

The Long Shadow of Iraq

The Davids and Chilcot Committees

Giles Scott-Smith

Iraq may now be in the past in terms of both Dutch and British military involvement, but in 2010 its legacy has continued to rumble on in the politics of these two countries. While the Davids committee caused considerable upheaval within the space of 10 months, the Chilcot committee, assembled in July 2009, is not expected to report until early 2011. Nevertheless, the British inquiry has already produced some unique political theatre with real impact. The approach and the outcome of the two investigative committees are compared here to see how the Iraq episode has had an impact in the political environment of both nations.

1. Truth and Reconciliation

Charles Moore recently remarked in the *Spectator* that the Chilcot inquiry in Britain is functioning as a sort of post-apartheid 'truth and reconciliation' committee. Most of the material has been in the public domain for several years, thanks to the earlier Hutton and Butler reports paving the way. The Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly (Hutton) was presented in January 2004 and covered the alleged political manipulation of evidence on Iraqi weapons of mass destruction (WMD) capabilities to support the case for war.¹ The broader follow-up, the Review of Intelligence on Weapons of Mass Destruction (Butler) presented in July 2004, is a comprehensive overview of the threat posed by Iraq in the context of nuclear proliferation, terrorism, and other 'countries of concern' (Iran, North Korea, Libya, Pakistan).² What is more, Sir John Chilcot was a member of the Butler committee, so he's been here before. But the reason for Moore's remark is that the Chilcot hearings are public, for all to see.³ The Iraq trauma can finally be assessed out in the open. And Chilcot's remit is to cover the entire period from summer 2001 to July 2009 – more or less the entire maneuvering towards war, through the chaos of the aftermath and the insurgency, to the announced withdrawal of British troops from Basra.

How does the Davids report compare with what has taken place in Britain? Firstly, it is difficult to see the Dutch experience as one of 'truth and reconciliation'. It could have functioned in this way, considering the fact that Dutch military involvement ended in March 2005 with the withdrawal of the 1,100-strong contingent from the Iraq Stabilisation Force. That is long enough ago to allow for some reflection. It could have functioned in this way as well had it been granted the opportunity for public hearings, bringing everything out into the open. But an Iraq inquiry has always been a highly contentious issue, part of the unresolved running battle between the PvdA (social democrats) and the CDA (Christian democrats) since 2003. The integrity of the CDA and in particular Balkenende himself was at stake, and this was emphasized by the Minister President's stubborn refusal to allow any kind of inquiry to take place.

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RAPPORT

COMMISSIE VAN
ONDERZOEK
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A strange contrast is apparent. In the British case it has the feel of reevaluating history and of a genuine attempt to involve the country in the process. The appearance of Tony Blair before the inquiry on 29 January was riveting, not because of any repentance or admittance of wrongdoing on his part, but because he exactly held fast to his convictions and faced down his critics. "He believed every word he said," declared the *Daily Telegraph*, not known as a friend of the Labour party. In contrast, the Davids committee were given too little time to conduct an investigation that took place entirely behind closed doors. Then when the results were presented two and a half months later than intended, they triggered not so much a laying to rest of the past as a major cabinet fall-out. Blair could visit the inquiry as a statesman who has left the perils of British politics behind; Balkenende remains the only current Western leader who was in power at the time of the Iraq invasion. In these circumstances the space for reconciliation was narrowed, but it could still have been grasped if he had chosen to do so. He could have attempted the move of Blair and demonstrated the courage of his convictions. Instead, in his rapid response to the report on 12 January, he questioned the merit of the inquiry itself. If there was a moment that effectively buried any hope of reconciliation, it was this. More than anything, this triggered the painful factional struggle within the cabinet then continued all the way through to the official response by letter to parliament on 9 February. By then it was only about saving face.

2. The Machinery of Government

While Tony Blair's evidence to the Chilcot inquiry was fascinating, he was trumped by an even more remarkable performance three days later. Claire Short, the former Development Minister who resigned over Iraq in May 2003, gave evidence to the inquiry on 2 February 2010. She gave a devastating picture of Blair's "presidential" style of government, involving the side-lining of the cabinet and the deliberate misuse of intelligence. From the summer of 2002 onwards "there was never a meeting [...] that said 'what's the problem, what are we trying to achieve, what are our military and diplomatic options,' we never had that coherent discussion of what the problem was and what it is the government is trying to achieve, and what our bottom lines were, never." Short continued: "The machinery of government is unsafe [in general] [...] In the case of Iraq there was secrecy and deception on top of that."

