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CCLPS.

10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

DEFENCE COMMITTEE: WESTLAND PLC

I showed the Prime Minister your minutes of 19 and 23 September about the Government's responses to the Defence Committee's Third and Fourth Reports.

Subject to the views of other Ministers, the Prime Minister agrees that the Government's responses to these two Reports should be published together as a single document, in a Command Paper. She agrees, too, that the response should be published in the week beginning 13 October with a view to a debate during the two weeks beginning 20 October. The Business Managers will, of course, need to confirm the acceptability of these arrangements.

On the drafts of the Government's responses, the Prime Minister is content with the draft response attached to your minute of 19 September to the Defence Committee's Third Report ("The Defence Implications of the Future of Westland plc"), provided that the other Departments concerned (principally the Ministry of Defence and the Department of Trade and Industry) are content too.

As to the response to the Fourth Report ("Westland plc: the Government's Decision-making"), the Prime Minister prefers the shorter version attached to your minute of 23 September, though she fully takes your point that we have to beware of making this response so perfunctory that it stimulates rather than avoids further probing. The Prime Minister therefore wonders whether the draft might not be filled out by the inclusion of non-controversial material which will not run any risk of stimulating controversy or further questions. To that end, she suggests that the response should quote in full wherever possible, either in reported speech or verbatim as appropriate, the references mentioned in the Report. She has in mind, in particular, the Attorney General's answer of 24 July referred to in paragraph 3 of the draft, paragraphs 36-42 from the Seventh Report of the TCSC Committee and her and the Minister of State, Privy Council Office's statements of 24 and 25 July respectively which are referred to in paragraph 5 of the draft. The Prime Minister thinks, too,

BM

that the draft could benefit by splitting some of the longer paragraphs (e.g. paragraphs 5, 8 and 9) into two or more paragraphs.

The Prime Minister's detailed comments on the draft response attached to your minute of 23 September are as follows:

(i) Paragraph 1: Amend the last sentence to read: "The Government stands by those accounts, sees no need to qualify or add to them, nor any point in repeating yet again the sequence of events and decisions covered by the Report."

(ii) Paragraph 5: Omit the words "....for which they are answerable directly to the Prime Minister" at the end of the third sentence.

(iii) Paragraph 6: Amend the fifth sentence to read: "But it remains the Government's view that, having regard to all the circumstances, disciplinary proceedings were not called for."

(iv) Paragraph 7: The fifth sentence (beginning "This does not mean ..."), the sixth sentence (beginning "Nor does the fact ...") and the eighth sentence (beginning "His personal position ...") should be omitted. As for the earlier part of this paragraph, the Prime Minister wonders whether it is not preferable to use the formulation which you had originally proposed in paragraph 15 of the draft attached to your minute of 19 September (though omitting "all" in the third line, and substituting "they" for "Ministers" in the seventh line).

BF Could I suggest that you now should amend the drafts in the light of these and other comments, and let the Prime Minister have a further combined version of the two responses.

I am sending copies of this minute to the Private Secretaries to the Lord President, the Secretaries of State for Defence and for Trade and Industry, the Attorney General, the Chief Whip and the Minister of State, Privy Council Office.

N.L.W.

N. L. Wicks

24 September 1986

B

Ref. A086/2648

MR WICKS

Defence Committee: Westland plc

with NLW?

Further to my submissions of 19 September and 23 September (Refs A086/2614 and 2634) there is one other procedural question which Ministers will need to consider: in whose name the White Papers containing the responses are presented to Parliament.

2. If the two responses are presented as separate documents, the response to the Third Report should in my view be presented by the Secretary of State for Defence. The response to the Fourth Report could then be presented either by the Prime Minister on her own or by the Prime Minister and the Secretary of State for Trade and Industry together.

3. If the two responses are presented as a single document, it could be presented by the Prime Minister and the two Secretaries of State jointly; but it is arguable that, since it would be the response to the Defence Committee's Reports, it should be presented by the Secretary of State for Defence on his own.

4. Apart from the political significance of this choice, it has some practical implications: the choice of presenting Minister or Ministers will determine which Department handles the publication arrangements.

5. I am sending copies of this minute to the Private Secretaries to the Lord President, the Secretary of State for Defence, the Secretary of State for Trade and Industry, the Lord Privy Seal, the Attorney General, the Chief Whip and the Minister of State, Privy Council Office.

RA

ROBERT ARMSTRONG

23 September 1986

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PRIME MINISTER

cc Mr. Ingham

Mr. Powell

DEFENCE COMMITTEE: WESTLAND PLC

Sir Robert Armstrong, in his minute at Flag A, suggests the tactics for handling the Government's response to the Defence Committee's two Westland reports. He suggests, and I agree:

(i) They should be published together as a single document, in a Cmnd paper. (At 'X').

