



House of Commons
Public Administration Select
Committee

Parliamentary Commissions of Inquiry

Ninth Report of Session 2007–08

*Report, together with formal minutes and oral
evidence*

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The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioners for England, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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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 <http://www.parliament.uk/pasc>.

Committee staff

The current staff of the Committee are Steven Mark (Clerk), James Gerard (Second Clerk), Pauline Ngan (Committee Specialist), Louise Glen (Committee Assistant), Anne Woolhouse (Secretary) and James Bowman (Senior Office Clerk).

Contacts

All correspondence should be addressed to the Clerk of the Public Administration Select Committee, Committee Office, First Floor, 7 Millbank, House of Commons, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3284; the Committee's email address is pasc@parliament.uk.

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Summary

This Report considers the case for Parliament to be able to initiate and conduct inquiries into serious and significant matters of public concern. It takes up the recommendation made by our predecessor Committee (in the *Government by Inquiry* Report) that there should be a parliamentary mechanism for initiating inquiries. These would take the form of ‘Parliamentary Commissions of Inquiry’, composed of parliamentarians and others. Recent calls for an inquiry into the Iraq war and its aftermath have made the issue very topical, and this Report uses the example of a possible Iraq inquiry to explore the considerations that would be involved in establishing a Parliamentary Commission of Inquiry.

In the Report, we examine the justification for creating Parliamentary Commissions of Inquiry—in particular, that they would enable Parliament to hold the Executive to account more effectively (Chapter 2). We then look at some of the practical issues involved in setting up inquiries of this nature: how Parliament could instigate an inquiry, its composition, and its operation and powers (Chapter 3).

We conclude that it is crucial, in a constitutional sense, that Parliament has the necessary powers and abilities to scrutinise the Executive and hold it to account. Proper parliamentary scrutiny should include the ability to establish and undertake inquiries into significant matters of public concern. Parliament has, in the past, conducted investigations of this kind—and, as the great forum of the nation, should be expected to do so. Our recommendation for Parliamentary Commissions of Inquiry would promote effective parliamentary accountability by creating a process for Parliament to initiate inquiries where it—rather than the Executive—sees fit.

1 Introduction

1. The Public Administration Select Committee has had a long-standing interest in the use and effectiveness of public inquiries. In the past, we have proposed a stronger role for Parliament in the conduct of inquiries. In particular, Parliament should be able to initiate and undertake inquiries into serious and significant matters where the scrutiny of government actions is involved. Recent calls for an early inquiry into the Iraq war have made our proposals on parliamentary inquiries extremely topical. We therefore thought it worthwhile to explore whether Parliament could (or should) initiate an Iraq inquiry. To this end, we held an evidence session with some of the leading proponents of such an inquiry: Rt Hon the Lord Hurd of Westwell, Rt Hon the Lord Owen, Rt Hon Sir Menzies Campbell MP and Adam Price MP. This Report consequently considers again the desirability and feasibility of Parliament being able to instigate inquiries into important issues of public concern such as Iraq.

Background: *Government by Inquiry*

2. The Report by our predecessor Committee on *Government by Inquiry* examined a comprehensive range of issues relating to the conduct of public inquiries.¹ That Report recommended that Parliament should retain a role in establishing inquiries, as originally provided for by the *Tribunals of Inquiry (Evidence) Act 1921*. In particular, the Report proposed that Parliament should be able to initiate its own inquiries on significant matters involving the scrutiny of government conduct and actions. The suggested mechanism for doing so was through the creation of ‘Parliamentary Commissions of Inquiry’—ad hoc inquiries which would be instigated and appointed by Parliament.

3. The importance of parliamentary involvement in the inquiry process derives from the basic constitutional tenet that Parliament should be able to scrutinise the actions of the Executive and to hold it to account. Hence, in situations where the Government is unwilling to initiate inquiries into important concerns itself, it is vital that Parliament is able to do so. It is for this reason that our predecessor Committee declared its preference, constitutionally speaking, for inquiries established by Parliament rather than the Executive, recommending that:

...in future inquiries into the conduct and actions of government should exercise their authority through the legitimacy of Parliament in the form of a Parliamentary Commission of Inquiry composed of parliamentarians and others, rather than by the exercise of the prerogative power of the Executive.²

4. The Government’s response to the *Government by Inquiry* Report set out its position on the appropriateness of parliamentary involvement in inquiries. The Government did not accept the conclusion that Parliament should retain a role in establishing inquiries, as prescribed by the 1921 Act.³ It also disagreed with the conclusion that inquiries set up by Parliament to investigate the actions and conduct of executive government were preferable,

1 Public Administration Select Committee, First Report of Session 2004–05, *Government by Inquiry*, HC 51–I

2 *Ibid*, para 215

3 Department for Constitutional Affairs, *Government Response to the Public Administration Select Committee’s First Report of the 2004-5 Session: “Government by Inquiry”*, Cm 6481, March 2005, p 22

in a constitutional sense, to inquiries instigated by the Executive itself.⁴ Subsequently, the *Inquiries Act 2005* was passed. The new legislation repealed the 1921 Act, resulting in the removal of any formal role for Parliament in establishing inquiries.

5. However, as the Government observed, the 2005 Act does not preclude inquiries being set up directly by Parliament, should Parliament resolve to do so.⁵ Consequently, we have revisited the case for a parliamentary mechanism to initiate inquiries in the context of recent calls for an inquiry into the Iraq war. Using a proposed Iraq inquiry as an example, this Report considers the arguments for establishing a Parliamentary Commission of Inquiry. It then examines some of the considerations regarding the feasibility of setting up a parliamentary inquiry of this nature.

2 A Parliamentary Commission of Inquiry into Iraq?

6. The *Government by Inquiry* Report concluded that where the Government is unwilling to undertake an inquiry into an important matter itself, Parliament should be able to do so. This would ensure that the Executive could be held to account by Parliament for its actions—given that governments have an inherent interest in not setting up inquiries that could result in politically embarrassing or awkward findings for them. Sir Menzies Campbell told us how a parliamentary inquiry into Iraq, for example, would serve the interests of parliamentary accountability:

If [parliamentary] supremacy really is constitutionally sustainable, then one of the ways in which Parliament can assert it is by holding the Executive to account in a much more systematic way, and a mechanism for that would undoubtedly be an inquiry...I think the principle of Parliament being entitled to hold the Executive to account ought to be sufficiently strong in our constitutional arrangements to allow Parliament to create an inquiry of the kind that pretty well all of us have agreed is necessary.⁶

7. Inquiries initiated by Parliament are especially suitable for investigating topics that have a political dimension. As we have already observed, it is more legitimate and serves the interests of accountability more effectively for Parliament, rather than the Executive, to inquire into the actions of executive government. Where politically sensitive subjects are concerned, parliamentary inquiries are also preferable to judicial ones. Lord Woolf told our predecessor Committee that in his view it was not appropriate for judges to be involved in the inquiry process when politically contentious matters were being considered, due to concerns about the possible politicisation of the judiciary.⁷

8. An additional rationale for having a parliamentary inquiry into a politically contentious issue such as Iraq is on the grounds that it could help restore public trust in Parliament. This was put to us by Adam Price, who told us that:

4 *Ibid*, p 28

5 *Ibid*, p 29

6 Q 3

7 *Government by Inquiry*, para 187

...it would be a very, very important step in terms of restoring some of the lost trust and credibility among the public in Parliament [and] in the political process for us to have a parliamentary revolt, if you like, against the Executive on this issue and for Parliament to decide that it wants to initiate its own investigation.⁸

9. Our exploration of calls for an inquiry into the Iraq war indicates that there is still a need—unmet since an earlier investigation by this Committee—for Parliament to be able to initiate and conduct inquiries of its own. Inquiries with the imprimatur of Parliament would have the legitimacy to ensure that the Executive could be held to account effectively. Select committees do an excellent job of holding the Government to account in their particular spheres of operation. We believe, however, that there needs to be a broader parliamentary mechanism for establishing inquiries into matters of the highest significance and greatest public concern. We therefore repeat the recommendation made by our predecessor Committee that Parliament should be able to set up a Parliamentary Commission of Inquiry whenever it wishes to investigate important matters of this nature that involve the scrutiny of government actions.

3 Practical considerations for a Parliamentary Commission of Inquiry

Instigation

10. Our witnesses agreed that it would be difficult to set up a Parliamentary Commission of Inquiry—whether into Iraq, or into another issue—because of party loyalism and whipped votes in the House of Commons. In all but the most extraordinary of circumstances, the governing party would be able to prevent any inquiry it did not want to see by using its majority to defeat any vote to set one up. This is particularly likely to be the case where an inquiry is politically inconvenient or embarrassing to the Government. Lord Hurd noted that “...it is precisely the role of the party and the strength of that role which is inhibiting the House of Commons from doing what in the 19th Century it did almost as a matter of course”.⁹

11. Lord Owen suggested to us that it was important for a Parliamentary Commission of Inquiry to be voted on by both Houses of Parliament, as this would increase its legitimacy and make it difficult to resist other than on purely political grounds. He also believed that the device of having a parliamentary inquiry should be used for only the most important matters. This would set it apart from day-to-day political skirmishing and make it more likely that a consensus could be built around the need for an inquiry. He told us:

...I do believe that what you are discussing [the idea of a Parliamentary Commission of Inquiry] is a completely novel procedure to be very exceptionally undertaken...I think it would be quite important to ring fence it by making it almost unique, and I think it would carry more conviction in that way.¹⁰

8 Q 2 [Mr Price]

9 Q 40 [Lord Hurd]

10 Q 23

12. Accordingly, the *Government by Inquiry* Report suggested a filtering procedure to help ensure that only serious and worthwhile proposals for a Parliamentary Commission of Inquiry were entertained. That Report recommended that the Liaison Committee receive and consider proposals for parliamentary inquiries. The proposals that the Liaison Committee decided did warrant serious consideration could be reported to the House, and a resolution to set up an inquiry could then be put to a parliamentary vote.¹¹