Short has already written about her time in Blair's cabinet in her book *An Honourable Deception?*, but once again it was the sight of her giving evidence in this manner that was so more captivating than reading a book.⁴ It was almost as if Blair and Short were going head-to-head, each one offering a totally different account of reality, and not just for posterity but for the good of the nation as a whole. Blair showed his messianic belief in the need to remove dictators and the need for regime change, determined in his conviction that if necessary he would do the same again. Kosovo was the first example of how to use military superiority for humanitarian ends, and Iraq was a justifiable follow-up. For Short this was yet more proof of Blair's unstoppable conceit. How can you maintain such conviction when it rests on falsity and deliberate deception?

Did Davids come close to producing a similar dispute? There has certainly been no head-to-head debate comparable to the Blair-Short disagreement, and in many ways that is a great loss. An open discussion between members of the actual cabinet at the time would have been a valuable follow-up to the report. But this is of course wishful thinking. Balkenende I had already fallen by mid-October 2002, after only three months. From then until May 2003 it operated as a 'demissionair' cabinet, holding the nation together during the elections and their aftermath. In these circumstances it does make sense that an extra effort was made to maintain a solid line in foreign policy, so that the disruptiveness of the LPF (Pim Fortuyn party) period did not affect the Netherlands' international position. It is difficult to imagine that ministers Heinsbroek or Bomhof had anything to do with Iraq in 2002, and even more difficult to imagine that they would have anything worthwhile to say on the matter now.

This brings us to the infamous "Atlantic reflex," or as the Davids report states, "[i]n the period examined by the Committee, the



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'Atlantic reflex' prevailed over a Eurocentric response."⁵ The reflex in the Dutch context was traced by the Committee to a meeting of the top levels of the Ministry of Foreign Affairs on 9 August 2002 where the essential stance of the Netherlands to stand by the U.S. was spelled out. From then on, policy was guided by Foreign Minister de Hoop Scheffer with able support from his civil servants to ensure no obstacles came in the way. And obstacles did appear – from within his own ministry, in the shape of concerns from the legal department on the legality of the approaching war.

This internal disagreement from April 2003 only surfaced in the *NRC Handelsblad* in January 2009, almost six years afterwards, when it was clear that the Davids investigation was on the way. As the pencilled notes on the front indicate, the advice was never passed on to the Minister himself.⁶ Similarly, there was the leaking of an internal document by a member of the AIVD (the Netherlands General Intelligence and Security Service) to *de Telegraaf* journalist Jolande van der Graaf in March 2009. The document in question was a self-assessment of the Service's functioning during the Iraq episode, and the fact that it was leaked at that time indicates some serious internal unrest over the coming investigation.⁷ In other words, the coming of Davids did cause disquiet in some circles. After years of keeping things under wraps, people finally felt compelled to push contentious information into the public domain.

It was as if up to that point no-one really knew what the Iraq episode meant for Dutch foreign policy, and the Davids report suddenly hit home with unexpected force. Since 2003 only isolated journalists at the *NRC*, *Argos*, and *KRO's Reporter* had come out with comparable material, and it had been sporadic, partly rumour-driven, and unable to achieve much grip in the body politic. Now it was all out in the open as mainstream news. For once, the lid was taken off the thinking processes behind the orientation of Dutch foreign policy.

Of course, not everyone has been content with this process. Jaap de Hoop Scheffer's reaction to the Davids report in *de Volkskrant* on 13 February is an indication of this. Firstly, he denies that the report should be treated as the one and only truth. Supporting Balkenende's initial view that it represented an opinion, de Hoop Scheffer considers everything that it produced to be open for debate. Secondly, he denies that there is any reason to have a different opinion on the international law dimension. According to him, there is no new information that undermines the position taken in 2002-2003 (that Resolution 1441 provided sufficient foundation for an invasion). Thirdly, he finds the description of the infamous 45-minute meeting in August 2002 a "caricature." He claims to have explained the wider context to the committee, but "clearly they didn't believe me. A pity." Fourthly, he denies that Balkenende's leadership was inadequate and that the parliament was insufficiently informed. In short, all of the main points

emphasized by the report do not reflect the course of events as experienced by the main protagonist. Once again, the idea of Davids providing an open space for reconsidering the reasons for decisions taken in the past, and the ways in which they were taken, is shut down. Partisan interests predominate.