(ii) The response should be published in the week beginning 13 October with a view to a debate during the two weeks 20 October. (At 'Y').

Do you agree?

Subject to the views of Ministers, I think that the debate should be handled by the Secretaries of State for Defence and Trade and Industry, though your name may have to appear on the White Paper together with theirs (since Civil Service matters would be dealt with). Do you agree? Yes MT

I felt that Robert's original draft response to the Committee's 4th Report, on Government's decision-making, was too long as well as containing some hostages to fortune. Robert has therefore put forward an alternative, much shorter, draft. The shorter version, which I prefer, is at Flag B and the longer original at Flag C. Two points on the draft ~~of~~ at Flag B:

(i) Robert points out very fairly in his minute at Flag B that this shorter response (to a 240-paragraph and 68-page long report) may be regarded as so perfunctory that it stimulates rather than avoids further probing.

Certainly we do not want to annoy Parliament by appearing to brush off their Defence Committee's report. But nor do we want to publish material which will only stimulate further questioning. One possibility, which might harmlessly expand the length of our response, would be to quote in full some of the material from July's TCSC report on Civil Servants and Ministers, (eg. in paragraph 5 of the shorter draft response which simply refers to paragraphs 36-42 of the TCSC report). Agree to ask Robert to see whether the response can be increased in length in this way? The draft at Flag B would also benefit by splitting some of the longer paragraphs into two.

Yes

Yes

(ii) You will want to read the draft carefully. Most of it seems to be innocuous. But could I draw your attention to paragraph 7, especially to the passage x - x about the circumstances for ministerial resignations.

May we discuss

Please could we have any comments on the draft response at Flag B.

Flag D gives the draft of the response on the Committee's report on defence implications of the Westland affair (which would, of course, be combined into the response at Flag B if you agreed that the two responses should be published as one document). This draft looks to be innocuous and I do not think you need spend much time on it.

N.L.W.

N L WICKS
23 September 1986

SL2AIV

B

Ref. A086/2634

MR WICKS

Defence Committee: Westland plc

We discussed yesterday the possibility of a shorter response to the Defence Committee's Fourth Report than the draft attached to my submission of 19 September (a086/2614), so as to expose the least possible flank.

2. I attach a revised draft accordingly.

3. The only point I would wish to make at this stage is that I think that we have to beware of the opposite danger of making the response so perfunctory that it stimulates rather than avoids further probing.

4. I am sending copies of this minute and the revised draft to the Private Secretaries to the Lord President, the Secretary of State for Defence, the Secretary of State for Trade and Industry, the Lord Privy Seal, the Attorney General, the Chief Whip and the Minister of State, Privy Council Office.

RA

ROBERT ARMSTRONG

23 September 1986

SHORTER VERSION

DEFENCE COMMITTEE: FOURTH REPORT

Draft Government Response

Draft of 23 September 1986

The Fourth Report from the Defence Commmittee ("Westland plc: the Government's decision-making": HC 519, Session 1985-86) is concerned with the ways in which decisions about Westland plc were made by the Government. Full accounts of these matters have already been given by Ministers in statements in Parliament, speeches in debates and Answers to Parliamentary Questions, and by the Head of the Home Civil Service in his evidence to the Committee. The Government stands by those accounts, and sees no need to qualify or add to them and does not ~~propose to rehearse~~ in repeating yet again the sequence of events and decisions covered by the report.

2. The Committee made a number of comments on the inquiry into the circumstances in which the existence and part of the gist of the Solicitor General's letter of 6 January 1986 to the then Secretary of State for Defence came to be disclosed:

a. that the fact that the disclosure had been authorised by the then Secretary of State for Trade and Industry must have been known before the inquiry began to a number of people (paragraph 196);

b. that in undertaking the inquiry the Head of the Home Civil Service was inquiring into the conduct of someone whose direct Civil Service superior he was (paragraph 215);

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c. that the inquiry did not result in disciplinary proceedings against any of the officials involved (paragraph 213).

3. The Attorney General has made clear in answer to Parliamentary Question (HC Official Report, 24 July 1986, Written Answers) that, at the time when he advised that an inquiry should be instituted, he did not know by whom the disclosure had been made nor that it had been authorised. He also made clear that, although he had reason to believe when, some days after the inquiry was instituted, he agreed to an offer of immunity to the person concerned that the disclosure had been made by that official acting in complete good faith, he was not aware of the full circumstances.

Do we not quote the whole of the written reply?

