

Inquiry on the Iraq war: Who is accountable?

A discussion at Friends House, 18 August 2009.

Why the UK went to war in Iraq in 2003

The story begins with an unguarded comment by President George Bush the day after 11th September 2001 (9/11). 'I don't care what the international lawyer says, we are going to kick some ass'. Afghanistan, home of the Taleban and with direct links to al'Qaeda, plainly had to be tackled first. But from the very beginning there was a conviction that Saddam Hussain was a bad person and had to be dealt with. 9/11 provided the perfect excuse. In April 2002 President Bush said on television 'Saddam needs to go'. By then a message had already been sent from Downing Street to Condoleezza Rice that Blair would not waver from his support for America on this issue. It seems that the Prime Minister told President Bush that the UK would support military action to bring about regime change so long as a coalition had been created, the Israel-Palestine crisis was quiescent and the UN weapons inspectors had been given an opportunity to eliminate Iraq's WMD. Why Blair was prepared to commit himself to this effect so early is a question to which I shall return at the end.

How was this action to be defended? There were, in theory, a number of justifications for removing Saddam Hussain. Could Britain claim to be acting in self-defence as allowed under Article 51 of the UN Charter? The events immediately following 9/11 suggested that it might. Only next day the UNSC, by resolution 1368 - which took its stand explicitly on the right of self-defence - declared the acts of 9/11 'like any act of international terrorism [to be] a threat to international peace and security'. The Council then expressed its readiness 'to take all necessary steps to respond'. This latter phrase is the established term for using military force. So the resolution was seen, quite reasonably, as justifying an attack on terrorist bases in any country or indeed on the government of such a country if it failed to prevent and punish terrorist attacks. It was taken by the US government to justify overthrowing the Taleban regime in Afghanistan because that regime was being effectively funded and controlled by al'Qaeda. The resulting military campaign - *Operation Enduring Freedom* - began on 7th October and resulted in the fall of Kabul on 12th November. The Security Council gave explicit endorsement to this action by a series of resolutions passed in the following weeks.

But the claim of Saddam's links with al-Qaeda, which could have put Iraq on all fours with Afghanistan, was soon acknowledged to be unsustainable. After the invasion, of course, Iraq became a honey-pot for Al Qaeda and a great boost to its recruiting - as some perceptive commentators like Paul Rogers had predicted. But there was no evidence that Saddam or his regime had any time for Al'Qaeda at all.

According to Geoff Hoon, then Defence Secretary, the reason why Britain joined the American invasion of Iraq in March 2003 was 'the threat, if not to the United Kingdom in the short term, then to our friends and allies in the Gulf region as well as to the wider stability of the world, if we had not intervened to deal with weapons of mass destruction in the hands of a regime like Saddam Hussein. To that extent it was just'. As Hoon said, there was no immediate threat to ourselves, since it was not plausible that Saddam's WMD, even if he had them, posed an imminent threat to Britain. Hoon was talking here about preventive military action to nip in the bud a possible future threat to international peace and security. The Americans had been quite explicit about this. *The National Security Strategy of the USA* of September 2002 had said, in relation to the threat of global terrorism: 'we will not hesitate ... to exercise our right of self defence by acting pre-emptively against such terrorists, to prevent them from doing harm against our people and our country'. One cannot blame America for confronting this new reality head-on, since states do now face dangers that cannot be deterred in any conventional sense and may need to be tackled before they develop into actual armed attack. But great concern was aroused by the peremptory way this doctrine was announced and its blatant assumption of unique authority, ignoring the problems that would arise if other countries claimed a similar right. It seemed to give the USA *carte blanche* to attack any country it chose on the pretext that it was harbouring terrorists. However a closer reading suggests that the doctrine was much more narrowly focussed. 'We must be prepared to stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the US and our allies and friends'.

The Americans were right in arguing that international law has long recognised that nations need not suffer an attack before they can legally take action to defend themselves against forces that present an imminent danger of attack. Classically this is defined as the right to act first in self-defence where 'necessity of that self-defence is instant, overwhelming, and leaving no choice of means, and no moment for deliberation.' The Americans now argued that the notion of imminent threat must take into account rogue states and terrorists relying on 'acts

of terror and potentially the use of weapons of mass destruction ... that can be easily concealed, delivered covertly and used without warning. ... The greater the threat, the greater is the risk of inaction - and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack'. This argument deals cogently with the issue of imminent threat. But it raises in acute form the issues of capability and intention. Does the country in question actually possess any weapons of mass destruction or at the very least necessary ingredients such as fissile materials or precursor chemicals? And if so, does it show any serious intention of transferring these things to terrorist clients? It is the great weakness of any doctrine of pre-emption that it places such great weight upon the accuracy of intelligence that in the nature of things may be unattainable. Where Iraq is concerned neither capability nor intention were convincingly demonstrated before the attack, nor have been since. Hence the case for pre-emption was weak, and the option of choosing other means was certainly wide open. In any case the British had never accepted that part of the new US National Security Strategy. In 2004 the UN Secretary General's High Level Panel did recognise the need to act 'preventively and before a latent threat becomes imminent' when 'nightmare scenarios combining terrorists, weapons of mass destruction and irresponsible states' were involved. But such action was to lie solely with the Security Council to determine.

The British had also discounted the idea of Humanitarian Intervention, which arises where a regime has been inflicting gross, flagrant and continuing breaches of human rights upon its own peoples. However brutal and appalling Saddam Hussein's behaviour had been in earlier years - such as gassing the Kurds in Halabja in 1988, when he was an ally of the Americans fighting the Ayatollahs in Iran - there was no humanitarian crisis of that kind in Iraq in 2003. Attorney General Lord Goldsmith said as much in his advice to the Prime Minister on 7 March 2003: 'The doctrine [of Humanitarian Intervention] remains controversial I know of no reason why it would be an appropriate basis for action in present circumstances.' In September 2005 the United Nations World Summit did recognise the propriety of Humanitarian Intervention - under the rubric of 'Responsibility to Protect' - provided it was undertaken 'through the Security Council'. On this body all the threads converged.