3. International Law

The most interesting aspect of the Atlantic reflex issue is its clash with the precepts of international law. In both the British and Dutch foreign ministries, the legal advisors' concerns over the lack of a sufficient mandate for war were ignored. While these concerns were kept within the Ministry of Foreign Affairs in the Netherlands, in Britain it went further. On 7 March 2003 the Attorney-General Lord Goldsmith gave advice to Tony Blair that declared a second UN resolution necessary to put the case for war beyond doubt.

Remarkably, on 17 March 2003 Goldsmith u-turned and declared to the House of Lords that existing UN resolutions from the time of the first Gulf War were sufficient. Much has been made of why Goldsmith seemed to change his mind in those intervening 10 days, considering the fact that the leader of the UN weapons inspectors, Hans Blix, reported three times to the Security Council in February and March that moves towards Iraqi disarmament were taking place. Elizabeth Wilmschurst, deputy legal advisor at the Foreign Office, resigned after the 17 March declaration because she felt the Attorney-General was mistaken in his belief that a mandate for war already existed. Considering the demands on the civil service to be above politics, this was a principled decision based on deep disquiet as to the direction UK foreign policy was taking.

This dispute has been thoroughly aired at the Chilcot inquiry. Sir Jeremy Greenstock, UK Ambassador to the UN, declared to the Chilcot inquiry that the invasion was "legal but of questionable legitimacy." Greenstock also stated that the agreements made between U.S. President Bush and Blair at their meeting in April 2002, and the determination of Washington to push on with war whatever happened at the UN, definitely undermined his attempts to secure a second resolution in early 2003.⁸ In January 2010 both Wilmschurst and her former superior at the Foreign Office, Sir Michael Wood (senior legal advisor 2001-2006) gave further damning evidence. Wood, who had not spoken publicly since he left the

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Foreign Office, told the inquiry: "I considered that the use of force against Iraq in March 2003 was contrary to international law." In a January 2003 letter to then Foreign Minister Jack Straw, Sir Michael told him that "without extraordinary circumstances" the UK could "not lawfully use force against Iraq."

It has been a painful process to relive this, but all the more valuable for that reason. Prime Minister Gordon Brown, appearing before the inquiry on 5 March, emphasized the need for collective action against 'rogue states' such as Iraq – but he began his testimony with a sincere word for the loss of life amongst British military personnel (although not Iraqi civilians). Chilcot does not rewrite history, but so far it has shone a vivid spotlight on the different motives behind British policy, and the clashes this involved.

In the Netherlands it has been quite different. Firstly, the consequences would hit home far more if the officials from Legal Affairs in the Foreign Affairs Ministry had given their evidence in front of the cameras instead of through a leaked document. Davids could then not be dismissed as a partial or distorted truth. But it goes further than that. The Netherlands is a nation that places international law and human rights at the forefront of its foreign policy. The maintenance of an ordered, normative international system stands paramount. Yet the Iraq affair exposed the fact that this is not as sacred a cow as we are led to believe.

In an article in the *NRC* in February Leiden Professor of International Relations Fred van Staden rightly questioned the limitations inherent in international law. He criticised how international law is always a political football kicked around within the UN Security Council. Votes are 'bought', and there is never a pure process of decision. He then raised the 'what if' questions: What if the invasion had gone well? What if the second resolution justifying an invasion had been passed, but the aftermath of the invasion had still gone badly?

Van Staden is of course right that it is hardly a perfect system, and it is wide open to abuse. But this raises two key points not addressed in the article. If by implication the UN Security Council is a political game-show, does that reduce *all* of its resolutions to nothing more than a sordid business of vote-trading? And if this faulty adjudicator of international security issues is all we have, should we not be moving towards some kind of more effective system to replace it?

