

A submission to the Iraq Inquiry

Rt Hon Ann Clwyd MP

The work of INDICT

January 2010

This submission to the Iraq Inquiry concerns my involvement with Iraq prior to 2003 and the work of the organisation I chaired called INDICT.

INDICT's aim was to bring to justice leading members of the regime of Saddam Hussein for war crimes, crimes against humanity and genocide, through the establishment of an ad-hoc international tribunal or through indictments by national prosecutors in individual countries.

I believed that INDICT's work, combined with the better, more targeted, use of UN sanctions, could have successfully brought about an end to Saddam's regime.

As such, this twin-track approach represented an alternative to war.

Rt Hon Ann Clwyd MP

Member of Parliament for the Cynon Valley, 1984 – Present

Prime Minister's Special Envoy to Iraq, 2003 – Present

Chair, All-Party Parliamentary Human Rights Group, 1997 – Present

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Executive Summary

1. I became involved in Iraq in the late 1970s when I heard the stories of a group of Iraqi students in Cardiff. The Committee Against Repression and for Democratic Rights in Iraq (CARDRI) was a campaigning organisation established by brave Iraqis studying in Britain and concerned Britons. I became the Chair of that organisation in 1984. CARDRI reported the crimes of the regime of Saddam Hussein and protested against the tacit support he received throughout the eighties from western governments.

2. INDICT was established in late 1996 to campaign for the creation of an ad-hoc International Criminal Tribunal - similar to those established for the former Yugoslavia and Rwanda - to try leading members of the Iraqi regime of Saddam Hussein on charges of war crimes and crimes against humanity, including genocide and torture.

3. The aim of INDICT was to bring to justice for war crimes leading members of the Iraqi regime of Saddam Hussein. We initially sought the creation of an ad-hoc international criminal tribunal, then indictments by national prosecutors in individual countries. Ultimately, the aim was to bring these individuals before a court so that they would have to answer for their crimes. Through our campaigning and through the obtaining of indictments, we sought to render the regime unable to travel, unable to deal with other governments, and unable to function. And it would have been recognition of the crimes that the regime had committed: crimes against their own people, and crimes against other nationals. And it would have caused a 'loss of face': in Iraq and within surrounding Arab countries, the effect of which might have been to force Saddam from power.

4. I believe that the indictment of Saddam, and leading members of his regime, was a missed opportunity to bring pressure on Saddam and leading members of his regime to account for their human rights record. Indictments would have sent a clear message to the leadership of the regime, that they stood accused of the most serious crimes by the international community. Indictments would have signalled that if Iraq wanted to be part of the international community again, these individuals would have to stand trial.

5. Alongside indictments, smarter sanctions, properly enforced by the UN, could have been used to exert the kind of pressure that may have ultimately been sufficient to force Saddam from power. Those sanctions needed to be better targeted at the leading members of Saddam's regime and the Republican Guard, who were sustained through illicit oil sales, with improved exemptions to avoid the suffering of the Iraqi people, better administered by the UN, and better enforced by the UN so that the regime could not avoid the impact of sanctions through smuggling and other abuses. Indictments and better enforced sanctions could have successfully brought about an end to Saddam's regime. As such, this twin-track approach represented an alternative to war.

6. I had not wanted to see another war in Iraq. The people of Iraq had already suffered from almost continuous conflict since Saddam had assumed his rule. The war with Iran, that cost a million lives, was followed by the Anfal campaign in Iraqi Kurdistan, and then the invasion of Kuwait was followed by the bloody repression of uprisings in the south and north of the country. The 1990s continued with savage punishment meted out to anyone who threatened the regime.

7. My support for military intervention in Iraq was based upon humanitarian concerns. I was persuaded that we had reached the point where the only way that the Iraqi people could be free of the

brutal oppression of Saddam's regime was for him to be removed through the military action of the UK, the US and our allies. Removing Saddam was the right thing to do. I held that opinion in 2003 and I hold that opinion today.

Campaigning on Iraq and Background to INDICT

Committee Against Repression and for Democratic Rights in Iraq (CARDRI)

In 1977 a group of Iraqi students, studying at Cardiff University, told me about their lives, and the oppression both they and their families faced in Iraq. Even when studying overseas, Iraqis were not free of the long arm of Iraqi state control; their international student organisation was little more than a branch of the secret police. Those who spoke out against the regime, while abroad, soon found their families being threatened at home. The students themselves were often attacked on university campuses in the UK by pro-Saddam students. It was testimony to the courage of those students and their families that they refused to remain silent.

The Committee Against Repression and for Democratic Rights in Iraq (CARDRI) was established by brave Iraqis studying in Britain and concerned Britons. I became the Chair of that organisation in 1984. In those years of repression and exile, CARDRI was a lifeline for the many persecuted within Iraq. It reported the crimes of the regime of Saddam Hussein and protested against the tacit support he received throughout the eighties from western governments.

Iraq under Saddam Hussein

The evidence of the atrocities committed by the regime of Saddam Hussein had been growing since the early years of the regime. The testimonies passed on to me by those Iraqi students in Britain painted a picture of a brutal police state that sometimes verged on the

incredible. We regularly publicised the names of those who had been executed. Little was done.

These crimes took place in the latter years of the Cold War. The development of universal human rights, although enshrined long ago in the United Nations Declaration on Human Rights and a multitude of treaties and pronouncements, was still seen as secondary to the realpolitik of the Cold War. Human rights abuses were seen as an internal matter, beyond the sanction of the international community.

The Iran-Iraq war provided a cover and excuse for the regime's atrocities. The prevailing logic from the United States was that the Iranian revolution was the principal threat to the region; as a result, any criticism of Saddam was muted. This silence even extended to the use of chemical weapons by the Iraqi forces, despite the use of chemical and biological weapons being strictly prohibited by the Geneva Protocol of 1925. Condemnation, when it came, was measured and even-handed, laying blame at the doors of both Iranians and Iraqis.

