inquiry Committee under Sir John Chilcot remain fluid, as was revealed during a debate in the House of Commons on 24 June 2009, which was called by the Opposition. We reprint excerpts.

Robert Marshall-Andrews MP: Many art forms thrive as a result of warfare, but none more, as a result of the Iraq war, than the art of sophistry. The ancient art of the sophist took apparently wise and irrefutable statements which, when they are carefully examined in the context in which they are made, turn out to be utterly without reason.

There was no better example of that than the words that fell from the Prime Minister's mouth when he announced the setting up of the committee. He said that the committee was to be set up in order that we should learn the mistakes and benefit from learning the mistakes that were made, and that they should not be made again – apparently wise in itself and, in the context of what the committee must consider and decide, utterly without meaning.

The central issue for the committee must be whether the House and, through it, the British people were misled and deceived into support for an illegal war. That is the central issue. There are other tangential and peripheral issues that need to be considered. I also would like to know about the aftermath. I would very much like to know about the role of Halliburton and other companies in the so-called reconstruction of Iraq. I would like to know many of the things that have perplexed the House as to what has happened since the war, but the central issue for those who were here and voted or did not vote for the war and took that awesome responsibility is whether the House at the time was deliberately misled into an illegal war.

In that essential question two things stand out above all and must be discerned. The first centres on the so-called Downing

Street memorandum in July 2002, many months before the war began. It is a clear minute, and it shows that our man – Q – who was at the time in Washington, Richard Dearlove, reported to the then Prime Minister in these terms:

‘Bush wanted to remove Saddam through military action justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy.’

That was the clearest possible statement, which was echoed in the House almost exactly word for word, although he did not know of the minute, by Robin Cook at the time that he made his resignation speech – that what was happening was that the facts were being fixed around policy.

That is the first thing that requires the Prime Minister of the day to go before the committee on oath and without immunity in order to be cross-examined about that, because he came to the House almost immediately afterwards and not a word of that reached the ears of those who were listening to him and were deciding on the issue of war. It is not the only internal memorandum, but it needs to be answered.

The second matter is the legal advice that was given to Cabinet, to the House and to the House of Lords. On 7 March [2003], the Attorney-General produced an opinion that has now, like drawing teeth, been made public. That opinion was hedged with doubt throughout on whether the war was legal. Any lawyer reading it would read both between and on the lines that the Attorney-General had the gravest possible reservations about the legality of war without a United Nations resolution. Seven days later a completely different opinion was given to Cabinet and subsequently was given in the House of Lords.

If the first opinion had been made public at the time, it is highly unlikely, in my view – we have one distinguished member of that Cabinet in the Chamber, and she will be able to tell us herself – that that Cabinet universally would have voted for war in those circumstances. That is the second matter that requires investigation.

Neither of these matters requires phalanxes of lawyers. Neither affects national security in their investigation. Both are absolutely central. They can be dealt with without months of preparation, on oath and in public. There is no lesson to be learned here. The lesson of whether or not to mislead the House is a lesson very quickly learned, and the answer is simple: do not mislead the House when dealing with the intelligence and the background to war. That is what we need to decide – not the lessons for tomorrow, but the facts of the past.

The mistakes that were made have already been visited, of course, by Lord Butler and his committee, but he was constrained. Those who read the Butler report can feel the frustration that comes out of those pages that he was constrained in his brief by looking only at the intelligence, and not at the use that was made of that intelligence in the dossiers and the information that was given to the House. The frustration that his committee obviously felt was manifest in what he said in the House of Lords in an extraordinary departure from normal protocol, when he also said that the inquiry must be held in public in order to deal with the issues.

In a sense, Lord Butler has no one but himself to blame because the Butler report was written in mandarin – a language in which Robin Butler is fluent and of which some of us have a passing knowledge, but it is a foreign language to the fourth estate. So, of course, the Butler report was taken as a vindication for what it most certainly was not – that is, the political reasons and the basis for war.