13. Some kind of sifting mechanism for deciding on the validity of proposals for Parliamentary Commissions of Inquiry is required, whether that be the involvement of the Liaison Committee or some other procedure. Successful inquiry proposals would then need to be debated in the House in order for Parliament to vote on whether to establish a particular inquiry. **We believe that the bar for inviting the House to consider instigating a Parliamentary Commission of Inquiry should be set fairly low, so that proposals for an inquiry can be made without hindrance. The bar for securing a full debate in the House on setting up the inquiry should, however, be set fairly high, in order to ensure that only serious proposals are put to the House. A debate to set up an inquiry should not require Government support to take place, but a majority of the House would need to vote in favour of the inquiry for it to be established. We invite the Procedure Committee to design a mechanism for establishing Parliamentary Commissions of Inquiry with these requirements in mind. Our invitation is also open to the House of Lords.**

Composition

14. The membership of a Parliamentary Commission of Inquiry is an important factor in establishing the credibility of an inquiry. Lord Hurd told us that the composition of an inquiry is highly significant, particularly if it is not to be discredited for acting in a partisan manner. He cited the 1912–13 Marconi inquiry, into allegations of corruption concerning the construction of wireless telegraph stations, as a warning. The Marconi inquiry had originally brought parliamentary inquiries into disrepute because it had allowed partisan considerations to dominate, with members eventually voting along party lines.¹²

15. One of the key decisions would be the appointment of an inquiry chair, which in turn would depend on the type of inquiry being conducted and its purpose. In relation to an inquiry into Iraq, our witnesses expressed a variety of opinions about the sort of person that would be suitable as an inquiry chair. Lord Owen believed that it should be a parliamentarian rather than a judge or a civil servant, since a political figure could be expected to understand the political dimensions and nuances of such an inquiry. More generally, both Lord Owen and Sir Menzies Campbell expressed the view that the inquiry chair should be of sufficient standing to resist the inquiry being manipulated or undermined by the Government—this being particularly important for a parliamentary inquiry that seeks to hold the Executive to account.¹³

16. The *Government by Inquiry* Report envisaged a Parliamentary Commission of Inquiry comprising parliamentarians from both Houses as well as others with relevant expertise

11 *Government by Inquiry*, para 222

12 Q 10 [Lord Hurd]

13 Q 17 [Lord Owen, Sir Menzies Campbell]

from outside Parliament.¹⁴ Lord Hurd observed that for inquiries where sensitive security and intelligence material were to be considered (such as an Iraq inquiry), members could be made Privy Counsellors in order for them to see evidence on Privy Council terms.¹⁵ This occurred during Lord Butler's inquiry into the intelligence on weapons of mass destruction leading up to the invasion of Iraq. In effect, an inquiry could take the form of a Committee of Privy Counsellors that is appointed by *Parliament* rather than by the Government. Lord Butler gave evidence to our predecessor Committee that his inquiry could have been a parliamentary inquiry, given its membership (four of the five inquiry members were parliamentarians: two were Members of Parliament and another two were Members of the House of Lords).¹⁶

17. We believe that decisions about the membership and chairmanship of a Parliamentary Commission of Inquiry should be taken carefully in order to avoid the inquiry being undermined by partisanship or political concerns. To operate effectively, a Parliamentary Commission of Inquiry should consist of a Committee of Privy Counsellors appointed by Parliament. Individuals could be made Privy Counsellors in order to serve on an inquiry of this nature. Members should be drawn from both Houses of Parliament, with external members appointed where appropriate for their specialist expertise.

Operation and powers

18. Under normal circumstances, we would expect a Parliamentary Commission of Inquiry to sit in public due to the need to hold the Government to account and ensure public confidence in the proceedings. Our witnesses agreed, however, that some topics—such as the Iraq war—might warrant inquiries sitting in private some of the time due to the sensitivity of the evidence being considered. Lord Owen, reflecting on his experience of having given evidence to the Franks Commission on the Falklands war, said “...there is no doubt, in my view, that at that particular time—we were still hostile to Argentina—there were a lot of things that I would not have been able to say if it had been in public”.¹⁷ A Parliamentary Commission of Inquiry should, therefore, be able to hear and consider evidence in private as necessary in order to, as Adam Price put it, “get us closer to the truth”.¹⁸

19. The effectiveness of a Parliamentary Commission of Inquiry would also depend, in part, on its powers. The Foreign Affairs Committee reported in 2004 that its inquiry into the decision to go to war in Iraq had been hampered by problems in gaining access to witnesses and documents. That Committee concluded that, in relation to its particular experience, the powers of select committees to send for persons, papers and records “...are, in practice, unenforceable in relation to the Executive”.¹⁹ Adam Price suggested to us that in addition to the powers enjoyed by select committees, a Parliamentary Commission of

14 *Government by Inquiry*, paras 214–215

15 Q 10 [Lord Hurd]

16 *Government by Inquiry*, para 215

17 Q 8

18 Q 9 [Mr Price]

19 Foreign Affairs Committee, First Special Report of 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*, HC 440, para 13

Inquiry would require further powers including the ability to grant witnesses immunity from disciplinary proceedings.²⁰ Lord Owen concurred that existing select committee procedures are unlikely to be sufficient, but that the “almost unique” status of a Parliamentary Commission of Inquiry could be expected to work in its favour in terms of how the inquiry would operate.²¹

20. The operation of a Parliamentary Commission of Inquiry would depend, in part, on the nature of the inquiry and those conducting it. Some inquiries, such as an inquiry into the Iraq war, might need to sit in private when sensitive material is being considered. We believe this should occur only as necessary, balanced against the requirement to operate in public in order to secure accountability and ensure public confidence. Any Parliamentary Commission of Inquiry would also need enforceable powers to summon witnesses and to access papers and other relevant evidence of its choosing (including classified government material) in order to do its job effectively.

4 Conclusion

21. It is Parliament’s responsibility to hold the Executive to account for its actions. Part of this involves investigating and inquiring into important matters of public concern. For example, there have been many calls for an Iraq inquiry, and the Government has clearly been reluctant to set up an inquiry of its own in the foreseeable future. Yet Parliament has not succeeded in establishing its own inquiry into the Government’s actions on Iraq, even though it is the most significant issue of public concern in recent times. This signifies a fundamental problem in our current constitutional arrangements. In the past, Parliament has initiated investigations into matters as momentous as Iraq, and has been expected to do so. In relation to Iraq, the Government has conceded the principle of an inquiry. We have proposed a mechanism—the establishment of Parliamentary Commissions of Inquiry—for Parliament to instigate inquiries of its own. It is now up to Parliament to take that initiative.

20 Q 9 [Mr Price]

21 Q 23

Conclusions and recommendations

1. Our exploration of calls for an inquiry into the Iraq war indicates that there is still a need—unmet since an earlier investigation by this Committee—for Parliament to be able to initiate and conduct inquiries of its own. Inquiries with the imprimatur of Parliament would have the legitimacy to ensure that the Executive could be held to account effectively. Select committees do an excellent job of holding the Government to account in their particular spheres of operation. We believe, however, that there needs to be a broader parliamentary mechanism for establishing inquiries into matters of the highest significance and greatest public concern. We therefore repeat the recommendation made by our predecessor Committee that Parliament should be able to set up a Parliamentary Commission of Inquiry whenever it wishes to investigate important matters of this nature that involve the scrutiny of government actions. (Paragraph 9)
2. We believe that the bar for inviting the House to consider instigating a Parliamentary Commission of Inquiry should be set fairly low, so that proposals for an inquiry can be made without hindrance. The bar for securing a full debate in the House on setting up the inquiry should, however, be set fairly high, in order to ensure that only serious proposals are put to the House. A debate to set up an inquiry should not require Government support to take place, but a majority of the House would need to vote in favour of the inquiry for it to be established. We invite the Procedure Committee to design a mechanism for establishing Parliamentary Commissions of Inquiry with these requirements in mind. Our invitation is also open to the House of Lords. (Paragraph 13)
3. We believe that decisions about the membership and chairmanship of a Parliamentary Commission of Inquiry should be taken carefully in order to avoid the inquiry being undermined by partisanship or political concerns. To operate effectively, a Parliamentary Commission of Inquiry should consist of a Committee of Privy Counsellors appointed by Parliament. Individuals could be made Privy Counsellors in order to serve on an inquiry of this nature. Members should be drawn from both Houses of Parliament, with external members appointed where appropriate for their specialist expertise. (Paragraph 17)
4. The operation of a Parliamentary Commission of Inquiry would depend, in part, on the nature of the inquiry and those conducting it. Some inquiries, such as an inquiry into the Iraq war, might need to sit in private when sensitive material is being considered. We believe this should occur only as necessary, balanced against the requirement to operate in public in order to secure accountability and ensure public confidence. Any Parliamentary Commission of Inquiry would also need enforceable powers to summon witnesses and to access papers and other relevant evidence of its choosing (including classified government material) in order to do its job effectively. (Paragraph 20)
5. It is Parliament's responsibility to hold the Executive to account for its actions. Part of this involves investigating and inquiring into important matters of public concern. For example, there have been many calls for an Iraq inquiry, and the Government has clearly been reluctant to set up an inquiry of its own in the foreseeable future. Yet

Parliament has not succeeded in establishing its own inquiry into the Government's actions on Iraq, even though it is the most significant issue of public concern in recent times. This signifies a fundamental problem in our current constitutional arrangements. In the past, Parliament has initiated investigations into matters as momentous as Iraq, and has been expected to do so. In relation to Iraq, the Government has conceded the principle of an inquiry. We have proposed a mechanism—the establishment of Parliamentary Commissions of Inquiry—for Parliament to instigate inquiries of its own. It is now up to Parliament to take that initiative. (Paragraph 21)

Formal Minutes

Thursday 15 May 2008

Members present:

Dr Tony Wright, in the Chair

David Heyes	Mr Gordon Prentice
Kelvin Hopkins	Paul Rowen
Mr Ian Liddell-Grainger	Mr Charles Walker
Julie Morgan	

Draft Report (*Parliamentary Commissions of Inquiry*), 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 21 read and agreed to.

Resolved, That the Report be the Ninth Report of the Committee to the House.

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

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Thursday 22 May at 9.45 a.m]

Witnesses

Thursday 3 April 2008

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**Rt Hon Sir Menzies Campbell CBE QC MP, Rt Hon Lord Hurd of
Westwell CH CBE, Rt Hon Lord Owen CH, and Adam Price MP**

Ev 1

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is in brackets after the HC printing number.