The UN Charter, in Chapter 7, allows the use of force to maintain or restore international peace and stability if the Security Council so determines. The Security Council did so determine in 1990 by Resolution

678, authorising force against Iraq, to eject it from Kuwait and to restore peace and security in the area. In 1991, after the war, Resolution 687 set out cease-fire conditions and obliged Iraq to destroy its WMD. The British and Americans scored a great success in November 2002 when the Security Council unanimously adopted Resolution 1441. This determined that Iraq was in material breach of earlier Resolutions and had failed to co-operate with UN arms inspectors. It gave Iraq a 'final opportunity' to comply with its disarmament obligations. It set up an enhanced inspection regime, required a full and accurate declaration of Iraq's WMD programmes and decided that any false or incomplete declaration would constitute a further material breach. It directed Hans Blix (head of the UN inspectors) and Mohamed El Baradei (head of the IAEA) to report any failure to comply. The Security Council would then meet to consider the situation. In the event of continued violations Iraq would face 'serious consequences'. This wording was crucial. At the insistence of Russia, China, France and Germany it did not authorise states to use 'all necessary means' to enforce its requirement.

In March 2003 Hans Blix reported that while Iraq had taken numerous initiatives to resolve some long-standing open disarmament issues, these did not amount to 'immediate co-operation' (as the Resolution had required) nor did they necessarily cover all areas of relevance. But Iraqi co-operation was accelerating. The inspectors had found no WMD and asked for a few more months to complete their task. On the strength of this report America, with Britain and Spain, tabled a draft Resolution saying that Iraq had failed to take the final opportunity afforded to it. But this had little support. France, Germany and Russia tabled a contrary Resolution saying that the conditions for using force had not been fulfilled. Diplomatic efforts to persuade the six swing voters, Mexico, Chile, Guinea, Cameroon, Angola and Pakistan, by the offer of development assistance, failed to bring them to the American side. By the second week of March 2003 efforts to secure a 'Second Resolution' had collapsed.

Up to this point the view of the British Attorney General (Lord Goldsmith) had been that to use force against Iraq, without a further Security Council specifically authorising the use of 'all necessary means', would not be lawful. By 7 March, following a meeting with lawyers in the White House, he had apparently been persuaded that a second resolution would not be necessary. He recognised however that in a court of law this view might not prevail. This advice, set out in a thirteen page document that was only published two years later, was not good enough for cabinet colleagues or the Chief of Defence Staff. Almost certainly it

would not have persuaded parliament. On 15 March the Prime Minister unequivocally confirmed that in his view Iraq had committed further material breaches of Security Council Resolutions. On 17 March, in response to a parliamentary question, Lord Goldsmith set out his final view that the authorisation to use force given by the Security Council in Resolution 678 had been 'revived' by Iraq's material breach of Resolution 687 and 'so continues today'.

Blair got his favourable vote in the House of Commons and the war went ahead. But the argument was a bad one in which very few states and virtually no established international lawyers have seen merit. The reason is that resolution 687 expressly reserved to the Security Council responsibility for securing peace and security in the region. So it was for that body, not the British, American or any other government, to determine whether the disarmament obligations under that resolution have been met; and if not, what action should follow. This view was shared by the UN Secretary General. If it is correct then so also is his opinion that relying on bad arguments destroys the credibility of governments. Failure after the invasion to uncover any WMD or means of making them has added to the erosion of trust.

Why did Tony Blair decide so early in the game to give unequivocal support to the Americans, in their determination to topple Saddam Hussein come what may? I believe that the answer is simple. The outgoing Chief of the General Staff, Richard Dannatt, in a final talk to the IISS on 30 July last, explained 'I believe ... that our history and the inescapable demographic legacy of our Empire, linked to our current status, our trading interests, geography, trans-Atlantic ties and our responsibilities as a P5, G8, NATO and commonwealth member – all these things are hardwired into our political and national DNA. With this comes the responsibility of international activism on the global stage. We should not shy away from this. This is not 'punching above our weight' [so much as] 'operating commensurate with our responsibilities'. And this global perspective must also be informed by a clear understanding of what capabilities our principal ally – the United States of America – needs and expects from us.' In other words the Prime Minister, in his policy on Iraq, was not prepared to withstand our principal ally on an issue which appeared to be of major importance to them. This was not an ignoble reason, but nor was it a necessary one. The war was a war of choice and the choice had been made by America.

Which leads to the final question, why was the Bush administration so determined, almost from the outset, to destroy the regime of Saddam Hussein? A whole raft of reasons has been suggested. Among the most plausible are the desire to tilt the Middle East on to a more progressive political track; to send a message that Western governments were not prepared to allow countries in the region to incubate Muslim fanatics and suicide bombers; to help resolve the Palestinian impasse; and to secure a dominant position for the US in the control of oil production. These motives, however far-fetched they may now seem, were not bad in themselves. They just did not stack up to sufficient cause for invading a sovereign state and fellow member of the United Nations. Be that as it may, some of the most influential people in the Bush administration, including Dick Cheney, Donald Rumsfeld and Paul Wolfowitz had been calling for Saddam's removal since the mid-1990s. Perhaps it was simply that he was a constant reminder of the impotence of the first Bush presidency and the limits of American power. Clearly he was 'a bad person and needed to go'. One should never underestimate the power of a simple idea, be it wise or foolish, to seize the minds of even very clever, able people and so to sway the fate of nations.

[2487 words = 16 minutes]