4. The Head of the Home Civil Service had reason, before he began his investigations, to think that the disclosure had been made by an official who believed that due authority had been given for the disclosure. He did not, however, know at that time what that authority consisted of nor how it was conveyed or expressed. The view was taken - and the subsequent events suggest that it was reasonable for that view to be taken - that the formal inquiry should discover as fully as possible the circumstances in which the disclosure came to be made, and the accounts of those concerned of their parts in the affair, before findings were arrived at and reported.

5. The officials questioned in the inquiry, all of whom co-operated fully in it, were in the Department of Trade and Industry and the Prime Minister's office. The Head of the Home Civil Service is not the direct superior of officials in the Department of Trade and Industry. Nor is he the direct superior of those in the Prime Minister's office, save in the purely formal sense that the Prime Minister's office is treated for "pay and rations" purposes as part of the Cabinet Office (Management and Personnel Office), (in exactly the same way as

it has always been treated as part of the department of which the Head of the Home Civil Service has from time to time been the permanent head): he does not supervise the day-to-day work of members of the Prime Minister's office ~~for which they are answerable directly to the Prime Minister~~. The Head of the Home Civil Service did not, by virtue of the "dual role" under which the post of Head of the Home Civil Service is combined with that of Secretary of the Cabinet, face any problem that his predecessors as Head of the Home Civil Service would not have faced in a similar situation. The Government made observations on the question of the dual role in its response to the Seventh Report of the Treasury and Civil Service Committee (Cmnd 9841, paras 36 to 42), and sees no reason to take a different view of the matter in the light of the Fourth Report of the Defence Committee. The Government has already made clear to the House of Commons, in the Prime Minister's answers to questions on 24 July and in the speech by the Minister of State, Privy Council Office on 25 July, that it does not agree with the Committee's suggestion that the Head of the Home Civil Service failed to give a clear example and a lead in these matters. On the contrary, as the Minister of State said, his part in the matter demonstrated the exercise of leadership with great responsibility and integrity.

Quote

Quote.

6. The Committee say that they do not believe that the authority of the Secretary of State for Trade and Industry was sufficient to make public parts of a document which contained the advice of a Law Officer without the knowledge or permission of the Law Officer. As the Committee make clear, there is a rule that it is not permissible, save with the prior authority of the Law Officers, to disclose to anybody outside the United Kingdom Government service what advice the Law Officers have given in a particular question or whether they have given, or have been or may be asked to give, such advice. In this case the prior authority of the Law Officer concerned was not sought or given. The Prime Minister, the then Secretary of State for

Trade and Industry and the Head of the Home Civil Service have all expressed their regret that the Solicitor General's letter was disclosed in the way it was disclosed. But it remains the Government's view that in the circumstances it was entirely reasonable for those responsible to decide, having regard to all the circumstances, that disciplinary proceedings were not called for. The Government is satisfied that those concerned acted in good faith, believing that Ministerial authority had been given for what was done. As the Prime Minister said in the House of Commons on 24 July, the Government has total confidence in the officials referred to in the Committee's Report.

7. The Defence Committee's Fourth Report reverts, in its final paragraphs, to the matter of accountability. The basic principles on this matter are clear. Civil servants are responsible to Ministers for their actions and conduct. Each Minister is responsible to Parliament for the conduct of his Department, and accountable to Parliament; ~~in the sense that~~ he has a duty to give an account to Parliament of what is done by him in his capacity as a Minister or by his department. This does not mean that a Minister is bound to endorse the actions of his officials, whatever they may be, if he did not know of them and would have disapproved of them had he known of them. Nor does the fact that he is accountable mean that he has necessarily to accept a personal sanction. There is not and never has been a convention that a Minister is bound to resign in the event of any instance of wrongful action or misconduct of his department. His personal position is a matter of political judgment in all the circumstances.

May we discuss this

8. As the Government's response to the Seventh Report of the Treasury and Civil Service Committee suggested, these principles have implications for the relationship of Select Committees to Ministers and civil servants. Select Committees exercise their formal powers to inquire into the policies and actions of

Departments by virtue of the accountability of Ministers to Parliament. Civil servants who appear before them do so as representatives of, and subject to the instructions of, the Minister. The civil servant is accountable to his Minister for the evidence he gives to a Select Committee on his Minister's behalf. Under Standing Orders a Select Committee has the right to send for any person whom it chooses; but it does not, and in the Government's view should not attempt to, oblige a civil servant to answer a question or to disclose information which his Minister has instructed him not to answer or disclose, or which it is contrary to his duty of confidentiality to answer or disclose. If in giving evidence to a Select Committee a civil servant refuses to answer a question on the ground that his Minister has instructed him to do so, the Committee's recourse must in the end be to the Minister. Similarly, if a Select Committee is not satisfied with the manner in which or the extent to which the Minister's accountability has been discharged, the Committee should not insist upon calling on a civil servant to remedy the deficiency, and thus in effect to exercise an accountability to Parliament separate from and overriding his accountability to his Minister. As the Select Committee on Procedure stated in its First Report of 1977-78:

> "it would not, however, be appropriate for the House to seek directly or through its Committees to enforce its right to secure information from the Executive at a level below that of the Ministerial head of the department concerned, since such a practice would tend to undermine rather than strengthen the accountability of Ministers to the House".