Session 2007–08

First Report	Machinery of Government Changes: A follow-up Report	HC 160 (<i>HC 514</i>)
Second Report	Propriety and Peerages	HC 153 (<i>Cm 7374</i>)
Third Report	Parliament and public appointments: Pre-appointment hearings by select committees	HC 152 (<i>HC 515</i>)
Fourth Report	Work of the Committee in 2007	HC 236 (<i>HC 458</i>)
Fifth Report	When Citizens Complain	HC 409
Sixth Report	User Involvement in Public Services	HC 410
Seventh Report	Investigating the Conduct of Ministers	HC 381
Eighth Report	Machinery of Government Changes: Further Report	HC 514

Session 2006–07

First Report	The Work of the Committee in 2005–06	HC 258
Second Report	Governing the Future	HC 123 (<i>Cm 7154</i>)
Third Report	Politics and Administration: Ministers and Civil Servants	HC 122
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121 (<i>HC 88</i>)
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523 (<i>HC 922</i>)
Sixth Report	The Business Appointment Rules	HC 651 (<i>HC 1087</i>)
Seventh Report	Machinery of Government Changes	HC 672 (<i>HC 90</i>)
Eighth Report	The Pensions Bill and the FAS: An Update, Including the Government Response to the Fifth Report of Session 2006–07	HC 922 (<i>HC 1048</i>)
Ninth Report	Skills for Government	HC 93 (<i>HC 89</i>)
First Special Report	The Governance of Britain	HC 901

Session 2005–06

First Report	A Debt of Honour	HC 735 (<i>Cm 1020</i>)
Second Report	Tax Credits: putting things right	HC 577 (<i>HC 1076</i>)
Third Report	Legislative and Regulatory Reform Bill	HC 1033 (<i>HC 1205</i>)
Fourth Report	Propriety and Honours: Interim Findings	HC 1119 (<i>Cm 7374</i>)
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689 (<i>HC 91, Session 2007–08</i>)
Sixth Report	The Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications	HC 1081 (<i>Cm 1961</i>)

Seventh Report	The Ministerial Code: the case for Independent Investigation	HC 1457 (<i>HC 1088, Session 2006–07</i>)
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690

Oral evidence

Taken before the Public Administration Committee

on Thursday 3 April 2008

Members present

Dr Tony Wright, in the Chair

Paul Flynn
Kelvin Hopkins
Mr Ian Liddell-Grainger

Julie Morgan
Mr Gordon Prentice
Mr Charles Walker

Witnesses: **Rt Hon Lord Hurd of Westwell CH CBE**, a Member of the House of Lords, **Rt Hon Lord Owen CH**, a Member of the House of Lords, **Rt Hon Sir Menzies Campbell CBE QC MP** and **Adam Price MP**, gave evidence.

Q1 Chairman: Let me call the Committee to order and welcome our witnesses this morning. We are delighted to have our colleague Adam Price, Lord Owen, Lord Hurd and Sir Menzies Campbell. I am sure you have had it explained to you why we particularly wanted to have this session and to invite you along. The Committee has been interested for some time in the whole business of inquiries and it produced I think perhaps the first comprehensive report three years ago, called *Government by Inquiry*, setting out the range of inquiries that governments can hold and saying various things about them. As part of that, it concluded that there was a gap where Parliament should be and it recommended a device, which has been called in that report a “Parliamentary Commission of Inquiry”, which Parliament could itself institute and we wanted to link this, if we could, to some of the contemporary arguments about the case for an inquiry into Iraq to see whether this proposition and this demand can be reconciled in some way. Unless any of you particularly want to say something by way of introduction, I think we would feel quite inclined to try you out with some questions, if that would be all right. Shall we do that? Can I ask this to start with, and it goes to the core of the issue, really, I think. What on earth can Parliament do when a government says that it does not want to hold an inquiry, or at least does not want to hold one at the moment, into something of public importance? Is there not something rather odd about the fact that Parliament has to sit around saying there ought to be an inquiry but then looking to the Executive all the time to set it up?

Lord Owen: I agree, and I think that you have got the power to do it, a resolution of both Houses, set out by a select committee, with the powers that were needed, and if you were clever you could overcome most of the sensible objections that might come, you could ensure that everybody on it was a privy counsellor, you could ensure that the chairmanship was one that was beyond question, acceptable through your own contacts to all the parties, you could design its terms of reference and you could carry it through; and, if you wished, given the controversy at the moment about when to set it up,

you could also set a date when they would report, and I would suggest that it should be after the next election, so it should be June 2010 for the report, and there is some merit actually. People will be more honest and it will be more cohesive of Parliament’s view as a whole if it does not get dragged into the next election, and the important thing is it should be available for the new government and, if it is sensible, it will be a report that will genuinely draw lessons for the future and, hopefully, draw lessons for a future Prime Minister as to how to conduct and how not to make mistakes. I feel strongly. I went back over the Suez crisis just recently and I think if we had gone seriously, as Parliament, into what went wrong with Suez, and particularly the handling of it through Number 10 by Sir Anthony Eden, as he then was, I think that we might have learned some lessons of value for the handling of the Iraq war.

Q2 Chairman: There is a quotation from Michael Foot about his pressure to get an inquiry into Suez, where he says it was once the traditional practice of the House that when a disaster occurred, especially a military disaster, the House of Commons should set up an inquiry into the conduct of the Executive, and over history you can look at the precedents for this. Do we have to say, though, now that Parliament has become so enfeebled that the ability to do this has gone and that we have to sit around simply asking the Executive to do it?

Lord Hurd of Westwell: I come to it from the angle of feeling very strongly that there should be an early inquiry into the Iraq war rather than from the constitutional point of view which, naturally, is top of your mind. We have got a situation where the Government has been pressed by many of us and has moved slowly to a position where, yes, there will be an inquiry but not now, for reasons which you may not want to go into but which I think are bogus. There should be maximum pressure on them to do that, and what you are doing is, at the minimum, a form of pressure. You see it as something more ambitious and constitutional than that. I actually think that an inquiry set up by government is probably the best way because I think then the atmosphere would not be one of trying to force

**3 April 2008 Rt Hon Lord Hurd of Westwell CH CBE, Rt Hon Lord Owen CH,
Rt Hon Sir Menzies Campbell CBE QC MP and Adam Price MP**

things out of government, out of ministers, out of top civil servants, out of chiefs of staff, it would be something which government itself had acknowledged had to happen, and I think you might get a more fruitful inquiry that way. But if they are not going to do it, if they dig in, I think British troops will be in Iraq in small numbers for a long time, and if they use that as a reason for not having an inquiry, then I think that Parliament should move and should set up, under your guidance, the best form of inquiry it can. I would put it that way.

Adam Price: Can I say, Chairman, I think the constitutional dimension of this debate is absolutely critical, because the kind of foreign policy calamity that was Iraq also laid bare the huge failings of our machinery of government and our constitutional system, and they are many—politicisation of the Civil Service, the concentration of power in the hands of the Prime Minister side-lining of Cabinet—but also at the core they are about, I think, an imbalance in the power between the Executive and Parliament. There was this debate after Suez as well, you are quite right, Crossland writing in the sixties about the unbalanced constitution, and that was at a time when maybe cabinet government was more liked than it is now; so I think that this is absolutely critical to understanding why the mistake was made and it would be a very, very important step in terms of restoring some of the lost trust and credibility among the public in Parliament in the political process for us to have a parliamentary revolt, if you like, against the Executive on this issue and for Parliament to decide that it wants to initiate its own investigation.

Q3 Chairman: Can I bring Ming in to pick that up and also what Douglas Hurd said. If the two Houses of Parliament did decide by resolution that they wanted a parliamentary commission, whatever we call it, into Iraq, there would be no question, surely, but that the Government would have to say, “We shall give it every co-operation”, so that would not, in fact, be a stumbling block, would it?

Sir Menzies Campbell: No. If the vote had carried earlier this week on that topic, then it would have been politically impossible for the Government to resist establishing an inquiry. Precisely what the terms of reference would be, because the motion which the House was invited to approve did not actually contain terms of reference except in the broadest general sense about the way in which the responsibilities of government were discharged, but there would have been a political imperative which the Government would have found impossible to resist, and that is why when you said, “We just have to sit around”, I am not sure about that: because if opposition parties are willing to use the limited time available to them to put an issue of this kind in front of the House, then there is the opportunity to bring some kind of pressure. Rather like Douglas Hurd, I am afraid I bring quite a lot of baggage to this argument because I was wholly opposed to the military action, and that has consistently been my position for the last five years, so I am not sure I am

an entirely objective witness, but can I put this point to the Committee? Throughout those long weary days on Lisbon, a constant refrain for many of the Members of the House of Commons was that Parliament was supreme and that we should not be ceding too many powers to Brussels. If that supremacy really is constitutionally sustainable, then one of the ways in which Parliament can assert it is by holding the Executive to account in a much more systematic way, and a mechanism for that would undoubtedly be an inquiry. I am less concerned about the form of the inquiry. I think one can get caught up in all sorts of discussions about when is a judicial inquiry not a judicial inquiry. I think the principle of Parliament being entitled to hold the Executive to account ought to be sufficiently strong in our constitutional arrangements to allow Parliament to create an inquiry of the kind that pretty well all of us have agreed is necessary.

Q4 Chairman: When the Inquiry Act was passed recently one of the effects (and this partly prompted our interest in this) was that it took away any role in Parliament under the original 1921 Act to set up these statutory parliamentary inquiries; so Parliament was removed from the picture.

Sir Menzies Campbell: Worse than that, Chairman, it gave ministers responsibilities or powers in relation to the duration of the inquiry, who might attend it, it allowed ministers to say, “It is time this inquiry came to a conclusion.” I think that is a reaction to Saville, and there may be questions of management, but we should not allow questions of management to intrude upon the principle of Parliament being able to hold the Executive to account.

Q5 Chairman: Are we not stumped by the fact that we now have intense party control, and although in the great days of the nineteenth century we had these inquiries because Parliament was a looser body, and you have mentioned opposition parties putting motions down on this, but, of course, that is guaranteed to produce solidity on the Government benches, more or less, apart from this Committee, so that is the context now, is it not, in which we try to move these things on?

Lord Hurd of Westwell: The tactical truth is that if this initiative that you are starting really gathered strength and it began to look as if, to use your phrase, both Houses of Parliament were going to insist on this, the Government would move in quickly and try and take charge. You would have pushed them to the final decision to hold an inquiry and to start it soon—maybe a report after the election—and then there would be a discussion between the Executive and the Legislature about terms of reference and how it worked, and that would be a very satisfactory solution. They would move in under pressure and try and organise an inquiry in a more traditional way, in a Falklands type way.