May I have my three ha'p'orth of where all this sits in the events of the past weeks that have affected the House? One of the problems that lies behind the expenses debate is not that it has thrown up serious matters – it undoubtedly has – which require investigation and answer. It has also been responsible for a wave of matters that are in themselves trivial – bath plugs, paperclips, and the like. What is the reason for that? One reason, undoubtedly, is to portray this House in a Lilliputian light: to trivialise its very existence. That is it. If we allow that to happen, we deserve to be portrayed as a Lilliputian assembly, unable to control our own destiny.

It is we who were misled, many of us believe, in the preparation for the Iraq war. It was this House that was misled.

Mr. Winnick *indicated dissent.*

Mr. Marshall-Andrews: My good and hon. Friend shakes his head when I say that, but let us have an inquiry to find out, and then, at least, something that has passed between he and I will be laid to rest. It is we who were misled, if we were misled, and it is to us that the inquiry must answer and it is to us to set the terms of reference of that committee. The terms of reference are not in themselves a matter of deep jurisprudence, because they are perfectly simple: the inquiry should be open; on oath and without immunity. What is more, those against whom criticism or indictment may be made must be warned of that fact and must be represented – yes – when they give evidence before the committee.

None of that is difficult to understand; it was all enshrined in the committees that were set up under Lord Salmon and The Tribunals of Inquiry (Evidence) Act 1921, which, as my hon. Friend the Member for

Cannock Chase (Dr. Wright) pointed out, was the point at which we divested ourselves of such authority. Now, we must retain it and we must regain it. That is one reason why, if the House divides, I shall be on the Opposition side, not because I wish to vote with the Tories, but because I wish to vote for – for – an inquiry in the terms that we require it ...

Sir Menzies Campbell MP: ... I shall set out some questions that I hope the inquiry will address. What was the then Prime Minister's motive in establishing a policy of standing steadfastly by the Bush Administration? Did the Cabinet agree with that policy? Did the Cabinet ever discuss that policy? Is it the case that by July 2002 at a meeting in Downing street, the minutes of which have been leaked, as it happens to *The Daily Telegraph*, Mr. Blair was committed to military action along with the United States? Is it the case that by that meeting Mr. Blair was committed to regime change?

When did the Cabinet first discuss military action? When did the Cabinet first discuss regime change? And on how many occasions thereafter did it discuss either or both implications of Government policy? Why did the Cabinet not see the Attorney-General's full opinion of 7 March 2003, before military action commenced? Who took the decision that the Cabinet should see only the one-page answer to a question no doubt placed by arrangement in the other place? Why did the Chief of the Defence Staff insist on specific legal advice on the legality of what he was being asked to do? Was the Cabinet advised that the intelligence assessment was that war against Iraq would increase the likelihood of terrorist attacks in the United Kingdom? If not, why not? Was the Cabinet informed that the 45-minute claim related only to battlefield nuclear weapons? ...

Michael Mates MP: [*who was on the Committee of Privy Councillors under Lord Butler which conducted a 'Review of Intelligence on Weapons of Mass Destruction' and reported in July 2004*] ... The right hon. and learned Member for North-East Fife (Sir Menzies Campbell) asked a number of questions. I know most of the answers, because we were shown all the evidence. We had to go into the legal aspects of the matter from an intelligence point of view, and we reported on that. However, we were constrained from reporting on them other than from that point of view. I remember that when we asked the Attorney-General a specific question, he said, 'Well, there was no intelligence aspect to that question, so I do not have to answer it.' Sir John [Chilcot] must have a broad canvas to work on.

I have seen advice from the Attorney-General that I do not believe the right hon. Member for Birmingham, Ladywood (Clare Short) has seen,

because it was not shown to the Cabinet. Some of it was leaked, and all of it was given to us, but we were constrained from reporting on it. That was not for reasons of national security but because if we had tried to, someone would have said that it was none of our business. That needs to be put right so that the Chilcot inquiry can examine all the matters that I have mentioned.

Regime change loomed large in the arguments about the legality of the war, as did [UN] resolution 1441. Papers laying everything out have flown between very senior Government representatives and Ministers, which will make certain people's eyes water when they see them. Our inquiry saw all those things, and the Chilcot committee must see them and be able to report on them. Five or six years on, it is not a question of national security any more. It is about what advice was given to Ministers and what their reaction to it was – did they accept it, or did they ignore it?

