



House of Commons
Foreign Affairs Committee

First Special Report

Session 2003–04

**Implications for the Work of the House
and its Committees of the Government's
Lack of Co-operation with the Foreign
Affairs Committee's Inquiry into The
Decision to go to War in Iraq**

*Ordered by The House of Commons
to be printed 16 March 2004*

The Foreign Affairs Committee

The Foreign Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Foreign and Commonwealth Office and its associated public bodies.

Current membership

Rt Hon Donald Anderson MP (Labour, Swansea East) (Chairman)
David Chidgey MP (Liberal Democrat, Eastleigh)
Fabian Hamilton MP (Labour, Leeds North East)
Eric Illsley MP (Labour, Barnsley Central)
Andrew Mackinlay MP (Labour, Thurrock)
John Maples MP (Conservative, Stratford-on-Avon)
Bill Oler MP (Labour, Nuneaton)
Richard Ottaway (Conservative, Croydon South)
Greg Pope MP (Labour, Hyndburn)
Rt Hon Sir John Stanley MP (Conservative, Tonbridge and Malling)
Gisela Stuart MP (Labour, Birmingham Edgbaston)

The following Member was also a member of the Committee during the parliament.

Sir Patrick Cormack MP (Conservative, Staffordshire South)

Powers

The Committee is one of the Departmental Select Committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/foreign_affairs_committee.cfm. A list of Reports of the Committee in the present Parliament is in the inside front cover of this volume.

Committee staff

The current staff of the Committee are Steve Priestley (Clerk), Geoffrey Farrar (Second Clerk), Ann Snow (Committee Specialist), Kit Dawnay (Committee Specialist), Kevin Candy (Committee Assistant), Julia Kalogerides (Secretary) and Chintan Makwana (Senior Office Clerk).

Contacts

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First Special Report

Background

1. In June 2003, the Foreign Affairs Committee carried out an Inquiry into *The Decision to go to War in Iraq*. The Report of that Inquiry was published on 7 July 2003.¹ Further oral evidence was heard on 15 July, from Dr David Kelly, and on 17 July, from Andrew Gilligan.² Mr Gilligan's evidence was the subject of a Special Report of the Committee to the House, in which we set out our concerns about the protection which Parliamentary privilege affords to witnesses who make unsubstantiated allegations.³ Dr Kelly also gave evidence to the statutory Intelligence and Security Committee on 16 July. On 18 July, Dr Kelly was discovered dead and an inquiry into the circumstances surrounding his death was then carried out by Lord Hutton. The Prime Minister published the Report of the Intelligence and Security Committee on *Iraqi Weapons of Mass Destruction – Intelligence and Assessments* on 11 September 2003.⁴ The Report of Lord Hutton's Inquiry was published on 28 January 2004.⁵

The Government's evidence to the Foreign Affairs Committee

2. When we began our Inquiry in June 2003, we were hopeful that we would receive full co-operation from the Government. As we set out below, this was not forthcoming.

3. We commented in paragraph 6 of our Report on *The Decision to go to War in Iraq*, as follows:

We are strongly of the view that we were entitled to a greater degree of co-operation from the Government on access to witnesses and to intelligence material. Our Chairman wrote to the Prime Minister (requesting his attendance and that of Alastair Campbell); the Cabinet Office Intelligence Co-ordinator; the Chairman of the Joint Intelligence Committee; the Chief of Defence Intelligence; the Head of the Secret Intelligence Service; and the Director of GCHQ. None of them replied. It was the Foreign Secretary who informed us that they would not appear. The Chairman wrote a further letter to Alastair Campbell and after an initial refusal he agreed to appear. We asked for direct access to Joint Intelligence Committee (JIC) assessments and to relevant FCO papers. That was refused, although some extracts were read to us in private session. We are confident that our inquiry would have been enhanced if our requests had been met. We agree with Alastair Campbell that "it would have been very odd to have done this inquiry" without questioning him, and we regret

¹ Foreign Affairs Committee, Ninth Report of Session 2002–03, *The Decision to go to War in Iraq*, HC 813

² Foreign Affairs Committee, Session 2002–03, oral evidence, *The Decision to go to War in Iraq*, HC 1025

³ Foreign Affairs Committee, First Special Report of Session 2002–03, *Evidence from Mr Andrew Gilligan to the Committee's Inquiry into The Decision to go to War in Iraq*, HC 1044

⁴ Intelligence and Security Committee, Report on *Iraqi Weapons of Mass Destruction – Intelligence and Assessments*, Cm 5972

⁵ *Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly CMG*, HC (2003-04) 247

that other witnesses, some of whom we suspect felt the same way as Mr Campbell, were prevented from appearing. Yet it is fair to state that within the Government's self-imposed constraints the Foreign Secretary sought to be forthcoming, spending more than five hours before the Committee, and reading to us in private session limited extracts from a JIC assessment dated 9 September 2002.⁶

4. The only way in which the Committee could have sought to insist on the attendance of official witnesses or the production of official papers would have been to make a Special Report to the House, or to table an appropriate Motion. Either course of action would have required the Government's agreement for a debate to be held in government time.