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Q6 Chairman: This is why we suggested a mechanism involving the Liaison Committee here, which is a joint committee of all the select committees, that would kind of trump the channels—

Lord Hurd of Westwell: Fair enough.

Q7 Chairman: ---but we have made little progress with that. Lord Owen.

Lord Owen: One of the problems you face is one of the problems we faced with the Bingham Inquiry, which I established to look at the oil companies, BP and Shell, not keeping to the law over sanctions, supplying oil to, then, Rhodesia. It became obvious that there was a constitutional problem in that Bingham was given access to all the Foreign Office papers, at my instructions, in which, part of them, were the Cabinet minutes and the Cabinet discussions of a previous administration, the Wilson administration in 1967-1968, which were crucial to their deliberations. This was accidental. It happened to be on the files of the Foreign Office, and they ought to have been, apparently, under the precedent, returned to the Cabinet Office and held there. There then proceeded to be a very heated debate inside the Cabinet about how to proceed now that I had allowed these papers to go to the Bingham Inquiry, and I had to go back to Bingham and try and persuade him, which he was amenable to, that he could draw on the findings but not quote from them, which he did. Then, when it came back to the House of Commons, there was a whole question of how to establish a new inquiry because the then Cabinet insisted that they had no right to look at these past papers, and eventually we proposed a commission which was then voted down by Parliament, but you have to deal with this issue because it is crucial, what went on in Cabinet and how government was conducted at Cabinet level, and so that would have to be specifically put into any terms of reference.

Q8 Mr Prentice: Is that why you want the inquiry to meet in secret? You told us earlier that you would report after the next general election in June 2010.

Lord Owen: I think that they should be both given powers to meet in private and in secret. I am probably the only person to have given evidence to the Franks Commission on the Falklands, and there is no doubt, in my view, that at that particular time—we were still hostile to Argentina—there were a lot of things that I would not have been able to say if it had been in public. It would have been possible to have had part in public and part in private, but there will be intelligence questions, and that is why we have covered that, as you know, by the conventions with privy counsellors, but I think there is a more important thing. I used, when I sat where you did, to be very much keener on everything being public, and I have grown to believe that actually, personally, you give better evidence if you know that you have got two days to look back on what you have said, and so you may have, without realising it, over-stepped the mark on some intelligence thing which you have got a provision to pull back over two

days, three days. I mean, broadly speaking, I am prepared to speak almost always on the record, but I think there is sometimes a little bit of leeway. Anyhow, these are all matters for you and others to discuss, but I think you would get into a lot of Whitehall resistance if you said it had to be in public at all times, and I also think you would not get at the problems, so I think you have got to open up the possibility. In this particular inquiry, but particularly since it would be probably with troops still on the ground in Iraq, I think you have got to be pretty open that quite a lot of it might be semi-private in that you would be able to change your evidence if you had gone over the mark and in two or three days the full transcript would be published, maybe a week.

Q9 Julie Morgan: Do the others agree with that view that some of it should be in private?

Sir Menzies Campbell: I think discretion should rest with the Committee or the Commission of Inquiry.

Lord Hurd of Westwell: I agree with that.

Sir Menzies Campbell: If they are sufficiently experienced, then they will know, when they have come to a point of the kind that David Owen has described, that it will be better to hear evidence in private and allow the opportunity for subsequent revision.

Adam Price: Yes. Committees currently have the option of hearing evidence in private, *in camera*, so I think that should be afforded to any commissioner, whatever is the most likely route to get us closer to the truth. One of the difficulties, or one of the issues that a parliamentary inquiry would have to face would be the Government's rules on access to civil servants, and while the House has never taken a position on this, the Government has its guidance which, although they are often honoured more than breached, do state that civil servants give evidence acting on the instruction of their ministers and, therefore, they are not meant to answer questions in relation to their own conduct. If we do not have a proper comprehensive inquiry into Iraq, then we will have to ask questions about civil servants' conduct as well, including their advice to ministers, which again is meant to be a no-go area. Of course, we would also be in the difficult area if there had been change of government. We have another convention which says that if there is a change of administration, then all the papers, the working papers, are locked away and even the ministers of the in-coming government cannot see them unless prior permission has been given. So, that would be an issue, again, where Parliament would have to simply, I think, assert its supremacy. There is no limit to Parliament's right to call for persons and papers and ask for evidence under oath. I think it would be important as well that any witnesses would be given the same protection, not just the immunity from prosecution which all witnesses of select committees currently enjoy, but also, I think, the immunity from disciplinary proceedings that was given by the Cabinet Secretary to civil servants giving evidence in

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the Butler Inquiry. I think we would need the same level of protection to all witnesses for any parliamentary inquiry as well.

Q10 Mr Liddell-Grainger: All of you have spoken of past inquiries, the Dardanelles, the Falklands you have just mentioned, Mesopotamia and many others. There are lots of precedents here where inquiries have taken place sometimes during wars, all mainly at the instigation of the Prime Minister. We have got Bloody Sunday on-going, which is a bit of a shambles, for obvious reasons. Where do we take this? Everything is there to actually create an inquiry, yet we cannot move on. Where do we take this from here?

Lord Owen: Parliamentary procedure is eminently flexible, and were there to be an all-party agreement, official opposition can give time maybe—I think it has been offered by William Hague—to the Labour people to put a motion down, if they wish to, so there are lots of ways in which you could overcome this; but as Douglas Hurd has said, I think the reality is that once Parliament shows muscle, either through a straight-out vote or a vote generated perhaps by your committee on a resolution, government would start to co-operate and you would probably end up with some form of inquiry. It is almost inconceivable that an inquiry would work unless the Government had confidence in the Chairman. I think we have got to get out of this business that we cannot have an inquiry unless they are a High Court judge—this is really ridiculous—and we have seen some pretty awful reports from judges, and, frankly, successive Lord Chancellors have not wanted judges to do it. In the Bingham Inquiry, which I think was extraordinarily well conducted, the then Lord Chancellor, Elwyn-Jones, was against having a judge, and they would prefer judges kept out of these political things and, by and large, they are well aware that they do not know enough about the machinery of government.

Lord Hurd of Westwell: It should not be a judge, but there is a further point. It is not just the chairmanship. I think this has been a major disaster for the foreign policy of this country and also actually for our Armed Services. So, far from being hostile to an inquiry, my feeling is that they would greatly welcome one for that reason, so that it could not happen again, but that means that it is not an ordinary matter of, as it were, legitimate party warfare. If you went ahead and produced a plan, which all of us would support, I think you would need to be clear not to fall into the Marconi trap. The reason why parliamentary inquiries were discredited was because of the Marconi Inquiry. At the end it was voted simply along party lines, so this carried no conviction, and therefore to let purely party considerations appear to dominate, whether it would be whipping in support of a government or actually party antagonism to a government, those things should not be allowed to dominate, and that affects who you appoint as Chairman, who you have on. I am in favour of privy counsellors. You can make privy counsellors for this purpose. The

position is extremely flexible. You can get people, and I can think of two or three people, from outside Parliament, and outside party, who would be very good members, and they could be made privy counsellors for the purpose if that was needed to get access to things. It is a very flexible system, but I hope as you proceed you bear in mind this has to be removed, as it were, from party favours of any kind, so far as that is possible.

Chairman: Going back to David Owen's point, it is worth recording the fact that when we were talking evidence on this two or three years ago it was the judges, in fact it was Lord Woolf, in particular, who was Lord Chief Justice at the time, who was emphatic that judges should not be brought into these politically contentious kinds of inquiry. So we kind of documented that, and I think that kind of makes the point.

Q11 Mr Liddell-Grainger: Can I follow it down, because the picking of the chairman is the crucial part to all this, and it has got to have, as you say, government approval. Yet it is the Government, as we have seen in the Butler and the other inquiries, who have picked it with a very narrow remit. How do we get round the picking of the chairmen? What are your thoughts on that?

Lord Owen: I think it is the usual channels and, broadly speaking, that produces a better choice than just the Prime Ministers on their own.

Q12 Mr Liddell-Grainger: Should it be Parliament's final decision, the picking of the chairmen?

Lord Owen: Let us come back to the only one I really know about, which is the Falklands Commission. The decision to establish an inquiry was made during the war, by Margaret Thatcher, quite early on and it was crucial, and it was made very implicit to her that, if she did not concede this, it would be very difficult to abandon the party political arguments as to whether the war should have been prevented. From the moment she agreed that there would be one set up after the war, the party political criticism of the early part of the war was completely stopped and everybody focused on one thing, which was having a successful outcome, and I think that was very successful. Then, after the war, it came to establish the inquiry and discussions were conducted through the usual channels, and Lord Franks' name came up and it was accepted. I cannot remember talking to different people, but I think it was accepted by everybody as being a good choice, and she did not choose a Conservative, and it was not a lawyer, it was a distinguished civil servant. That met only in private, and there were a lot of limitations about that commission, and I personally think that there are some lessons from that, but it was ideal in every other respect.

Adam Price: As a general principle, I do not think you can allow the Government to choose the chairman of an inquiry whose principal focus is to investigate the conduct of the Government or the previous conduct of their policy. We have a classic example from the United States with the 9/11

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Commission, which was set up as Bush's response to the congressional pressure for a congressional inquiry. He appointed Philip Zelikow as the head of the 9/11 Commission and it subsequently emerged that Zelikow had written the 31-page Bush doctrine on pre-emptive attack, and then Zelikow, who was the head of the Commission, had to give evidence to his own commission and was recused from actually being part of some aspects of the inquiry because Bush had put his own man at the head of the inquiry. That was an extreme example but I think it sheds light on the basic principle that, if an inquiry is looking at the conduct of government, including government ministers, some of whom are still in Cabinet, then you cannot allow the chair of that inquiry, the membership and the remit, to be decided by the Executive.

Sir Menzies Campbell: You have to put it down in a resolution in the House of Commons, which says "nominate Mr X, Y, Z to be the chair and the following to be members", and then that resolution has to carry through the House. If the House is dissatisfied, it can turn it back.

Q13 Mr Prentice: In 2003 you originally called for a judicial inquiry. Given what you have just heard, have you changed your mind on that?

Sir Menzies Campbell: I am not as opposed to judges as some of my colleagues. Saville, I think, is an aberration, and I think there are management questions about Saville.

Q14 Mr Prentice: Have you changed your mind—that is the question?