One issue to consider is the resignation of a legal adviser to the Foreign Office, who was not content with the Attorney-General's advice. That is in the public domain, but the reasons behind it are not. That may explain why the FCO was largely excluded from the latter stages of the discussions and the decision taking, most notably when Tony Blair, the Prime Minister, met President Bush in Washington with his coterie of No. 10 advisers and Sir Christopher Meyer, our ambassador there, was excluded from the meeting. If it is not the job of Her Majesty's ambassador to be there to report from the American perspective, I do not know what is, but he was not permitted to go to that meeting. I shall not repeat myself, but we have seen the accounts of that meeting, whereas others who should have seen them have not. Sir John must be able to bring all that out.

Why is there no one with some legal expertise on the committee? We need that sort of expertise among its members, so it seems strange it is missing from those people who have been chosen, although, like others, I am in no way criticising them.

My last point is about the intelligence, political and machinery of government aspects that led to the way in which the decisions were taken, which we were able to report on more substantially. In fact, our comments on that were perhaps some of our most trenchant. Perhaps the hon. and learned Member for Medway did not get the bit in mandarin, because we were highly critical of the style of government that had led to no notes being taken and no record being made.

Mr. Marshall-Andrews: The passage to which I think the right hon. Gentleman is referring is exactly the mandarin passage that I had in mind, when Lord Butler said that, taking everything together, the committee was

‘surprised’ that none of the intelligence being placed before the Government was reflected in the statements being made. The word ‘surprised’ in mandarin does not mean: ‘Good Lord! Is that the time?’ It means: ‘It is absolutely inconceivable that anything like this could happen.’

Mr. Mates: I will leave the interpreter of mandarin to draw his own conclusions.

The whole UK-US relationship must obviously be examined too. There are reams of papers that explain and reveal how the two were interacting in that relationship and how that led to certain decisions being taken that, if they had been presented differently, might have been taken differently. There were crucial reports of the key moments in the decision-making process. First, there was the meeting between the Prime Minister and the President in Texas, at President Bush’s ranch in Crawford. Then there was the meeting between the Prime Minister and the President in Washington from which Sir Christopher Meyer was excluded. Then there is a series of documents written by Sir David Manning, the Prime Minister’s adviser on overseas and foreign policy. Those documents are crucial to understanding the way in which all the decisions were made. The press have speculated about them – sometimes correctly, sometimes incorrectly – and some have been leaked. Having seen them all, I know how crucial those documents are for the Chilcot inquiry to be able to do its job properly.

Last of all, if ever there was a war in which politics – that is, in the decision to go to war, not the war itself – played such a major part, it was this one, given the political decisions taken here and in the United States. As I speak these words, I can hear colleagues saying, ‘He would say this, wouldn’t he?’ Why are there no politicians on the committee? That point was made very well by my right hon. Friend the Member for Chingford and Woodford Green (Mr. Duncan Smith) and the hon. and learned Member for Medway, as well as by others, from all round the House. The reason the Prime Minister gave us was this:

‘the membership of the committee will consist entirely of non-partisan public figures acknowledged to be experts and leaders ... There will be no representatives of political parties from either side of this House.’ – [*Official Report*, 15 June 2009; Vol. 494, c. 24.]

David Davis MP: I commend my right hon. Friend on making an astonishingly informative speech. To reinforce his comment about politicians being involved, everything that he has described is mirrored in similar failures – constitutional, structural, governmental and decision-making failures – in the United States. They have come out recently

because of the torture issue and how legality was bypassed, so it is doubly important that politicians should be involved ...

George Galloway MP: ... The Prime Minister's initial prospectus for this inquiry proved that the Government just do not get it. When, in 2005, I was elected as the first left-of-Labour Member of Parliament in England for 60 years, I was elected because of Iraq. The Labour party's membership has halved because of Iraq. Millions of Labour voters have left them and new parties – some of the left and some of the right – are proliferating and strengthening, in substantial part because of Iraq. That has happened not directly, but indirectly because of the poison that the Iraq question has caused to pulse around the British body politic. The lack of credibility of the British political class has also been the result of Iraq.