Throughout this period there had also been reports of brutal action taken against the Kurdish population in the north of Iraq. Since the creation of modern Iraq there has been a tension between the centre and the Kurdish region. Political solutions had failed. Now the government in Baghdad tried to undercut support for the Kurdish cause in rural areas. A policy of Arabisation was adopted, as Kurdish communities were forcibly moved and their villages destroyed.

In the late 1970s 1,189 villages were annihilated and their inhabitants dispersed. In hindsight, this policy would be seen as a prelude to the more serious crimes against the Kurds that became known as the Anfal.

The Anfal campaign continued the policy of destroying villages. But now the population were also legitimate targets for attack by the Iraqi military.

The Anfal saw the repeated use of chemical weapons against a civilian population. In the run up to the war in Iraq in 2003, the Kurdish town of Halabja became more widely known as an example of Saddam's brutality. The bombing of the town of Halabja owed its notoriety to the numbers killed and the presence of television cameras to record the aftermath. But away from the cameras, from February through to September 1988, there were many more Halabjas as the Anfal campaign raged across Iraqi Kurdistan. The Kurds claimed that 182,000 had been killed during this period. CARDRI published books, pamphlets, newsletters, and used conferences, and public meetings in an attempt to raise public awareness, both in the UK and overseas.

The huge military defeat suffered by Saddam in Kuwait ultimately resulted in greater freedom for Iraqi Kurds but also heralded the beginning of another bloody episode in Iraqi history. This time the victims were the Shia of southern Iraq.

After 1991 the story of the Anfal could be told, because it was possible to physically get to Iraqi Kurdistan. I made the first of several visits. The rubble of thousands of destroyed villages was easy to see. As the Baathist security services fled Sulaymaniyah and Arbil, they left behind tonnes of documents that provided meticulous detail of the brutality meted out to opponents of the regime. I met the relatives and saw the evidence. No such evidence was available outside the Iraqi Kurdish safe haven. It was only after April 2003, when Saddam's regime had been toppled, that the evidence also began to be uncovered of the terrible abuse, in the south of the country.

In June 2003, I watched as the bodies were dug out at the mass grave at Al-Hillah, sometimes with bare hands, in chaotic scenes, as relatives scrabbled through the dirt to find any remains of their lost loved ones. It appeared that everyone had known of the existence of the sites of these mass graves, but it was only now that they could go to them. The graves were filled with those slaughtered by the Baathists in the aftermath of the failed uprising at the end of the war in Kuwait. Thousands of bodies had been buried there.

The majority of those found in the graves around Al-Hillah would have been members of the Iraqi Shia community. They had already suffered at the hands of Saddam in the previous decade. The main Shia political party, the Da'wa, had been outlawed in March 1980 and membership of it was punishable by death. The following month the spiritual leader of the Da'wa, Muhumad Baqir al-Sadr, was executed. It was the first time in the history of the modern Middle East that a Grand Ayatollah had been executed. Many more Shia were executed while others fled into exile.

The Shia uprising at the end of the war with Kuwait was put down with great brutality. One haven of safety had been the vast expanse of the Marshlands that straddle the Iraq-Iran border in the south of the country. These became Saddam's next target. New dams and canals were constructed that effectively drained the marshes. This was coupled with military action against the Marsh Arab population.

It was a widespread misconception, that abuses under Saddam's regime were largely historical by the time regime change had become a policy option. Sanctions and international pressure in the 1990s had not in fact ended the atrocities. The oppression of the Marshland communities continued throughout the final years of the regime and only came to an end with its demise.

The same was true of the Arabisation programmes around Kirkuk. Kirkuk has always been a disputed city. It is home to a large Kurdish community and is surrounded by large oil reserves. Ever since the discovery of oil, the issue of who should run the city and own its mineral resources has been contested. The last years of Saddam's regime saw a concerted effort to alter the ethnic make up of the city decisively. A UNHCR report estimated that 100,000 had been displaced as a result of this policy. This was a clear policy of ethnic cleansing, which was carried out up until the regime was deposed in 2003.

Sanctions

I hope that the Inquiry will have opportunity to consider the history of sanctions as part of the background to its report, because I think it says a lot about Iraq under Saddam, about the inadequacy of the international response over more than a decade to the situation in Iraq, and because it explains a great deal about the situation the government and the international community faced by the spring of 2003.

I would like to briefly here explain my support for sanctions against Iraq, but record what I saw the very clear problems were, why we could have achieved more with better sanctions, but why ultimately sanctions were not going to be enough and why another tool needed to be explored in addition to sanctions – the idea of indictments.

I refer the Inquiry in particular to a report of the House of Commons Select Committee on International Development, of which I was a member, conducted in 1999 and published on 27th January 2000, *The Future or Sanctions* (Second Report, Session 1999-2000); to the Government response to that report, published on 9th May 2000; and to a report from 2007 of the House of Lords Select Committee on Economic Affairs, *The Impact of Economic Sanctions* (2nd Report of Session 2006-07, 9th May 2007).

Support for Sanctions

I supported sanctions in relation to Iraq. Importantly for me, Iraqi opposition groups also supported continued sanctions. In evidence to the International Development Committee, witnesses said, “they [sanctions] are absolutely necessary to keep pressure on the regime.” And Dr Latif Rashid, then of Iraqi National Congress and now a

Minister in the Iraqi Government, said, "I think that it would be a nightmare for the Iraqi people if the pressure on the regime was reduced."

Sanctions were considered a necessary mechanism to enforce Iraq's compliance with UN resolutions restricting the development and retention of weapons of mass destruction, which Saddam had possessed, had used against his own people and against neighbouring countries. I also supported sanctions as a tool to put pressure on the regime of Saddam Hussein. My hope was that sanctions could eventually force Saddam's regime from power in Iraq.