Sir Menzies Campbell: I am a lawyer; I take a while to answer your question! The Billy Wright Inquiry is proceeding, I understand, under the chairmanship of my erstwhile colleague now Lord McLean, and I am told that is moving expeditiously, quickly and has drawn its management, as it were, from the failures of Saville. So, I think judges in certain circumstances are entirely right, particularly if it comes to the weighing up of contradictory evidence where you have questions of credibility, because that, after all, is what their primary function is. Having looked again, the word "judicial" is not a term of art here, it is a general description.

Q15 Mr Prentice: I understand that, but you did not call for a judicial inquiry into any old thing. You called for a judicial inquiry into Iraq, and there are political considerations.

Sir Menzies Campbell: I think I fell into the trap.

Q16 Mr Prentice: Can I just finish the point. Tony said just a few moments ago that when Lord Woolf was before us way back in 2005, he said that for issues perhaps like Iraq, where there are political considerations, it is not really always clever to have a judge chairing the inquiry. My question quite simply is, in view of everything you have heard, are you still pressing for a judge?

Sir Menzies Campbell: No, with the benefit of hindsight, it seems to me that, if the issues are as political as the issues surrounding the decision to take military action against Iraq, then I think the interposition of a judge is inappropriate.

Q17 Mr Liddell-Grainger: Can we follow that along then. We had the Butler and the Hutton Inquiries, two very different men, two very different briefs. They were seen as a safe pair of hands, they were under a lot of criticism because they were appointed by the Prime Minister to get the answer he wanted, and all the rest of it. Do you see any of that as being a problem? Could an inquiry have been better, could it have been broader? What are we all feeling, because they, both of them, came in front of this Committee and I think at the time we felt there were a lot of things that could have been done, and should have been done, but were not. Were they the right men to conduct those two inquiries?

Lord Hurd of Westwell: I think they were the right men. I think the terms of reference were narrow. What we are talking about is something much broader which focuses, in particular, I would think, on something which has simply not been properly examined at all this side of the Atlantic, although it has been thoroughly examined the other side, namely the totally false assumptions on which the planning of a major exercise proceeded or the absence of valid assumptions. That is a huge issue. It encompasses to some extent, of course, the things which at any rate the Butler Report covered and, as Butler himself said, there may be more to come on that than was available to him, particularly from across the Atlantic, but this is a huge enterprise and, therefore, I think, not to be completely compared to the earlier ones as if it is a re-run of them; it is not; it is something much bigger.

Lord Owen: I gave evidence to the Butler Inquiry. I think it should not be a civil servant who is chairman of the inquiry, and I think it particularly should not be previous secretaries of the Cabinet. I give you an example of where I think the Butler Inquiry got off to a very bad start. The day that I appeared before them in order, potentially, to give evidence, it was announced that Sir John Scarlett was going to become the head of MI6, and they started it as if it was obvious that I would give evidence to them, and I said, "Look, before we go any further, I have not yet decided whether I am going to give evidence to you because I need an assurance that this committee is not going to be inhibited in their inquiry by the fact that one of the most substantial issues has been pre-empted by the Prime Minister by appointing Sir John Scarlett already to the head." I must say, I think that Lord Butler was not aware of how serious this was, and I said had to say, "I think you should discuss it first", because I already had a press statement ready that, if they did not give me a satisfactory answer to this, I was not going to give evidence. I think that we do need to realise that a parliamentarian would have no problem with this at all, they would have sensed immediately that this was a serious problem. Their whole authority was

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being challenged by the Prime Minister while the inquiry was under way. They did recess and discuss it, and they came back with an answer which was just about satisfactory as far as I was concerned, but it was never really clear as to how much the chairman had been consulted—he had been notified, but how much he had given a nod and a wink that this would be acceptable—and I think that a parliamentarian would have told the Prime Minister it is not acceptable to be establishing an inquiry on the intelligence and have the most important aspect of it, the conduct of the JIC¹, in effect, pre-empted during their whole inquiry. This goes on behind the scenes but people should know that an important issue like that was able to be done, and it demonstrates that, unless there is a very strong resolve of particularly the chairman, you can have it manipulated by the Prime Minister actually while it is being set up.

Sir Menzies Campbell: I must say how strongly I agree with what David Owen has just said. There is also some anecdotal evidence now emerging in various sets of memoirs for that period that at least one member of the Butler Committee fought long and hard against others in relation to conclusions which they might have reached which might have been thought to be critical of the Government, so one cannot, I think, look at Butler as if it were a perfect illustration of an inquiry into a sensitive area. I think there is no doubt, in the minds of some at least, that some of the opinions being expressed there had a very strong political bias.

Q18 Mr Liddell-Grainger: Do you agree with that, Adam?

Adam Price: Yes. The key problem with Butler was the narrowness of its remit, focusing on the competence of the intelligence services, et cetera, but then it was used by the Executive to exonerate the administration. Exactly the same thing happened in the United States in the Silverman-Robb Commission, set up by the Bush administration, and that actually was the catalyst, if you recall, for the decision to set up the Butler Inquiry. We were pushing in Parliament for that inquiry; indeed I think there was a motion by the Liberal Democrats and discussion on the floor of the House. The Government were resisting that. Suddenly Bush decides to set up his own commission and, hey presto, we have an exact equivalent here and a very narrow remit. Yet on both sides of the Atlantic they did exonerate, by and large, the intelligence community, but that exoneration was actually used by the members of the Executive and the Butler Inquiry was not set up to do that. We need an inquiry which looks at the conduct of policy and policy makers. We have not had that to date.

Chairman: It is interesting that when Lord Butler himself gave evidence to us in our inquiry on inquiries we discussed these matters with him and the fact that he led a privy councillor inquiry, but he thought it could equally well, and probably better, have been a parliamentary inquiry because, in effect,

all the privy counsellors, I think apart from one, were Members of Parliament anyway, so the status and legitimacy of this enterprise would have been much greater if rooted in Parliament, something also which Richard Scott said to us about his Scott Report as well, and so there is a sort of history to these arguments.

Q19 Paul Flynn: The main point that this Committee's report came out with and also looking at the inquiries that had taken place, was that we needed to have inquiries that were initiated by the power of Parliament rather than by the property of the Executive. Looking back, Lord Owen mentioned the Suez crisis, and if anything is comparable to Iraq it is Suez, it brought many people onto the street and it was unpopular at the time in many ways and unpopular in retrospect. Do you see merit in the committee's proposal and, if you look back at, say, the Suez Inquiry and the others, if there would have been a superior inquiry into that time that was based on this rather than the political power of the Executive at the time?

Lord Owen: You have to look at the political timing of Suez. It was 1957, just after the 1955 election, so the then Prime Minister Harold Macmillan faced a problem which is somewhat analogous to the situation of the now Prime Minister Gordon Brown. Firstly, if you set up an inquiry how much is that objected to by your predecessor, how much are you seen to be undermining him? In this particular case, MacMillan had been a very controversial participant in aspects of the Suez crisis. Did he want to have to reveal his particular hand—first in last out, according to Harold Wilson's summary of MacMillan's position? The Prime Minister of the day had a real dilemma about setting up an inquiry, and I think to some extent those problems are there for Gordon Brown, which, again, is an argument for taking it out of the Prime Minister's hands and giving it into Parliament's hands, and maybe he might not be too unhappy about that, to be frank about it. Then, you also come to the question: it would have been difficult to postpone that until the next election, so it was bound to come out in the time of the Conservative Government, and by then Suez, which had started off as bi-partisan—Hugh Gaitskell broadly supported military action—but by the time, of course, the debacle had occurred and the clandestine nature of it, became very, very partisan, so an inquiry established by a Prime Minister would have been to establish an inquiry that was likely to report before the next election and be embarrassing for him and, by and large, politicians do not do that.

Q20 Paul Flynn: Indeed. Do you see this as something that could maybe improve the future conduct of Prime Ministers if they knew that they did not have the ability to re-write immediate history?

Lord Owen: Yes. Sir Percy Craddock, who was a diplomat but also had been Chairman of the JIC and then had been Margaret Thatcher's adviser on foreign policy and intelligence matters, has written

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an extremely good book on the history of the JIC and he has had access to the papers and he is very critical of Eden's conduct of the JIC and by-passing of the JIC and taking intelligence, and it has an eerie quality, some of his criticisms, of the present circumstances in the Iraq inquiry, and I do think we would have learned lessons. The other question, which I think we will have to address, is how do you get at the different views of the military? For example, some people say that in Iraq we were just a small pimple, we had no effect; we could never have had an effect. I think this is a completely nonsensical position. There was a point in Iraq where John Sawyers, the Ambassador in Egypt, who had previously worked for Tony Blair in 10 Downing Street, was sent into Iraq and made a report and warned that it was chaos and there was no plan and the whole thing missing. He also made a recommendation that a battalion of British troops should be moved to Baghdad, and we know that because this memo has been revealed. What we do not yet know is what discussion was taking place inside the Government. It is becoming pretty much clear that there was a division of opinion between the military advice on this, and it is pretty much clear that the Chief of Defence Staff, then General Walker, disagreed with the Chief of the Imperial General Staff, General Jackson. It is not yet clear, but it is beginning to be. I think these things are important to discover. The tradition previously of the military going before parliamentary procedures of this House is that they only say that which the Government has accepted. Therefore, as the Government also accepts, they do not display their differences. This is a very delicate question and you will all have to look at this. It is a very hard thing to know. Broadly speaking, I think it is right in the normal working of government that civil servants give the advice, and keep the advice which they say to ministers private and this applies to admirals, generals and air-marshals, but there must come a moment when an inquiry is of such importance that that has to end and there has to be a readiness to reveal difference of view. Then you have to decide, should the Prime Minister, as I believe he should have done, have decided that we would reinforce Baghdad? Had we reinforced Baghdad it would have been impossible for Rumsfeld to off-ramp, as they say, the 1st Cavalry Division American troops and they would have increased their forces. It would have been impossible not to have responded in America to putting more troops into Baghdad if the British had done it. This is a perfect example of where, entirely within the confines of British decision-making, it would have been possible to have had a dramatic influence on the conduct and the success of the Iraqi occupation.