The Government still do not get it. If they did, they would have used this opportunity for a grand catharsis, to turn the page and finally leave Blairism behind and call for the kind of inquiry that has been repeatedly demanded in the House this evening.

... Some of us say, to reverse Talleyrand, that this was worse than a blunder; it was a crime. If the inquiry is to mean anything, it will need to be able not only to apportion blame but, if blame is apportioned, to signal what legal avenues should be pursued. I know that we do not like that sort of thing in this country – things are usually swept under the carpet and finessed – but this is new territory. Events such as the expenses scandal have left the country seeing our House with such odium, and this country's political class so naked, that the old ways will not do. If the inquiry finds people guilty of misleading Parliament, the Queen, the armed forces and the public, they will have to be held accountable. There will have to be a trial, which will have to be held under oath, and that will lead to punishment if there are convictions at the end – nothing less will do ...

Alan Simpson MP: ... I remind the House of some of the inconvenient elements that were already in place in the run-up to the war in 2003. I pay tribute to many of my hon. Friends, some of whom are in their places, who at that time formed Labour Against the War. It was to demonstrate in the Chamber that there was not a consensus in the Labour party that endorsed the country being bounced into an illegal and immoral war.

It was under the auspices of Labour Against the War that we brought into the Palace of Westminster several of the key international players who ought to have informed our debate. Dominique de Villepin was here, and he set out the French perspective. Scott Ritter, a former head of the United Nations Special Commission weapons inspectors, came here and set out what the inspectors already knew about the destruction of both Iraq's

capabilities and its potential to deliver weapons of mass destruction. He gave UNSCOM's evidence to Members who were interested. Denis Halliday, the UN humanitarian co-ordinator, came and told us what a devastating mess we were already making in Iraq and how disastrous it would be to compound that error.

On the eve of the publication of the Government's dodgy dossier, those of us who had the temerity to do so produced a counter-dossier, which was Labour Against the War's case against the war in Iraq. It set out the degree of international evidence available that contradicted all the claims that were coming out of Downing street. The inquiry therefore needs to address how, in the face of that evidence, this House could be bounced into a war of choice.

A number of hon. Members have referred to the importance of the availability of the legal advice at the time. However, it is not enough to have access to the legal advice; it is also important that the memorandums and notes of meetings should be available. Two of those memorandums that have already been widely leaked have been mentioned. My hon. and learned Friend the Member for Medway (Mr. Marshall-Andrews) referred to the secret Downing street memo produced on 23 July 2002 by David Manning and Matthew Rycroft, the Prime Minister's foreign policy adviser at the time. My hon. and learned Friend cited the comments by the head of MI6 about the need to fix the facts around the policy. However, I was far more interested in the comments made by elected Members of this House at the meeting described in that memorandum.

The then Foreign Secretary, for instance, said:

'It seemed clear that Bush had made up his mind to take military action, even if the timing was not yet decided. But the case was thin.'

In an attempt to be helpful, the then Defence Secretary said that

'if the Prime Minister wanted UK military involvement, he would need to decide this early.'

Even at that time, however, the Attorney-General said that

'the desire for regime change was not a legal base for military action'.

In conclusion, however, the then Prime Minister said:

'If the political context were right, people would support regime change. The two key issues were whether the military plan worked and whether we had a political strategy to give it the space to work.'

For the Prime Minister, the question was not then, and perhaps never was,

whether the war was legal. It was not then, and possibly never was, whether there were weapons of mass destruction. The question was: can we manufacture the case for a war, in order to con the country, the Cabinet and the Commons into endorsing that plan? That absence of legality and the cynical manipulation of a case for a war of choice must be the focus of the inquiry's work.

The second note relates to the meeting that took place in the Oval Office on 31 January 2003, to which the right hon. Member for East Hampshire (Mr. Mates) referred. He is right to question the absence from that meeting of both members of Cabinet and the UK ambassador to the US, because there were only three people at that meeting from the UK side: the Prime Minister, Jonathan Powell, his chief of staff, and Matthew Rycroft, the foreign policy aide who was the author of the memo. However, that memo said that

‘the president and the prime minister acknowledged that no unconventional weapons had been found inside Iraq. Faced with the possibility of not finding any before the planned invasion, Mr. Bush talked about several ways to provoke a confrontation, including a proposal to paint a United States surveillance plane in the colors of the United Nations in hopes of drawing fire, or assassinating Mr. Hussein.’