Humanitarian Impact

But the humanitarian impact of sanctions was significant and very distressing to those who, like me, supported sanctions as a means to target the regime, but who wanted to avoid harming the Iraqi people.

The humanitarian impact of sanctions was exacerbated by the treatment of the Iraqi people by the regime of Saddam Hussein and the human rights situation in Iraq.

In a report of 26th February 1999, on the human rights situation in Iraq, the UN's Special Rapporteur, Max van der Stoep, concluded that "the gravity of the human rights situation in Iraq had few comparisons in the world since the end of the Second World War" and that the Iraqi regime had "effectively eliminated the civil rights to life, liberty, physical integrity, and the freedoms of thought, expression, association and assembly."

Manipulation by Saddam's Regime

The humanitarian impact of sanctions was significant and distressing, but the chief cause of the humanitarian impact was not the sanctions themselves, but the policies of the Saddam regime.

As a witness to the International Development Committee in 1999, Jeremy Carver, then Head of International Law at Clifford Chance, had said:

“It is not the imposition or maintenance of international sanctions, but the policies of the Iraqi government which are the primary cause of this suffering. The Iraqi regime has cynically exploited sanctions: both to justify its neglect of its own population and as a tool to solicit external support for its reconstructed ambitions. A government which delights in showing foreign parliamentarians suffering infants, when its warehouses are overflowing with food and medicine undistributed for years, surely reveals itself, save to the gullible.”¹

The UN Oil for Food programme also suffered from manipulation by Saddam's regime, as well as gross maladministration by the UN. The House of Lords Committee sanction report in 2007, quoting written evidence from Carne Ross, based on figures calculated by the Iraq Survey Group and similar to the estimates arrived at by the Volcker Commission, found that the Iraqi regime “was able to make approximately \$2 billion from abusing the [Oil for Food] programme by such methods as false pricing and bribes from suppliers, but its main source of income was oil exports outside of UN control which generated a total of around \$12 billion (mostly through trade protocols with Jordan and Turkey).”

¹ House of Commons International Development Committee, *The Future of Sanctions*, Second Report of Session 1999-2000, page 129, evidence taken on 28 October 1999, para 8.

Sanctions were manipulated by the regime to control, through suffering, the Iraqi people, and to blame the UN and the international community for that suffering. Meanwhile, the regime also continued to profit from illicit oil sales through smuggling and the complicity of other countries, and through the abuse of the Oil for Food programme, and the maladministration of that programme by the UN.

Conclusions on Sanctions in Iraq

There were big problems with sanctions in Iraq. But even with those problems, sanctions were having some effect. Better, smarter, sanctions could have had much more of an effect. Better targeted at the leading members of Saddam's regime, with improved exemptions to avoid the suffering of the Iraqi people, better administered by the UN, and better enforced so that the regime could not avoid the impact of sanctions through smuggling and other abuses.

There were two chief problems with sanctions: the humanitarian impact and the abuse of the sanctions system. The humanitarian consequences were significant; sanctions were manipulated by the regime; they were undermined by smuggling and by trade agreements with other countries; and they were undermined by maladministration and corruption through the Oil for Food programme.

More could have been achieved with better sanctions. But, ultimately, sanctions were never going to be sufficient. The effects of sanctions are difficult to target, weak sanctions do not work, and comprehensive sanctions run the risk of causing significant humanitarian problems. But sanctions can be effective when combined with some other tool. That other tool could have been the use of indictments.

As I said in the House of Commons on 29th June 2000²:

“Like so many other UN resolutions, [resolution 688, which deals with human rights in Iraq], has not been honoured by the regime. The regime's officials, headed by Saddam Hussein, should face trial before an international tribunal.”

“One sanction that would make it impossible for Saddam Hussein or other members of the regime to travel is indictment. Other war criminals who have been chased around the globe have eventually been caught. If the members of the regime are indicted, they are less likely to move outside the country. I have had many dealings with Ambassador David Scheffer, whose remit includes war crimes committed throughout the world. He believes that Saddam Hussein and his henchmen are still viewed by some Governments as the legitimate leaders of a country that is under siege by the international community. In reality, they are thugs who are terrorising what was once, and could be again, a great nation.”

“We, the United States and many other countries have said that that group of Iraqi criminals should be stripped of their power and, if possible, brought to justice. They should not benefit from contracts, trade or initiatives that would bestow any legitimacy on their regime in Baghdad. They should be isolated, cut off and brought before the gates of justice.”

² *Hansard*, 29 Jun 2000 : Column 267WH

In its response to the report of the International Development Committee, the Government had signalled its clear agreement. The Government report said³:

“Any move away from comprehensive sanctions should go hand in hand with measures designed to target the real culprits, not the poor of Iraq but their leadership. Possibilities include a concerted attempt to target and either freeze or sequester the assets of Saddam Hussein and those connected to him, and the indictment of Saddam Hussein and his close associates as war criminals. To bring to justice Saddam Hussein is also a humanitarian imperative and this should be done without delay” (para 8).

“The Government shares the view that Saddam Hussein and other members of his regime should be brought to account for the atrocities they have committed over the years. The Government supports INDICT and other organisations which seek to bring them to justice” (para 8).

³ House of Commons International Development Committee, Second Special Report, Session 1999-2000, 9th May 2000.

Aims and History of INDICT

INDICT was established in late 1996 to campaign for the creation of an ad-hoc International Criminal Tribunal - similar to those established for the former Yugoslavia and Rwanda - to try leading members of the Iraqi regime of Saddam Hussein on charges of war crimes and crimes against humanity, including genocide and torture.