Q21 Paul Flynn: I am grateful for that. Can we go back to the principle of this: which is the better inquiry, which is the better way to do it? The difficulty we had over Iraq, which is almost unique, is that both the Government and the opposition were implicit in that original decision but would

presumably both be reluctant to have an inquiry and to have the full truth come out. Shall we take it that a future Prime Minister would know, if they are involved in a decision of this kind, that there will be an inquiry that will certainly take place within a short period and it will be within the control of Parliament and not within the control of the Executive. Would that not be beneficial for the quality of future decision-making?

Lord Owen: I think so, yes. Of course, an American President knows that perfectly well. He knows that Congress will inquire into any decision he takes on an issue of controversial foreign policy, and I think it would not be a bad thing if the ministers did know this, but you have to be careful, and you all know this. The normal convention that advice to ministers is private is a good one and, equally well, a convention of collective responsibility and that cabinets make decisions and that dissent is not known until a long period afterwards. I think it has to be very exceptional, therefore, when you break that convention when you come before Parliament, and, again, I think personally that is a parliamentary decision that has to be taken for a particular inquiry.

Lord Hurd of Westwell: I think it is exceptional. I think this whole thing should be treated as exceptional in order to get at the kind of incidents that David is talking about. I know John Sawyers. He was my private secretary. He is now our representative in New York. He is not like Mike Jackson, who is retired, he is a continuing and crucial senior diplomat, but, on the other hand, these things have to come out if the inquiry is to be worthwhile. As the key to turn the lock, you do need the consent of government but the consent of government which is achieved because of the respect and fear which ministers should have of Parliament. So much will depend, to repeat a point I started on, with the spirit and purpose of the whole thing. If it is regarded as simply an effort to identify and punish and to expose, then you will not get, in my view, the kind of co-operation from human beings which you will get if the aim is clearly to prevent any such thing happening again and to correct the clear errors, mistakes that happened in the conduct of the Iraq war. There is a difference of character. If an inquiry is to be really productive, it needs to be organised so as to have that second characteristic rather than the first.

Sir Menzies Campbell: I think one has got to see this, too, against a changing background, particularly the influence of freedom of information: because, as you know, the Commissioner, I think, has made an order in respect of some Cabinet documents which the Government has now appealed to the High Court, and it will be very interesting to see whether the High Court takes the view that the Commissioner has acted so unreasonably that his decision has to be overturned. If that is the after-taste of access to information, then clearly it has some relevance to the enthusiasm which we would have for inquiries of the kind we are discussing and the consequences of that, and that is why precedents are interesting; but in these matters one has to remember that Parliament

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is supreme and, therefore, Parliament can do what it wants and if there is a background of increased access to information because of the Freedom of Information legislation, then Parliament's opportunity to take a more proactive role is obviously enhanced.

Q22 Paul Flynn: Adam, would you like to perhaps say a word or two about the four inquiries that have taken place? How adequate you regard them as being. What would you see as the ideal inquiry and the ideal mechanism for creating such inquiries?

Adam Price: Clearly, the Foreign Affairs Select Committee has been the only major parliamentary inquiry. Their principal problem was that they were frustrated in their access to information. I think that a parliamentary commission of inquiry of the type that your Committee is positing is a new model and certainly one which is emboldened with a parliamentary mandate, won on the floor of the House in the teeth of Executive opposition. I think it would be impossible for a government to frustrate the will of that inquiry. I think Iraq is unique, it is uniquely terrible, I think, in terms of its consequences, but also it does flow from failings in the constitution, as I said earlier, which are of a more general nature—particularly the falling away of the traditional checks and balances of the British constitution, particularly ministers listening to advice, whether it is from the diplomatic services, civil service, et cetera, the role of discussion in Cabinet and also the role of Parliament in checking the power of the Executive—and I think that as well as learning what went wrong, setting up a parliamentary commissioner would make a major contribution as well to restoring that balance within the constitution. The deterrent effect that you refer to would be very important. In the Blair years we had so many wars we would be having commissions of inquiry every year, which is one of the problems, but certainly we need to send out a clear message to future administrations that Parliament reserves the right *in extremis* to actually investigate in a way that it would not normally do in a select committee mode but in a far deeper way with unfettered access to papers and to persons.

Q23 Julie Morgan: Lord Owen, you said that you thought the Prime Minister did not want an inquiry because it would be embarrassing for him. Is there any reason that you think the Government could be justified in not wanting an inquiry into the Iraq war soon?

Lord Owen: I think it is difficult. By and large, Prime Ministers, if they are of the same party, they may have a chequered relationship with their predecessor but, equally well, they owe obligations to them. To some extent that is a decent, honest and honourable tradition. They are not there to make life difficult for them if they can avoid it, and it does seem to me not unreasonable for Parliament to say in these situations. The more I hear of this, and I have not thought of it quite so much, the more I do believe that what you are discussing is completely novel

procedure to be very exceptionally undertaken, and I think that what Douglas Hurd has said about the Marconi Inquiry should hang over you at all stages, because we have had our own debates, and I am the only one here who actually supported the war whole heartedly, so the way this inquiry is seen is going to be extremely important for the future. You have been involved in this before this for a long time. I would have thought you could come up with an overall conclusion which could carry conviction with people of all parties in substantial numbers in both Houses of Parliament, and I think that would be a better way of establishing this inquiry that it was not a select committee, you did not use the select committee procedures which I had previously thought would be all right. I think it would be quite important to ring fence it by making it almost unique, and I think it would carry more conviction in that way. You would not then have the business of establishing precedents and everything like that, and the more I listen to the way you have obviously given a lot of thought to it, that is the way I think it would be better.

Q24 Julie Morgan: I wanted to ask Lord Hurd a follow up question. You said that one of the reasons the Government has given is concern about troops still being in Iraq. You said you thought the troops would welcome an inquiry. I just wondered if you could expand on that.

Lord Hurd of Westwell: I think, and this is all anecdotal, of course—

Q25 Julie Morgan: Yes, but it is an important point.

Lord Hurd of Westwell: But I have the strong impression that people serving in Iraq are fully aware of the controversies at home—of course they are. The idea that they can be somehow sheltered from a perfectly legitimate political argument at home is absolute nonsense. They are citizens like the rest of us and they know that something has gone seriously amiss with the way in which the enterprise in which they are involved was planned and carried out. Therefore, just from a professional point of view, they need to know what went wrong and how it can be prevented from going wrong again. This is purely anecdotal. I cannot prove my point, but that is my quite strong impression of a very general view.

Sir Menzies Campbell: There is some proof. If you have got time, read the military blogs. People serving are very, very clear about what they think about what they are being asked to do, the circumstances in which their obligations arose and the extent to which they should continue doing what they are doing at the moment. They are very, very frank.

Adam Price: I want to return to the issue of partisanship, which is the pitfall that Lord Owen sets out in terms of the parliamentary inquiry. Looking at congressional experience, of course, they did have a problem with one of their investigations, one of the House Intelligence Committee, where the Republicans, for their partisan reasons, were trying to delay and delay publication of any report, or any progress, and the Democrats were leaking to the

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press all the time. In fact, it got to one ridiculous stage, I think, where the FBI were investigating the committee for the leak while the committee were investigating the FBI. I think that the Congress actually has recovered its position: because they set up the Baker-Hamilton Commission. That was with co-chairs, one from either party, and that is a model, I think, for the kind of bi-partisan commission, which has broad political support, which is not a political covetable lynch-mob, it is a genuine attempt to get to the truth and to learn the lessons and to hold people to account, where necessary, but to do it on a fair and a bi-partisan basis; and that commission, of course, did report while troops were on the ground, while significantly more American troops were on the ground than is the case in Britain; so actually that gives the lie to the argument that this cannot be done while troops are engaged in the field in Iraq.

Q26 Mr Prentice: When you say the commission should be balanced, what do you mean by that? It should reflect the relative strength of the political parties in the House, or the people who voted against the war? There were 104 Labour MPs who voted against the war—more than any other party? What do you mean by balance in this context?

Adam Price: I think the idea of a co-chair, which is a tradition with many congressional initiated commissions, is something that is worth looking at, one from the opposition and the governing party. Our original motion was to set up a committee, I believe, of 13 members, which would have been broadly reflective, in our case, of the House of Commons, though it is another issue, if it was a parliamentary committee, whether it should be a joint committee of both Houses. But, yes, I think it should be reflective of the broad political balance and also, you are quite right, Gordon, it should reflect the range of views within each party, because there were Tory rebels who voted against the war and there were Labour devotees that voted in favour.

Q27 Mr Prentice: What about the military? There is a precedence going back decades, of course, that the military were represented in commissions of inquiry, but now we have it on record that lots of former chiefs of defence staff want an inquiry. Lord Bramall said the Prime Minister—that is Tony Blair—failed properly to consult the chiefs of staff or his Cabinet colleagues before going to war, and Lord Craig, the former Air-Marshal of the RAF, thinks there should be an inquiry. He said, “I think it is very timely to have an inquiry before memories fade.” We have got General Sir Mike Jackson. The military are queuing up calling for an inquiry. In this parliamentary commission should the military be represented as well?

Adam Price: My preference would be for a parliamentary commission which would be composed of senior parliamentarians.

Q28 Mr Prentice: Lord Guthrie is a parliamentarian.

Adam Price: Yes, of course, and in the case of former senior military, certainly that option would be open if they were ready to serve in that context.

Lord Owen: Lord Inge was on the Butler inquiry.

Q29 Mr Prentice: Yes.

Lord Owen: I would be perhaps a little bit careful about this Baker-Hamilton analogy. That reached agreement because it broadly was looking to the future. This inquiry is looking to the past. It is always easier to lift people’s horizons and reach agreement when you are looking at the future; looking at the past is pretty divisive.

Lord Hurd of Westwell: I would foresee people coming in—independents. As I said, I can think of two or three people, commentators who have studied these matters through life. They might not want to do it, but people like Sir Michael Howard, and so on, who have got the history and the guts of this in them. You should bring in people from outside, make them privy counsellors. You said both Houses of Parliament, Chairman. The House of Lords, whatever your views on it, would be very useful on this kind of occasion.

Mr Prentice: So you pick an expert and then you make him or her a privy counsellor and Bob’s your uncle.

Chairman: I think when we recommended on this some time ago we were emphatic about it being both Houses, but also that it could then bring in people in a mixed membership format and then it could, of course, take on its own advisers—if it wanted military advice it could take those people on, if it wanted legal advice it could take those people on—and so you can devise the construction that best suits the purpose of the inquiry, and it would be a *sui generis* kind of model and not one that would just be an adaptation of the ordinary select committee system. That is just to clarify.