That is the cynical pursuit of conditions under which it will be possible to manufacture a case for legally going to war when no legal basis for doing so exists.

The inquiry must address to what extent members of the Cabinet were ever informed of those discussions. It must address whether the Cabinet knew, for instance, that the then Prime Minister was planning a war of choice in Iraq nine months before it was fought; that his objective was regime change, not the removal of weapons of mass destruction; that he had agreed nine months in advance to fix intelligence and facts around the Bush policy; and that Britain, based on the Prime Minister's approval, was colluding with acts of provocation or assassination.

Those are all illegal acts ...

Adam Price MP: ... I remember when the then Prime Minister spoke at that Dispatch Box on that terrible day for our democracy. He referred to the UN inspectors' reports, which contained, he said, unanswered questions and

‘29 different areas in which the inspectors have been unable to obtain information’. – [*Official Report*, 18 March 2003; Vol. 401, c. 763.]

He used that terrible Rumsfeldian logic. Absence of evidence is not

evidence of absence; the fact that there was no evidence of WMD did not mean that the WMD were not there. That was sufficient reason – justification – for the war.

I did not believe a word that the Prime Minister said, but many hon. Members believed that it was not possible for a serving Prime Minister to lie to the House and to the people. Because he is no longer a Member of the House, I no longer have to fear being ejected for saying what many people believe: we were misled and the House was misled on a matter so serious – life or death, peace or war. That is why it is our responsibility tonight to get to the heart of the matter, both the specifics of the Iraq war and how our democracy and our machinery of government were so terribly undermined. We have to establish the truth and ensure that that never happens again – and yes, if as a result of that the inquiry believes that it must attribute blame, it should be free to do so if there is individual culpability, as many of us believe.

There are three key issues that the inquiry must consider and which have been touched on by many hon. and right hon. Members. On the motivation for the war, I believe that WMD were the pretext. As we have heard, various minutes and the Downing street memos that have emerged subsequent to the Butler inquiry suggest clearly, as Wolfowitz said, that WMD were simply the bureaucratic rationale. The real reason lay elsewhere, and it was regime change all along.

On legality, the contribution made by the right hon. Member for East Hampshire (Mr. Mates) was fascinating and it chimes with what Philippe Sands said in his book, ‘Lawless World’: the Butler inquiry saw correspondence between Ministers that the Cabinet never saw and which raised serious doubts about the legality of the war, and indeed shared some doubts that Colin Powell had about its legality.

We now know that the legal advisers in the Foreign Ministry of the Dutch Government believed that

‘the Netherlands would lose any case brought before the International Court of Justice’.

Interestingly, written on that memorandum were the words:

‘Bury it well in the archives for future generations.’

Our memorandums will not be buried. We owe it to future generations to ensure that this does not happen again.

Will there be *prima facie* evidence? Will the inquiry conclude that there is evidence that the war was indeed unlawful? We must remember that in

November, Lord Bingham, former Lord Chief Justice and senior Law Lord of the United Kingdom, said that the Attorney-General's advice to the British Government contained

‘no hard evidence’,

that Iraq had defied UN resolutions

‘in a manner justifying resort to force’

and that the invasion – the Iraq war – was

‘a serious violation of international law and of the rule of law’ in this country as well ...

I believe that if the inquiry concludes – as the senior Law Lord of the United Kingdom has concluded – that the war was indeed unlawful, the Government should voluntarily report themselves. They should report the Iraq war to the International Court of Justice for a declaratory opinion so that we can ensure that, for the avoidance of doubt, it is established in international law for future generations, and so that the hundreds of thousands of Iraqis and the 179 British servicemen and women who lost their lives will not have lost them in vain. We will then have established a core principle in our democracy: that those who lead us cannot mislead us and expect to get away with it ...