The aim of INDICT was to bring leading members of the Iraqi regime of Saddam Hussein to justice for war crimes, crimes against humanity and genocide. We initially sought the creation of an ad-hoc international criminal tribunal, then indictments by national prosecutors in individual countries. Ultimately, the aim was to bring these individuals before a court so that they would have to answer for their crimes. Through our campaigning and through the obtaining of indictments, we sought to render the regime unable to travel, unable to deal with other governments, and unable to function. And it would have been recognition of the crimes that the regime had committed: crimes against their own people, and crimes against other nationals. And it would have caused a 'loss of face': in Iraq and within surrounding Arab countries, the effect of which might have been to force Saddam from power.

The campaign was launched in the House of Commons and in the US Senate and remained dependent on voluntary donations and assistance until it received funding from the Kuwaiti Government and a financial grant through the Iraq Liberation Act, passed by the US Congress in December 1998, which allocated funds to various Iraqi opposition groups and specifically allocated money for war crimes issues.

INDICT initially looked to the United Nations to find a mechanism for trying Saddam Hussein and his regime. Despite overwhelming evidence that Saddam Hussein and other members of his regime committed such crimes, the UN Security Council failed to respond to the demands of the victims for justice. The then proposed, now established, permanent International Criminal Court was never going to have jurisdiction over the crimes already committed by Saddam Hussein and his henchmen.

Faced with these obstacles, in 1999 INDICT began to focus on collecting evidence to seek indictments by national prosecutors. The arrest in October 1998 of former Chilean president Augusto Pinochet in the UK, based on a warrant issued by a Spanish judge, showed that the prosecution of crimes against humanity could occur anywhere - when law enforcement authorities are willing to take action.

The task of INDICT was helped by the creation of the safe haven for Iraqi Kurds, which came after a report I made of having witnessed the Kurds fleeing from the helicopter gunships of Saddam Hussein on the mountains of Iran and Iraq in 1991. Now there was a part of Iraq where evidence could be collected and witnesses interviewed. Investigations were not only restricted to those still inside Iraq, however; other witnesses could be found outside Iraq, and statements could be collected. At the end of the process evidence had been collected in 15 countries. The interviews were always conducted on the basis that the evidence given could eventually be used in a criminal court. INDICT always insisted on the highest standard for the evidence it gathered.

The efforts of INDICT and other organisations campaigning for justice in Iraq did have some limited success in preventing members of the regime from travelling with impunity. In August 1999, for example, Izzat Ibrahim al-Douri, a senior member of the regime responsible for

planning genocide and other crimes against humanity, fled Vienna, where he had come for medical treatment, following attempts to secure an indictment against him. In late 2002, Saddam's half brother, Barzan al-Tikriti, was expelled from Switzerland after a complaint filed by INDICT accusing him of genocide and torture was received by the Swiss authorities. A case filed by INDICT in 2001 was credited as preventing Tariq Aziz, Iraq's Deputy Prime Minister, from travelling to Europe.

INDICT filed cases in the UK, Holland, Belgium, Switzerland and Norway, and had prepared cases for filing in Germany and several other European countries. In December 2002, INDICT filed a complaint with the Ethics Commission of the International Olympic Committee against the Iraqi Olympic Committee and its president, Uday Saddam Hussein, for the torture of Iraqi sportsmen. This directly led to the disbandment of the Iraqi Olympic Committee in May 2003.

INDICT collected evidence to be used in the prosecution of senior members of the Iraqi regime of Saddam Hussein for war crimes and crimes against humanity. Twelve main targets were identified for prosecution. In the preparation of the cases against these targets, INDICT's staff of researchers and lawyers interviewed witnesses, collected evidence and prepared legal briefs in order to provide prosecutors with the basis for bringing charges. The twelve target individuals are listed as an Annex.

INDICT and the UK Government

At the Parliamentary launch of INDICT on 15th January 1997, I read out messages of support from the then Prime Minister John Major, the then Leader of the Labour Party Tony Blair, and former Prime Minister Baroness Thatcher, amongst others.

Prime Minister John Major had said in his letter to "I fully share your political objective of bringing those responsible, particularly Saddam Hussein, to justice for the atrocities committed by the Baghdad regime. The international community is right to condemn such actions and we need to ensure that these actions remain in the public eye. I am sure your campaign will help."

The Leader of the Labour Party, Tony Blair, wrote: "Labour condemns atrocities committed by Saddam Hussein against the people of Iraq. The international community has a responsibility to press Saddam Hussein to respect the rights of all Iraqi civilians. Labour would support action by an International Criminal Court to investigate atrocities in Iraq. The peace and security the Iraqi people deserve will be hard to achieve if those committing atrocities against them are going unpunished. May I take this opportunity of wishing you well with the meeting and success in your campaign."

From that point on, I had many meetings with, and wrote letters to, government ministers, and I asked questions and made many speeches on the floor of the House of Commons. The replies that I received seemed to indicate government support for INDICT's work.

An exchange in the House of Commons on 10th February 1998, seemed to signal the clear support of the Foreign Secretary, Robin Cook⁴.

“Mr. Andrew Robathan (Blaby): In preparing for military action, which I fully support, will he [the Foreign Secretary] take steps to drive a wedge between the people of Iraq and the dictator [Saddam Hussein] by indicting him through the Security Council for crimes against humanity?”

“Robin Cook: The Government strongly support the case for an international criminal court. One of the reasons why, since the general election, we have come out robustly in support of such a court is precisely that it could provide an international legal framework before which a person such as Saddam Hussein could be arraigned. Regrettably, the court does not exist at present and will not exist in the time scale of the current confrontation. However, the confrontation reminds us why we need to strengthen the international law regime.”

“Ann Clwyd (Cynon Valley): Everyone must hope that the outcome of the present situation, whatever it is, will arise through diplomacy. May I support the call of the hon. Member for Blaby (Mr. Robathan) -- I have made it myself many times in the Chamber -- for indicting Saddam Hussein before an international criminal court? Such a court is, by all accounts, likely to be set up by the United Nations after its conference in Rome in June. Can we then call for his indictment, as he will remain a problem, whatever the outcome of the present situation? Indeed, he and his closest associates are the problem, and they should be brought before the court on charges of crimes against humanity, war crimes and crimes of genocide.”