The Government's evidence to the Intelligence and Security Committee

5. The following witnesses, requested by this Committee and refused by the Government, gave evidence to the Intelligence and Security Committee's inquiry into *Iraqi Weapons of Mass Destruction – Intelligence and Assessments*:

- the Prime Minister;
- the Cabinet Office Security and Intelligence Co-ordinator;
- the Chairman of the Joint Intelligence Committee;
- the Chief of Defence Intelligence;
- the Head of the Secret Intelligence Service ('C');
- the Director of GCHQ.

The evidence of all these was given in private but some of that given by the Cabinet Office Security and Intelligence Co-ordinator has since been published by Lord Hutton.

6. The following papers, requested by this Committee and refused by the Government, were provided to the Intelligence and Security Committee:

- drafts of the September 2002 dossier;
- the JIC assessments which were used in compiling the dossier;
- other records relevant to the dossier and to Iraqi WMD assessments.

Many of these papers have been published by Lord Hutton, some with deletions.

7. We note that the Intelligence and Security Committee has no powers to compel the attendance of witnesses or to require the production of papers and records.

⁶ HC (2002-03) 813, para 6

8. The Government chose to co-operate with the inquiry carried out by the Intelligence and Security Committee in ways in which it did not co-operate with a select committee of the House.

The Government's evidence to Lord Hutton's Inquiry

9. The following witnesses, requested by this Committee and refused by the Government, gave evidence to Lord Hutton's Inquiry into *The Circumstances surrounding the Death of Dr David Kelly* CMG:

- the Prime Minister;
- the Cabinet Office Security and Intelligence Co-ordinator;
- the Chairman of the Joint Intelligence Committee;
- the Head of the Secret Intelligence Service.

The evidence of all these was given in public and has been published.

10. The following papers, requested by this Committee and refused by the Government, were provided to Lord Hutton's Inquiry:

- drafts of the September 2002 dossier;
- the JIC assessments which were used in compiling the dossier;
- other records relevant to the dossier and to Iraqi WMD assessments, such as e-mails, notes of meetings and internal memoranda.

All these papers have been published, some with deletions.

11. We note that Lord Hutton's Inquiry was not established by Parliament under the Tribunals and Inquiries Act. It was established administratively, by the Prime Minister. The Inquiry therefore had no powers to compel the attendance of witnesses or to require the production of papers and records. All those who co-operated with Lord Hutton's Inquiry—including this Committee—did so willingly and no formal sanction could have been applied against any person who refused to co-operate.

12. The Government chose to co-operate with Lord Hutton's Inquiry in ways in which it did not co-operate with a select committee of the House.

Questions for the House to consider

Power to send for persons, papers and records

13. The House has given this Committee, in common with other Committees, power under its Standing Orders to send for persons, papers and records. The experience of the Foreign Affairs Committee in the course of its Inquiry into *The Decision to go to War in*

Iraq suggests that these powers are, in practice, unenforceable in relation to the Executive. We commented in our Report of that Inquiry in the following terms:

We also note that select committees have always enjoyed the power to send for “persons, papers and records” to assist them in their work. While committees cannot summon members of either House (Commons or Lords) to appear before them, officials have a duty to attend when requested. By tradition, select committees have observed what are colloquially known as the ‘Osmotherly Rules’, which provide guidance to civil servants appearing before committees.⁷ These state that when a Minister and a select committee disagree about the attendance of a particular, named official, the Minister should give evidence personally. However, in 1990, the then Permanent Secretary to the Cabinet and Head of the Home Civil Service, Sir Robin Butler, confirmed that when a specific civil servant was summoned by a committee they had a “duty” to attend.

We conclude that continued refusal by Ministers to allow this committee access to intelligence papers and personnel, on this inquiry and more generally, is hampering it in the work which Parliament has asked it to carry out.

We recommend that the Government accept the principle that it should be prepared to accede to requests from the Foreign Affairs Committee for access to intelligence, when the Committee can demonstrate that it is of key importance to a specific inquiry it is conducting and unless there are genuine concerns for national security. We further recommend that, in cases where access is refused, full reasons should be given.⁸

14. The Government has not accepted our recommendations. We therefore invite the House to consider, and to reach a view on, the following questions:

- What procedures should apply when a relevant Minister refuses to appear before a Committee of this House?
- What procedures should apply when a Minister refuses to allow a named civil servant or other official within his area of responsibility to appear before a Committee of this House?
- What procedures should apply when a Minister refuses to supply papers or records to a Committee of this House?

⁷ Footnote added for this Special Report: The Osmotherley Rules have never been accepted by the House.

⁸ HC (2002-03) 813, paras 167-9

Parliamentary scrutiny of the intelligence and security services

15. In our Report of July 2003, we also commented on the status of the Intelligence and Security Committee, as follows:

The Intelligence and Security Committee (ISC) is a committee formed of members of both Houses of Parliament, appointed by the Prime Minister. It is a creation of statute, not of the Standing Orders of the two Houses. Its secretariat is provided by the Cabinet Office. It reports to the Prime Minister, who lays an annual report on its activities before Parliament. The ISC exercises oversight of the three intelligence and security agencies of Government, and also regularly meets the JIC. It always meets in private.