Q30 Mr Prentice: What about summoning witnesses? This Parliamentary Commission would have full powers and you would expect the powers to be exercised. The witnesses would give evidence on oath, they would be cross-examined because, as we know, when Tony Blair appeared before the Hutton Inquiry famously he was never cross-examined, so in reality this Parliamentary Commission would exercise the full powers that Parliament has, insisting on attendance and so on and so forth.

Adam Price: Absolutely.

Sir Menzies Campbell: Just on Baker-Hamilton, of course another caveat is the notion of bi-partisanship is very well established in the American system, I think rather more than in our own. Lots of initiatives are done particularly in the Senate on both sides of the aisle. You have to bear that in mind when arguing that is necessarily an illustration we should follow in this country. We do not have as well developed a system.

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Adam Price: That is right and part of the reason why Parliamentary Commissions became discredited was because of the rise of the party management system and whipping and people's personal and party loyalty coming first rather than a dispassionate objective assessment of the facts. I think a vote on the floor of the House which had arisen either from a motion from a committee such as yours or from maybe a backbench cross-party initiative which was won on the floor of the House would signal the beginning of something new, a loosening of those ties. We read academic analysis which suggests that this is the most rebellious Parliament ever, almost because the whipping system, the party management system has become so extreme, people are responding against that. In fact, the biggest rebellion from Labour MPs on an Opposition motion was precisely on the motion to set up an Iraq inquiry, 12 Labour MPs. That is the highest number of Government MPs who have rebelled under this Government on an Opposition motion, which is obviously difficult, I understand that, for a Labour MP to vote on say a Conservative motion. There is something happening here which I think is historically and constitutionally significant.

Q31 Mr Walker: If we cannot initiate an inquiry as backbench Members of Parliament, what is the point of Parliament? What are we here to do? Are we just here to make up the numbers to support the Executive or support the leadership of our parties in opposition? I would be interested in your views on that because I think a lot of my constituents wonder what the role of a Member of Parliament is if we are not allowed to ask the difficult questions which they want asked.

Lord Owen: You can. The Liaison Committee has a capacity to determine which Select Committees have motions. If this Select Committee put forward a motion and the Liaison Committee agreed, you would get Parliamentary time, is that not the case?

Chairman: No, I think it is rather that they have the ability to have debates. You are into difficult territory when you start talking about motions, I am afraid, but we are on the case.

Q32 Mr Walker: I am seriously interested in your views as esteemed parliamentarians, what you believe the role of Parliament should be and backbench Members of Parliament because I think we do not flex our muscles enough and some of the criticism levelled at us is deserved at the moment.

Lord Hurd of Westwell: You have allowed the Executive, under the misleading logo of reform of Parliament, to bind you into procedures which make it much more difficult for you to probe and make life difficult for the Executive than it used to be. Your hours, the way you vote, the principles of the guillotine, all this in the name of reform has bound you more tightly to the Executive, but this is an example where you can break out.

Sir Menzies Campbell: It is reflected in the fact if you look at Parliament, when do people come now, they arrive Monday lunchtime, Monday afternoon. If

there is no particular business on Thursday or a motion on the adjournment or their Committee is not sitting, what do they do, they go back to their constituencies. The notion of being a good constituency MP has become very, very fixed in people's minds, when, in fact, our constitutional responsibility is to hold the Executive to account and protect the interests of our constituents against an over-mighty Executive.

Lord Hurd of Westwell: They make a Cabinet Minister get up in the middle of the night, come and answer a backbencher like Tam Dalyell who puts an awkward question on an embarrassing subject and you have to answer it at 1 am in the morning, but that is what Parliament is about, you have given a lot of that away.

Adam Price: If you take my position, indeed the position of the former Secretary General of the United Nations, that the Iraq War was illegal—I know there are a range of views but it is certainly my view—then to some extent Parliament was complicit in that crime. We voted for the war and, therefore, I think it is incumbent now upon Parliament to undo some of the damage that at least in part we contributed to. It is our responsibility now to force this inquiry and use every mechanism at our disposal. Select Committees in Parliament should have the right to force motions on to the floor of the House of Commons in the same way that Congressional Committees have that right and we need to win that battle. Specifically on this in terms of tactics, then I think all the Opposition Parties, the Conservatives, the Liberal Democrats and the Nationalist Party, have said, "We are willing to give up our time to a cross-party motion or even a motion headed by backbench Labour MPs so that more of them support the idea of the inquiry". I have no doubt there is a majority in the House of Commons who want an inquiry, we just have to find the means and mechanism whereby it is politically possible for that to happen.

Q33 Paul Flynn: This is a fascinating situation having three distinguished elder statesmen inciting insurrection against the Government from the backbenchers, but one which is very justified and very welcome. Do you see some hope in what was recently declared about the decision that now for the first time we can vote on going to war and reflect on the fact that there was a decision taken on Afghanistan—and up until the end of 2006 five people had been killed—to go into Helmand Province and now 91 people have been killed, but Parliament has never voted on the Helmand mission which, in terms of the deaths of our soldiers and the problems involved, was probably a greater decision than the original decision to go to Afghanistan? Do you see hope in the future? You have a very bleak view of how Parliament is losing its powers and backbenchers are not doing their jobs. There is some justification, but do you not see some elements of hope in that we can take decisions on going to war which we could not take before?

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Sir Menzies Campbell: If we are to avoid the disconnect between public and politicians, then we have to take steps to re-establish our capacity for scrutiny and determination to protect the interests of our constituents, otherwise, fewer and fewer people will vote, more and more people will join pressure groups and NGOs. It is not that people are disinterested in politics but they are disinterested in political parties and politicians and that is our fault.

Lord Owen: Politics is a blood sport and I slightly dissent from all this. I agree with what Douglas Hurd said, which was that in rationalising Parliament and doing all these sensible things, the overall effect is that some of its rawness has gone and that is a reality of life. If you in this Committee would agree to a proposition that this report would come after the election, I believe you would find a lot more doors open and you might find that you could get something from the Government which you would accept.

Q34 Mr Prentice: Everyone is in favour of an inquiry, the Prime Minister is in favour of an inquiry, the issue is when this inquiry will take place.

Lord Owen: Also when it reports.

Q35 Mr Prentice: I suppose it is because it fears that it will all become very, very partisan. The Liberal Democrats will be occupying the high moral ground because they voted against the war; the Conservatives, having voted for the war, will try and redeem themselves and so on and so forth, and it could become very bloody indeed. This is why Gordon Brown wants to kick it into the long grass, I suppose, but there may well be an inquiry after the next General Election anyway.

Adam Price: Looking at it from the Labour Party perspective, then surely unless he makes his position clear in terms of the timing and the nature of the inquiry, then it will become an election issue. The best way to take it out of ordinary partisan politics is to establish a properly constituted inquiry.

Q36 Mr Prentice: When I was talking about being partisan, I do not know, Adam, if you are in favour of indicting Tony Blair as a war criminal, are you?

Adam Price: That is an incendiary use of language, Mr Prentice.

Q37 Mr Prentice: If we are talking about this business of partisan politics being blood sports.

Adam Price: I have made my position clear, I wanted to impeach him. Obviously I am still of that view because I think the war was illegal and there was serious misconduct in Government policy here and people should be held to account. That is not the discussion we are having now and that should not be used to try and discredit the far broader debate we are having about the need for a proper inquiry.

Q38 Mr Walker: It strikes me as a new Member—and I would have voted to go to war whenever the vote was taken, I was not here and I will regret it bitterly for the rest of my life, but I think I need to

admit that on the evidence available then I would have voted in favour of a war—that so much of what we do in the House of Commons is just so cursory. We suffer from Bill fatigue, nothing gets properly debated, nothing gets properly scrutinised, we turn up, we vote on things we have no idea about what we are really voting on and it seems to me this would be a perfect example for us in Parliament to get our teeth into something and do something seriously. After all we have lost hundreds of young men and women out in these conflicts, thousands of people have been injured and really this is an opportunity for Parliament to establish itself as a serious body looking at serious things, matters of life and death. If that is a statement, I am sorry, but if anyone would like to comment on it, please do.

Sir Menzies Campbell: Hear, hear! That is correct.

Q39 Kelvin Hopkins: We have been talking around what are fairly fundamental constitutional issues, the overweening power of the Executive over Parliament which is unusual in most modern democracies and how we change that. Is there not some fairly fundamental constitutional change needed so that this sort of thing does not happen again, so that Parliament will be able to express its will and not simply be just a slavish majority supporting whatever the Prime Minister wants?

Lord Owen: At the end of the day, Parliamentary power comes on the vote. The Chairman's remarks point to the problem. You have a Select Committee procedure, you have a Liaison Committee procedure, you have the allocation of days, you can put a motion on, a question apparently which is still open is the vote. Therefore, until you can have power over the vote, you will be toothless. The vote is the ultimate element and that is the issue where it comes to appoint a decision. You have to find a mechanism through all these new procedures whereby you, as a Parliament, have a voice on the vote.

Adam Price: There was a discussion in the 1970s, for example, as to whether errant rebellious groups of governing party MPs should not be given the right. For example, if 60 Labour MPs signed a motion, not just an amendment to a Bill, which does happen obviously, but they could have some time on the floor of the House, how that would make Parliament a far more interesting place, would it not? Again, one of the problems in our political culture is that even if a backbench MP of a governing party agrees with an Opposition motion, there is a tribal instinct in them which prevents them from going through the lobby with the Tories. I think we need to look at all kinds of mechanisms which can give Parliament greater control of its own time, but also make sure that Parliament reflects the views of Members of Parliament because it certainly does not at the moment on this issue and I suspect on many others as well.

Sir Menzies Campbell: We can do all this if we choose to. We do not need to change a bloody thing in the House of Commons. If collectively we said, "This is to be an exercise of independent judgment", then the sort of idea of hearts and flowers, if I may

put it that way, we have been discussing is perfectly within our grasp, it is just that we choose not to do so. Why is that? Because of the enormous pressure which the party structure has upon our politics.