⁴ *Hansard*, 10 Feb 1998 : Column 155

“Mr. Cook: I assure my hon. Friend that we support INDICT's campaign.”

In a debate on sanctions on 29th June 2000, I asked the Foreign Office Minister, Peter Hain⁵,

“Ann Clwyd: In addition to pressing for the acceptance of resolution 1284, will the United Kingdom make some attempt to secure the official establishment of an ad hoc tribunal on Iraqi war crimes by the United Nations? That is very important, especially as war crimes tribunals have been set up for so many other countries. So much evidence is available that I can see no reason why the UN should not take that action.”

Peter Hain replied,

“Mr. Hain: I agree that Saddam Hussein is a war criminal: no one could dispute that. The issue is how such a tribunal could be created, but I am extremely sympathetic to the idea. As my hon. Friend will know, I have spoken on platforms for INDICT, the campaign which she chairs and which the Foreign Office and I strongly support. The problem that she has identified is not easy to solve, but we will certainly bear in mind the points that she has argued so forcefully and do what we can.”

As a member and then Vice-Chair of the Parliamentary Committee (the Executive of the Parliamentary Labour Party), I met on a weekly basis with a small committee of which the Prime Minister, Tony Blair, was a member. Chris Mullin records in his diaries that at the Parliamentary Committee meeting of 17th July 2002, held in the Cabinet room in 10 Downing Street, that I raised INDICT and the possibility of using it as

⁵ *Hansard*, 29 Jun 2000 : Column 296WH

an alternative to war. The PM's response was "Why don't we do it?" That was the last meeting of the committee until we returned on 23rd October 2002, when Tony Blair said that he "had followed up Ann's suggestion that Saddam and his cronies be indicted for war crimes. The police weren't keen, but they had been asked to take another look" (Mullin, 2009).

I continued to press the Government to support the case for indictments against Saddam and his henchmen, up to and including the House of Commons debate on 25th November 2002 on UN Security Council resolution 1441. I said⁶:

"International law must be a weapon used against the Iraqi regime. Individual countries, or preferably an international criminal court under the auspices of the UN Security Council, should hold Saddam and members of his regime to account for their many crimes by bringing indictments against them. There is a way to achieve regime change — I want to force it into people's minds tonight — by using international law and bringing those people before a tribunal or a court in a country where universal jurisdiction applies. That is not a fanciful notion, because bringing indictments against Milosevic and his associates in the former Yugoslavia was a vital means to delegitimise that regime inside and outside its borders.

"Let me remind the House that Milosevic was indicted while he was still Head of State, and no one thought that he would appear before the court in The Hague a year later. The setting up of a tribunal by the United Nations in that case also created an impetus to break with the past and allowed a new generation of leaders to come to the fore in that country.

⁶ *Hansard*, 25 Nov 2002 : Column 113

“Evidence against Saddam and his officials is certainly not lacking. I chair an organisation called INDICT, which I have spoken about in the House many times. It is funded by the US Congress and has been for the past five years. Ironically, some members of Congress and of the Clinton Administration wanted indictments against members of the Iraqi regime, but there was a policy of containment and they never went after those indictments. However, it was possible, and it is possible now. Organisations such as Amnesty and Human Rights Watch have damning and disturbing testimony detailing extra-judicial killing, torture, rape, genocide and widespread corruption. It does not prejudice the case against them to say that more than enough evidence exists to charge Saddam, Tariq Aziz, Ali Hassan Al-Majid, the sons of Saddam, and other senior officials for war crimes and crimes against humanity immediately.

“Even now, however, many of Saddam's officials travel to many parts of the world, apparently without hindrance, on official business and for personal reasons. Isolating them within their own country would surely undermine their standing and limit their ability to conduct dealings, including the conclusion of commercial agreements with certain countries and attempts to secure additional weaponry, which help to sustain them in power. As David Scheffer, the former US ambassador on war crimes, has said:

“We know from the ad hoc... tribunals for the former Yugoslavia... Rwanda and for Sierra Leone that indictments of alleged war criminals who lead tyrannical and genocidal regimes can destroy their political careers, isolate them internationally, end their regimes and even achieve justice.”

“That brings me to the point made by the hon. Member for South-West Bedfordshire. It is often forgotten that many of Saddam's many victims were British nationals. At the start of the Gulf war, more than 1,000 British citizens were taken hostage. Some died, some were raped, others were tortured, and all suffered fear and humiliation. By taking concrete action to ensure that British victims obtain justice, the UK Government could show that they will do everything to promote the rule of law and fight impunity for the most serious crimes, and that the UK's support for the International Criminal Court is more than just lip service.

“More generally, deterrence — especially as regards the conduct of any future Iraqi Government who might follow the current regime — demands justice. It has been said that international law cannot be enforced in Iraq without the use of force — that indictments as well as resolutions are not worth much unless they are underwritten by the world's most powerful armies. Conversely, however, whatever action the international community eventually decides is necessary, the law, and ultimately justice, must underpin such action. The moral case for dealing with the threat posed by Saddam that engages both hearts and minds demands that justice be done for the victims and that the standard by which any future Administration are judged be clearly laid down.

“It would seem that indictments, like military intervention, are a matter of political will. I ask my right hon. Friend the Foreign Secretary, whose motion I will support tonight, why, if Governments are willing to commit the lives of members of their armed forces, they cannot also commit themselves to law and legal procedure through recourse to the courts.”

The disappointing reality is that the UK government did not provide the necessary support for INDICT. The organisation itself had laid the foundations, but it needed the government to carry it forward: either by lobbying within the UN for the establishment of an ad-hoc international tribunal or by supporting the idea of indictments within the UK.