The Foreign Affairs Committee (FAC) is a select committee of the House of Commons, set up under the Standing Orders of the House and appointed by it. Its secretariat is provided by the Clerk of the House. It reports to the House and publishes its evidence with its Reports. The FAC scrutinises the expenditure, policy and administration of the Foreign and Commonwealth Office and its associated public bodies.

When the ISC was created (by the Intelligence Services Act 1994), the then Foreign Secretary, Lord Hurd, assured the House that it would not “truncate in any way the existing responsibilities of existing committees.” However, since the ISC was set up, successive Secretaries of State have on more than one occasion refused to allow FAC access to the agencies, on the grounds that Parliamentary scrutiny of those agencies is carried out by the ISC.

We have attempted, so far in vain, to explain to Ministers that for the FAC to discharge effectively its role of scrutinising the policies of the FCO, it will on occasion require access to intelligence material and, on rare occasions, to the agencies themselves. The present inquiry is a case in point. Ministers base their refusal to grant such access on the existence of the ISC, suggesting—in our view wholly wrongly—that Lord Hurd’s undertaking has been honoured, because there was no such access before 1994. This leads us to wonder what “existing responsibilities” Lord Hurd could have had in mind.

We are particularly concerned that there is no symmetry in the Government’s position. Our colleagues on the ISC produced a useful and well received Report on the Bali bombing, a substantial part of which commented on the administration of the FCO and was based on evidence taken from the FCO. Because the ISC operates in conditions of secrecy, we do not know how hard they had to press the FCO to allow them to scrutinise its procedures, but we do know that they succeeded. By the FCO’s own logic, it should have applied its policy of avoiding “competing jurisdictions” to the ISC’s wish to scrutinise the work of the consular division of the FCO, as it applied it to our request for access to intelligence papers which formed the basis of the FCO’s travel advice at the time of the Bali bombing.

We regard the Government's refusal to grant us access to evidence essential to our inquiries as a failure of accountability to Parliament, the more so as it does not accord entirely with precedent. As our predecessor Committee noted in 1998, the Foreign Affairs Committee was granted access to the highly classified "Crown Jewels" papers on the Falklands War in 1984; while in the course of its inquiry into Sierra Leone the Committee enjoyed some limited success in obtaining copies of classified telegrams. In both cases, parallel inquiries were under way (the Franks and Legg inquiries respectively). It is, as we have already observed, a matter of great regret that those precedents have not been followed in this case.⁹

The FAC does not seek to duplicate the work of the ISC, which has a valuable role to perform as the Committee responsible for scrutinising the work of the agencies. But there will be occasions, inevitably, when the work of both overlaps. This is quite normal with select committees, but the problem is that the ISC is not a select committee.

We note that the Foreign Secretary has now gone on the record as supporting the recasting of the ISC as a select committee of Parliament. This option would offer a number of advantages: the possibility of joint hearings, joint inquiries and joint reports; established structures for the management of overlap; a more open way of working; and a seat for the ISC Chairman on the Liaison Committee. We recommend that the Intelligence and Security Committee be reconstituted as a select committee of the House of Commons.¹⁰

16. In 1994, Parliament decided in creating the Intelligence and Security Committee that it should be a statutory committee, appointed by and reporting to the Prime Minister.¹¹ That was ten years ago, and we believe that it is now time for Parliament to reconsider this matter.

17. We invite the House to consider, and to reach a view on, the following questions:

- What should be the status of the Intelligence and Security Committee?
- What principles and procedures should govern relations between the Intelligence and Security Services and Committees of this House?

⁹ Footnote added for this Special Report: in 1998, our predecessor Committee made two Special Reports raising similar concerns. See Foreign Affairs Committee, First Special Report of Session 1997-98, *Sierra Leone: Exchange of Correspondence with the Foreign Secretary*, HC 760 and Foreign Affairs Committee, Second Special Report of Session 1997-98, *Sierra Leone: Further Exchanges of Correspondence with the Foreign Secretary*, HC 852

¹⁰ HC (2002-03) 813, paras 158-165

¹¹ Intelligence Services Act 1994

Formal minutes

Tuesday 16 March 2004

Members present:

Donald Anderson, in the Chair

Mr David Chidgey	Richard Ottaway
Mr Eric Illsley	Mr Greg Pope
Andrew Mackinlay	Sir John Stanley
Mr John Maples	Ms Gisela Stuart
Mr Bill Olnier	

The Committee deliberated.

Draft Special Report (Implications for the Work of the House and its Committees of the Government's Lack of Co-operation with the Foreign Affairs Committee's Inquiry into The Decision to go to War in Iraq), proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 17 read and agreed to.

Resolved, That the Report be the First Special Report of the Committee to the House.

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

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

[Adjourned till Tuesday 30 March at 2.30pm]