Q40 Kelvin Hopkins: Precisely, and I speak as one who has rebelled some might say frequently. I do accept that most of my colleagues find that very hard indeed, even if they privately might agree with my view. It is not just because they want to be a minister or want to support the party, the psychological pressures which come on people not to rebel are enormous. I think if people had been a bit freer at the time of the Iraq war, the Iraq war vote would have gone down, the Prime Minister would have resigned and we would not have gone to war in Iraq with America. Think the pressures were great—the psychological pressures, loyalty, tribalism, and also the possibility that bringing down a Prime Minister might lose you your seat in an election. People do not want to do that, so there are all sorts of reasons. I am trying to find out—I have various thoughts—what constitutional changes we could make which would give Parliament a much stronger role in relation to the Executive and stop Prime Ministers having the enormous power they have in Britain compared with almost every other Prime Minister in the democratic world.

Lord Hurd of Westwell: It is not a constitutional power that they have. I entirely agree with Ming, it is just the way our politics are structured, the psychology of it and the role of parties. It is odd because what has emerged, and it emerges from every conversation one has on this, as Ming said, is people are passionately interested in political issues. If you go to schools and universities, which I do all the time, you will find this. What they do not see is the role of the party in this, yet it is precisely the role of the party and the strength of that role which is inhibiting the House of Commons from doing what in the 19th Century it did almost as a matter of course. Therefore, a straitjacket is not just a straitjacket on what Members of Parliament do, it is also one of the reasons why people are turned off politics as a whole. It is a matter of breaking it case by case, vote by vote, not so much a matter of passing new resolutions in general terms.

Adam Price: In Italy, they do not have a Parliamentary democracy, it is controlled by the parties and that is the political culture we have as well and that has to be broken. Peter Oborne's book, the *Political Class*, has shed a lot of light on this, the fact that we now have a generation of politicians who have emerged out of politics, they know nothing else, working in politics, think-tanks, researchers, et cetera, so it is probably worse now than at any point. Now is the time to confront that because Members of Parliament need to have independence of mind, that includes independence of mind from their parties as well. I notice even Mike Gibbs said he would be prepared to vote for an Iraq inquiry as long as it was allowed to go back over the 1990s and 1980s. Why not? I would love to see Mike Gibbs rebel against the Government on this issue,

but why not. We need to break that iron grip unfortunately that the whips and the party managers have over our political thinking.

Lord Owen: It is quite impossible to hold a proper inquiry that time limits your look at Iraq, quite impossible. Of course you have to go back over the 1980's. I am not sure there would be too much resistance there. Of course one way this could be done—and personally I have even contemplated it, but I have no powers in the House of Lords in the sense that I cannot mobilise people—is the House of Lords can do primary legislation and legally it could set up an inquiry. There is no doubt that we could also reach a consensus broadly along the lines which your Committee are leading you on to and that would then have to be voted on by the House of Commons. That may be the right procedure. That is also one of the problems which has not yet been addressed. With the reform of the House of Lords, you have to decide whether you want to make it toothless or whether you want to give it some teeth.

Q41 Chairman: I think we have got the point. I can see red lights flashing at that point.

Sir Menzies Campbell: It is a delicious idea for the House of Lords to reform the House of Commons!

Kelvin Hopkins: There are many more possible questions, but there is one question which I think is very important and is particularly addressed to David and Douglas. Before Robin Cook died he spoke to the Hansard Society and he said that the party system had changed particularly because of the way the Labour Party elects its leader. In the past it had elected its leader through the Parliamentary Labour Party and as a result they had a range of views within Cabinet, from Shirley Williams and Roy Jenkins across to Barbara Castle and Tony Benn, and there were genuine debates representing that range of views within Cabinet. Now, the Cabinet is a cipher, loyal to the Prime Minister, and if anybody steps out of line then they find themselves on the back benches. That is a crude simplification of his argument. But this has changed the nature of our party politics and has given enormously greater power to the Prime Minister than in the past. They do not have to deal with the factions in the party anymore because they have got absolute control of the party. I think it started perhaps with Margaret Thatcher, but Margaret Thatcher was much more open and spoke to a range of views within her party more than did Tony Blair. Tony Blair was not interested in a range of views, he was interested in his own view. I only met him a couple of times in Downing Street so I did not know him personally, but he was very clear, he said, "You accept our view. This is the line. This is what you are going to do".

Chairman: I think that was a commentary rather than a question.

Q42 Kelvin Hopkins: I would like David and Douglas to comment, if they have got any thoughts on that.

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Lord Owen: At the end of the day, it was the House of Commons which got rid of Margaret Thatcher and it was the House of Commons which got rid of Tony Blair.

Q43 Kelvin Hopkins: It took a long time.

Lord Owen: It was the Labour Party Members who got rid of Tony Blair by giving him the timetable to leave and it was the Conservative Party MPs who got rid of Margaret Thatcher.

Q44 Kelvin Hopkins: We are forced into nuclear options all the time instead of having a real debate.

Lord Owen: At the end of the day, although they get elected by a wider franchise, Conservative, Labour and Liberal leaders, which I personally strongly support, they are made or broken and they leave office if they lose the confidence of the House of Commons. That has been recently shown on two most powerful Prime Ministers, Tony Blair and Margaret Thatcher. At the end of the day, their failure to carry their own MPs meant they were kicked out of office.

Chairman: That is a party answer. Enoch Powell once said that it is a mistake to talk about Parliament in a collective sense because Parliament now is where the party battle is conducted. The argument against what we are proposing in a way is the Marconi, the fact that we have entered an era when party trumps all, even the ability in Parliament to do things that it ought to do.

Q45 Mr Prentice: I agree with that. Everything is played for party advantage and I am looking at you, Ming!

Sir Menzies Campbell: Why are you looking at me!

Q46 Mr Prentice: The suggestion that MPs can just be dispassionate about everything without realising the consequences for the party is just lunacy. This is why we have such a problem in addressing this issue because at the end of the day, it all comes down to the calculation about party advantage. We have got to break through that and it is a struggle to find the way forward. Gordon Brown says he wants an inquiry but not yet because we have troops on the ground. Like every Labour MP, I got a briefing before the debate. I am not going to read it out verbatim because it says, "Dissemination of this political briefing is prohibited and may be unlawful", so I am not going to do, I do not want to get into trouble with Gordon Brown!

Sir Menzies Campbell: That is not like you, if I may say so!

Q47 Mr Prentice: They talk about the precedence for an inquiry at this stage when we have troops on the ground and we are all concerned about that, we have got the military in Iraq. The briefing says there was an inquiry into the Dardanelles during the First World War but only after the specific operation had been concluded, no inquiry into Suez—we have talked about that already—no inquiry into the Korean War, the Gulf or the Balkan conflicts, the

Franks inquiry which we talked about earlier, it may have been agreed during the conflict but it was not set up until after the end of the Falklands conflict. That is what Labour MPs were being told, yes, but there is no precedent for having an inquiry when our troops are engaged on the ground. That is an issue we have got to grapple with. Maybe that was just an observation from me rather than a question.

Sir Menzies Campbell: If Douglas Hurd is right about troops remaining in Iraq for a lot longer than people contemplate, then you would never have an inquiry.

Q48 Mr Prentice: We would never have one. Okay.

Lord Hurd of Westwell: You quoted precedent, but it is not an argument at all, there is no real argument. Okay, the troops were out of the Dardanelles but all the people involved were still fighting, still in action, and it was a very difficult thing to have an inquiry into the Dardanelles, particularly for Churchill but he welcomed it.

Q49 Mr Prentice: Because he was a target.

Lord Hurd of Westwell: The fact of the lack of precedent does not constitute an argument at all.

Q50 Mr Prentice: Fair enough. A final point to Lord Owen. Jeremy Greenstock, our man in Baghdad, has written a book about his time as our man in Baghdad and that was blocked by Jack Straw and has still not been published. At the very beginning you were talking about your penchant for openness when you were an MP, but your views perhaps have changed. Do you think there is a case for Jeremy Greenstock's book to be published?

Lord Owen: It will ultimately be published.

Q51 Mr Prentice: But you are calling for an inquiry now. Why can you not call for Jeremy Greenstock's book to be published now as an aid to our understanding because the American equivalent, I forget the guy's name now, the person who ran the Coalition Provisional Authority, his book was published years ago.

Lord Owen: A lot of people's books have been published and a more important book by the UK ambassador in Washington in the run up to the war has been published. We have now seen the Prime Minister's Chief of Staff, who was also made a civil servant, publish the whole account of the Northern Ireland negotiations. Your Committee took evidence on this whole thing. Again, I think there are no absolute rules. Jeremy Greenstock's views have become fairly obvious. The honest answer is he could defy the ban if he wished to. He does not choose to in part, because he is head of Ditchley, which is a quasi-governmental position, he is an honest and decent diplomat and he wants to take account of those criticisms. There was also a ban on a former ambassador publishing an account, Sir Nicholas Henderson, which he went along with with extreme reluctance. It has probably got to be left to the diplomat. Effectively, there are no rules that he could be banned from it. Jack Straw could not stop

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his pension, which would be the only real sanction, he might try but he could not stop it. I do think there are problems about the privacy of civil service advice. Of course, one of the issues would be we would discover whether, as I believe it was, Greenstock told Tony Blair the votes do not exist in the UN Security Council, Second Resolution. I do not think that is a terribly devastating piece of information to come out.

Q52 Mr Prentice We should publish, that is what you are telling us?

Lord Owen: Jeremy Greenstock will publish and I think he will publish when he leaves Ditchley.

Q53 Chairman: This was raised at the beginning. If there was a change of Government in a couple of years' time and if an inquiry either had been established already before that happened or if one was established subsequently, would there be an issue about access to the documents from the previous administration? You are shaking your heads in opposite directions.

Lord Owen: I think there would be an issue.

Lord Hurd of Westwell: There would be an issue but it is one of those rules which is constantly broken. I do not think it would be a real issue. It could be overridden.

Lord Owen: The freedom of information is now overriding all this. Sir Stephen Wall has just published a book on the history of the negotiations in the European Community from 1984 to the present day, and it is a very good book too, but basically it is breaking many of the traditions and that goes across two administrations.

Chairman: Gentlemen, you have been extremely helpful to us in trying to test some of these procedural ideas against solid experience and practice. I think Charles' point is the key one. With the particular case we are talking about, there is bafflement on the part of the public as to why Parliament, which, as Ming has told us, is sovereign, and we tell ourselves endlessly is supreme, cannot do the thing which the public obviously wants to happen, which is to have a proper inquiry into what happened in Iraq. I think it is bad for the institution that this is the case and it is bad for its relationship with the political system. We want to try and find a mechanism which can take this forward and we are very grateful to all of you for coming and helping us with that today. Thank you very much indeed.