Pursuing Indictments

In 1999, INDICT modified its strategy. As part of its original goal of campaigning for an international tribunal, INDICT had compiled a significant amount of information about the horrendous crimes and human rights abuses that had been committed by the regime of Saddam Hussein. Much of that information established the personal involvement of particular individuals in those crimes, leading members of the regime including Saddam Hussein. INDICT began to explore the feasibility of pursuing indictments against those individuals within the jurisdictions of particular countries.

INDICT sought the advice of a leading barrister in the UK – Clare Montgomery QC. Clare Montgomery was, and is, considered to be an authority in the area of International Criminal Law, Human Rights Law, and Extradition Law, including the issue of head of state immunity. She had worked as part of the legal team on the *Pinochet* case, which was the leading case at the time of what was an emerging area of international law.

Clare Montgomery examined the material that INDICT had begun compiling against the twelve target individuals, and offered advice on the possible legal avenues that might be pursued.

The strategy that emerged from that advice was that alongside an ongoing campaign for an international tribunal set up under the auspices of the United Nations, INDICT would seek to initiate prosecutions, or investigations leading to prosecutions, in particular countries, including the UK.

In the non-UK jurisdictions, we were looking to identify countries whose legal system had a principle of extra-territorial jurisdiction in

respect of crimes against humanity. After identifying a country where such prosecutions would be possible, the tactic was to identify an individual, most likely an Iraqi, now living in that country, who had been a victim of one of the major crimes INDICT had been compiling evidence on. INDICT's researchers, or the investigating authorities, would obtain a statement from this victim, and then, combined with the other evidence gathered by INDICT, we would lobby for a prosecution to be initiated within that country. The countries that we looked at included Belgium, Spain, Norway and Switzerland.

Indictments in the UK

In respect of the UK, we again acted on the advice of Clare Montgomery QC. She had examined the cases INDICT had begun preparing against the twelve target individuals – who the individuals were, the crimes they were accused of and the basis of the evidence against them – and advised on those targets that could be prosecuted through the UK legal system.

She provided her written legal advice on 23rd June 2000.

In that legal advice, Clare Montgomery considered whether, on the basis of the evidence collected by INDICT, there was sufficient evidence to warrant a prosecution in England and Wales of two of the targets – Saddam Hussein and Tariq Aziz.

The crimes that Clare Montgomery's advice was considering were those that would relate to the holding by the Iraqi armed forces of British hostages in 1990, during the period of the first Gulf war. In August 1990, following the invasion of Kuwait by Iraqi forces, a number of foreign nationals, including a large number of United Kingdom nationals, were detained by Iraqi troops in Kuwait and Iraq.

These hostages were held against their will at various locations in Kuwait and Iraq.

The evidence that the advice was based upon was: the concerted activity of the Iraqi armed forces over many months in effecting and continuing the detentions of the British hostages; direct evidence that implicated Saddam Hussein and Tariq Aziz in issuing threats to detain the hostages in order to force the United Kingdom and the United States to abstain from taking any military action against Iraq and to withdraw their forces from the Gulf region; evidence in respect of Saddam Hussein that he had several meetings with the hostages, as described in eye witness statements and evidenced on video tape; documentary material from the United Nations in the form of a letter from Saddam Hussein, in which he states that the hostages “are not allowed to leave Iraq”; evidence in respect of Tariq Aziz in the form of a series of statements he made to journalists, politicians, civil servants, and diplomats from various European nations during the course of the detention of the hostages, including a witness statement from John Simpson, of the BBC, which recorded Tariq Aziz as saying that “We are saying make peace and your nationals will enjoy freedom”.

Clare Montgomery explained that in her view “there is a powerful body of evidence that establishes that Saddam Hussein and Tariq Aziz were party to, and criminally responsible for, those detentions”. Her legal advice was that there was more than sufficient evidence to provide a realistic prospect of conviction, under the law of England and Wales, of Saddam Hussein on charges of hostage taking contrary to section 1 of the Taking of Hostages Act 1982. She advised that there was also clearly sufficient evidence to provide a realistic prospect of conviction of Tariq Aziz in respect of a charge of hostage taking contrary to section 1 of the same Act.

She advised that the conduct of Saddam Hussein also breached the International Convention against the Taking of Hostages, adopted by the United Nations General Assembly on 17th December 1979 (“the Hostages Convention”); that the United Kingdom had ratified the Convention on 22nd December 1982 and that the Convention had come into force on 3rd June 1983.

Head of State Immunity

On the question of head of state immunity, Clare Montgomery advised that the fact that Saddam Hussein was the head of state of Iraq did not make any difference to his criminal liability or his liability to arrest and detention. Her advice explained that the hostage taking established by the evidence was carried out in clear violation of Article 34 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, of 12th August 1949 (“the Geneva Convention”). By virtue of Articles 146 and 147 of the Geneva Convention, such conduct was made subject to universal jurisdiction in all States party to the Convention. Iraq ratified the Geneva Convention on 14th February 1956, the United Kingdom signed the Convention on 8th December 1949 and ratified it on 23rd September 1957 and Kuwait ratified the Convention on 2nd September 1967.

As explained above, Clare Montgomery QC was, and is, considered to be an authority in the area of International Criminal Law, Human Rights Law, and Extradition Law, including the issue of head of state immunity. She had worked as part of the legal team on the *Pinochet* case – the leading case at the time of what was an emerging area of international law. Her advice explained that, for the reasons explained by the House of Lords in the *Pinochet* case, Saddam Hussein was not entitled to claim head of state immunity since his actions were contrary to international law. Iraq, the United Kingdom, and Kuwait,

were all countries that had agreed to outlaw such conduct and make it subject to universal jurisdiction.