Van Staden mentions the NATO bombing of Kosovo/Serbia in 1999, also without a UN resolution, as a crucial precedent for the Iraq escapade. It showed that humanitarian militarism can be pursued outside of the UN, forcing the institution to change accordingly. But while the Kosovo war was carried out by NATO in the context of its security role in the North Atlantic area, the U.S.-UK drive on Iraq actually *undermined* NATO, splitting it down the middle between

pro ('coalition of the willing') and anti ("cheese-eating surrender monkeys," as *The Sun* memorably called them) factions. Is this leading to a new system of international law no longer based solely on UN resolutions? Van Staden does not go this far in his article, but he seems to be pointing in that direction. This is of course leading towards some kind of 'Community' or 'Council of Democracies' to provide a new form of legitimacy and effective action outside of the now-defunct (always defunct?) UN, which is crippled by the nationalist-authoritarian designs of Russia and China (and the anti-Americanism of the French). It will be interesting to see to what extent the forthcoming NATO strategic concept backs this idea.

The combination of WMD, rogue states, and terrorism is a potentially catastrophic 21st century combination that does demand a re-appraisal of the 'national self-defence' principal. The mechanisms to deal with this are highly controversial (pre-emption) and still in flux. But the main issue at hand here is that Iraq was not the ideal testing ground for launching a new platform for international law and international security. Saying that the existing apparatus of international law is inadequate (already an interesting claim in a country that bases its identity on upholding it) conveniently avoids the whole issue of how and why intelligence was totally distorted by politicians in order to convince others that the Iraq threat was much bigger than it actually was. Aside from the U.S.-UK examples which were crucial in forcing the issue, the Davids report has been crystal clear on this point for the Netherlands as well. The views of the intelligence services were ignored and bypassed by the political leadership – and the top ranks of Algemene Zaken (the Ministry of General Affairs) – because they did not fit the demand that Iraq be an obvious imminent threat. Both the Dutch and the British inquiries have seen plenty of spleen being vented by intelligence personnel who felt their opinions on the defence of the realm were being swept aside for highly dubious reasons.

This surely is the most immediate issue at stake. No, foreign policy should not be decided solely by international law. But 'Iraq' provides no credible example for a new form of international legitimacy. On the contrary, it shows us a totally corrupt one. Was that the example of U.S. power and alliance loyalty that should gain Dutch allegiance, at the expense of international law? Chilcot gave us another opportunity to hear Blair's determination to shape a just world, and it did, even now, sound as powerful as ever.

In Britain the Iraq trauma can finally be assessed out in the open

There was no such echo in the Netherlands. The existing resolutions were deemed adequate because the overriding concern was to maintain alliance cohesion.

Conclusion

There is more that can be said here. The issue of Host Nation Support, for instance, which stretched the limits of 'political not military support' and indicates the structural power of intra-alliance agreements (and which the Davids report covered on pages 380-386). But some conclusions can already be drawn.

The Chilcot inquiry is the final phase in a long-running saga of investigation and condemnation surrounding the British experience, a real exercise in 'truth and reconciliation' between politicians and public, politicians and civil servants, and politicians themselves. The Davids report, conducted in private, could never match this. But given its more limited means, it was still able to open up a space for reconsidering the merits of Dutch foreign policy, its attitude towards the transatlantic relationship and NATO, and its orientation towards potentially serious threats to international security. I use the word 'reconsidering' here in the most positive sense of self-reflection. Unfortunately this opportunity has largely been rejected by the politicians and most commentators. This is a missed chance. It is to be hoped that in the longer run the issues it raised can be kept alive by those genuinely interested in its important implications for the future.

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1. See www.the-hutton-inquiry.org.uk/content/report/index.htm.
2. www.archive2.official-documents.co.uk/document/deps/hc/hc898/898.pdf.
3. www.iraqinquiry.org.uk.
4. Claire Short, *An Honourable Deception? New Labour, Iraq, and the Misuse of Power* (New York: Free Press, 2004).
5. *Rapport Commissie van Onderzoek Besluitvorming Irak* (Amsterdam: Boom, 2010), p. 530.
6. See www.nrc.nl/binnenland/article2122905.ece/Buitenlandse_Zaken_hield_kritisch_Irak-advies_achter.
7. www.telegraaf.nl/binnenland/3585495/_AIVD_faalde_rond_Irak_.html. I have discussed this episode – and the whole Davids affair – in my blog, www.thehollandbureau.com.
8. 'Iraq Invasion Was of Questionable Legitimacy, Says British Diplomat', *The Guardian*, 27 November 2009.