Consent of the Attorney-General

The legal advice from Clare Montgomery was that there was sufficient evidence in respect of both Saddam Hussein and Tariq Aziz for prosecutions on charges of hostage taking contrary to section 1 of the Taking of Hostages Act 1982.

Section 2 of the Taking of Hostages Act 1982 provides that proceedings for offences under the Act can only be instituted with the consent of the Attorney-General.

Clare Montgomery's expectation was that the consent of the Attorney-General should not have presented any real difficulty, because the Attorney-General was bound to apply the same evidential sufficiency test, and would have to conclude, as she had, that there was sufficient evidence to provide a realistic prospect of conviction.

The remaining question for the Attorney-General would be whether the prosecutions would be in the public interest. Clare Montgomery's view was that there was no factor suggesting anything other than a strong public interest in prosecuting these offences.

An Arrest Warrant

The advice from Clare Montgomery was also that the requirement for the Attorney-General's consent for a prosecution of the hostage taking offences, did not prevent the issuance and execution of a warrant of arrest if that were required as a matter of urgency. She advised that section 25(2) of the Prosecution of Offences Act 1985 provided that a person may be arrested and remanded in custody even if the Attorney-

General's consent has not yet been given under section 2 of the Taking of Hostages Act 1982.

Correspondence with the Attorney-General

I wrote to the Attorney-General, Lord Williams of Mostyn QC, on 26th September 2000.

He replied to me on 1st November 2000. In that letter, Lord Williams explained that INDICT's case, as set out in my letter, had been considered by his officials, by the Anti-Terrorist Branch of the Metropolitan Police and by the Casework Directorate of the Crown Prosecution Service. Lord Williams explained that he did not consider it appropriate to grant his consent to the prosecutions without having seen the underlying evidence himself.

Lord Williams in the same letter went on to explain that a Detective Superintendent Bunn of the Metropolitan Police had considered the information on a preliminary basis. Detective Superintendent Bunn's view, communicated by the Attorney-General, was that pursuing the allegations made by INDICT in respect of Saddam Hussein and Tariq Aziz would have required "a considerable investment of investigative resources"; that there was no real likelihood of either Saddam Hussein or Tariq Aziz coming to the UK; and that without arrangements for satisfactory mutual legal assistance, a thorough police investigation was unlikely to be feasible.

Lord Williams copied his correspondence to the Foreign and Commonwealth Office.

I wrote again to Lord Williams, providing him with INDICT's evidence files.

It was then some considerable time before I heard back from the Attorney-General's with his decision on the evidence. During this period, the Attorney-General sought the advice of independent counsel outside of his office. I spent quite some time chasing the Attorney-General, at some points literally, before I received a reply.

Lord Williams wrote to me again on 22nd March 2001. His letter explained that after considering the file of evidence supplied by INDICT, and having considered the advice provided by Clare Montgomery QC, he had concluded that he should "at present" refuse his consent to the prosecution of Saddam Hussein and Tariq Aziz for the offence of hostage taking.

He explained that he had concluded in respect of Saddam Hussein that there was no realistic prospect of a conviction. That Saddam Hussein, as Head of State of Iraq, was entitled to assert immunity from criminal prosecution; and that he was anyway not satisfied that the evidence submitted to him was sufficient to provide a realistic prospect of a conviction.

He explained that in respect of Tariq Aziz, he was less clear on the question of immunity, but that in any case he was not satisfied that the evidence submitted to him was sufficient to provide a realistic prospect of a conviction.

Lord Williams concluded his letter by saying that "It does appear to me, however, that there is scope for further inquiries to be carried out. Therefore I consider it appropriate to report these matters to the police and to pass all the relevant material to them, inviting them to consider whether to start an investigation in respect of these matters or any of them. It will be for the police to come to their own conclusion about this."

There was then some further correspondence with Lord Williams, with the Metropolitan Police, and then with Lord Goldsmith, who succeeded Lord Williams as Attorney-General in June 2001. Members of INDICT met with the Metropolitan Police, and I met with Lord Goldsmith in the summer of 2001, shortly after his appointment to the role of Attorney-General. It was clear during this period that there was ongoing contact and discussion between the Metropolitan Police and the office of the Attorney-General.

On 2nd December 2001, Lord Goldsmith wrote to me to say that, after carrying out some investigations, the Metropolitan Police Anti-Terrorist Squad had sent some further material to the office of the Attorney-General, but that this material had not changed the evidential position set out by Lord Williams. That is, that in the view of Lord Goldsmith, there was still insufficient evidence for him to grant his consent to a prosecution of Saddam Hussein or Tariq Aziz in the UK. In that letter, Lord Goldsmith confirmed that the request for the police to continue with their investigation remained. However, he explained that in the aftermath of the 11th September 2001 terrorist attacks in New York, “the police are likely to have to take some tough decisions about operational priorities at this present time.”

Lord Goldsmith wrote to me again on 16th May 2002, in a letter which confirmed his final position on the question of indictments in the UK.

The first part of that letter concerned a legal case and a judgment of the International Court of Justice in the case of *Democratic Republic of Congo v Belgium*, which had taken place on 14th February 2002. This case had considered the question of head of state immunity and the judgment established that in respect of those members of a country’s government for which international travel is an essential element of their role – head of state, prime minister, foreign minister, perhaps defence minister – there would be an immunity from

prosecution whilst they remained in office. Lord Goldsmith concluded that, in addition to Saddam Hussein, who Lord Williams had considered would be immune from prosecution, Tariq Aziz would also be likely to benefit from immunity from prosecution whilst he remained in office.

The second part of Lord Goldsmith's letter provided an update and conclusion on the case from the Metropolitan Police. Alan Fry, Deputy Assistant Commissioner and National Co-ordinator for the Anti-Terrorist Branch, had advised Lord Goldsmith that the Metropolitan Police were "not in favour of embarking on a full-scale investigation, with the significant cost and resource implications for the Metropolitan Police Service," and that "the Anti-Terrorist Branch would regard such an investigation as low on its list of priorities and would prefer to have that position made clear."

Lord Goldsmith concluded that:

"The ICJ's judgment makes the prospects of bringing any criminal proceedings against either Saddam Hussein or Tariq Aziz in this jurisdiction so remote that, facing practical realities, there seem to me to be no grounds for arguing that Mr Fry's position is unreasonable."

"I have considered whether it would be right to encourage the police at least to take steps to preserve any evidence that may otherwise be lost, against the possibility that an investigation might become justified at some future date; but I do not consider that there is a strong enough case for doing this."

Conclusion on the Attorney-General's role

It is my view that the evidence compiled by INDICT, supplied to Lord Williams and which was available to Lord Goldsmith, so clearly established the case against Saddam Hussein and Tariq Aziz, that I do not understand why the two Attorneys-General reached the conclusion they did. Neither do I understand why they declined to meet Clare Montgomery QC to discuss the case, a practice I understand regularly occurs in such cases.

I feel that to have passed the case to the Metropolitan Police to investigate merely represented an attempt to 'kick it into the long grass.' I told the Attorney-General that at the time. At the level at which it was passed to the Metropolitan Police, to a Detective Superintendent, and without any clear backing for the principle of prosecutions from the Attorney-General, it was unlikely that any investigations conducted by the Metropolitan Police were going to result in a case to prosecute.

The evidence was there. Statements and documents compiled up to the criminal standard of evidence for UK courts. If there had been the political will, prosecutions could have been a reality in the UK.

Conclusion

I believe that the indictment of Saddam, and leading members of his regime, was a missed opportunity to bring pressure on Saddam and leading members of his regime to account for their human rights record. Indictments would have sent a clear message to the leadership of the regime, that they stood accused of the most serious crimes by the international community. It would have been part of a process that would have stripped the regime in Iraq of the international credibility it craved right up to its demise. The evidence of the crimes that it committed against its own citizens would have been there for all to see. Indictments would have signalled that if Iraq wanted to be part of the international community again, these individuals would have to stand trial.

Alongside indictments, smarter sanctions, properly enforced by the UN, could have been used to exert the kind of pressure that may have ultimately been sufficient to force Saddam from power. Those sanctions needed to be better targeted at the leading members of Saddam's regime and the Republican Guard, who were sustained through illicit oil sales, with improved exemptions to avoid the suffering of the Iraqi people, better administered by the UN, and better enforced by the UN so that the regime could not avoid the impact of sanctions through smuggling and other abuses. Indictments and better enforced sanctions could have successfully brought about an end to Saddam's regime. As such, this twin-track approach represented an alternative to war.

These arguments summarise the comments that I have made in this memorandum to the Committee. Clearly they have implications for my ultimate support for the war.

I had not wanted to see another war in Iraq. The people of Iraq had already suffered from almost continuous conflict since Saddam had assumed his rule. The war with Iran, that cost a million lives, was followed by the Anfal campaign in Iraqi Kurdistan, and then the invasion of Kuwait was followed by the bloody repression of uprisings in the south and north of the country. The 1990s continued with savage punishment meted out to anyone who threatened the regime.

When I visited Iraqi Kurdistan in the weeks before the conflict in 2003, I was told of the credible intelligence they had received there of plans to attack them with chemical weapons. In the local markets disposable nappies were being sold as makeshift gas masks, as people feared a gas attack. People were already leaving the towns for the safety of the countryside. The Iraqis I spoke to told me that there could be no peace while Saddam was still in power and that they could see no other way of being rid of him than through foreign intervention.

My support for military intervention in Iraq was based upon humanitarian concerns. I was persuaded that we had reached the point where the only way that the Iraqi people could be free of the brutal oppression of Saddam's regime was for him to be removed through the military action of the UK, the US and our allies.

I witnessed, first-hand, the difficulties faced in the Iraq that emerged after 2003. But through all those difficulties, the very many Iraqis whom I know, and that I regard as my friends, never stopped being grateful for the fact that they were free of Saddam.

Removing Saddam was the right thing to do. I held that opinion in 2003 and I hold that opinion today.

Annex

List of INDICT Targets

Saddam Hussein

President; Chairman of the Revolutionary Command Council; Prime Minister, Commander in Chief Iraqi Armed Forces.

Uday Saddam Hussein

Saddam's eldest son. Commander of Saddam's Fedayeen forces. President of Iraqi National Olympic Committee.

Qusay Saddam Hussein

Saddam's second son. Head of the Republican Guard. Has overall responsibility for Saddam's security organisations.

Barzan Ibrahim Hasan al-Tikriti

Saddam's half brother. Former head of Iraqi foreign intelligence (Mukhabarat) and former representative to the UN. Adviser to the President with Cabinet rank.

Sab'awi Ibrahim Hasan al-Tikriti

Saddam's half brother. Former Director of Intelligence and the General Security Directorate.

Watban Ibrahim Hasan al-Tikriti

Saddam's half brother. Former Minister of Interior and Advisor to the President.

Ali Hasan al-Majid

Saddam's cousin. De facto governor of Kuwait during the occupation. Senior commander during the Anfal campaign. Known as "Chemical Ali" after subsequent use of chemical weapons.

Tariq Aziz

Deputy Prime Minister.

Taha Yasin Ramadan

Vice-President. Deputy Prime Minister. Commander of the Popular Army. Member of the Revolutionary Command Council.

Izzat Ibrahim al-Douri

Vice Chairman of the Revolutionary Command Council.

Mohammed Hamza al-Zubaidi

Former head of Northern Bureau of the Ba'ath Party.

Aziz Salih al-Numan

Former governor of occupied Kuwait and commander of Popular Army in Kuwait.