9. The individual civil servant is accountable through his senior officers to his Minister, and if he has done amiss, it is to his Minister that he and his seniors are ultimately answerable. There are established means available - eg internal inquiry, disciplinary proceedings - whereby the Head of a

Department can bring an individual civil servant to account, and can penalise him if penalties are called for, with safeguards and rights of appeal as appropriate. The Government does not believe that a Select Committee is a suitable instrument for inquiring into or passing judgment upon the actions or conduct of an individual civil servant. As a witness the civil servant could be constrained in his answers by his instructions from or his accountability to his Minister or by his duty of confidentiality, and therefore unable to speak freely in his own defence. The fact that a Select Committee's proceedings are privileged does not absolve him from that duty. Particularly if politically controversial matters are involved, there is a risk that the process of questioning may be affected by political considerations. A Select Committee inquiry into the actions and conduct of an individual civil servant, conducted in public and protected by privilege, would give the civil servant concerned no safeguards and rights, though his reputation and even his career might be at risk. For these reasons the Government considers that Select Committees should not seek to extend their inquiries to cover the conduct of individual civil servants, and proposes to make it a standing instruction to civil servants giving evidence to Select Committees not to answer questions which are or appear to be directed to the conduct of themselves or of other named individual civil servants.

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cc CDP
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Ref. A086/2614

PRIME MINISTER

Defence Committee: Westland plc

On 24 July two reports by the Select Committee on Defence relating to Westland plc were published:

- the Third Report, relating to defence implications;

- the Fourth Report, relating to the Government's decision-making.

2. You answered questions about the Fourth Report in the House of Commons that afternoon (OR 24 July 1986, cols 587 to 590); and the Minister of State, Privy Council Office, responded to a debate on the adjournment on the same subject the following day (OR 25 July 1986, cols 858 to 862).

3. Draft Government responses to both reports have been prepared and are attached. Both have been prepared in consultation with the Departments principally concerned (the Cabinet Office, the Ministry of Defence, the Department of Trade and Industry, and (in the case of the response to the Fourth Report) the Law Officers' Department).

4. As to the response to the Fourth Report, the object has been to avoid going over the whole story again, and to minimise the number of comments on the Committee's judgments. But it seems necessary to deal with their criticisms relating to my inquiry and to the decision not to bring disciplinary proceedings; and with their observations on accountability.

RTAABZ

5. You will wish to consider both draft responses with your colleagues principally concerned, to whom I am sending copies of this minute and the drafts. Apart from questions of substance and drafting, there are a number of procedural and timing issues to be decided.

6. Ministers will wish to consider whether the responses should be published separately, or together as a single document. This is very much a matter of Parliamentary tactics, but I am inclined to think that, in the interests of confining any subsequent Parliamentary debate to a single day, they should be published together as a single document, in a Command paper.

7. As to timing, I have had some preliminary discussion with the Chief Whip. It seems inevitable that the publication of the responses will give rise to demands for a Parliamentary debate. It would be desirable to get the debate over during the spill-over, in the hope of getting the issue as far as possible behind us when the new Session begins (though I fear that the Select Committee on Trade and Industry will not complete their inquiry and submit their report until some time into the new Session). It would be prudent to defer publication until after the party conference season. This suggests that the response (or responses) should be published in the week beginning 13 October, with a view to a debate during the two weeks beginning 20 October.

/8.

RTAABZ

8. I am sending copies of this minute and the draft responses to the Lord President, the Secretary of State for Defence, the Secretary of State for Trade and Industry, the Attorney General, the Chief Whip and the Minister of State, Privy Council Office.

RTA

ROBERT ARMSTRONG

19 September 1986

RTAABZ

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LONGER VERSION

DEFENCE COMMITTEE: FOURTH REPORT

Draft Government Response

Draft of 19 September 1986

The Fourth Report from the Defence Commmittee ("Westland plc: the Government's decision-making": HC 519, Session 1985-86) is concerned with the ways in which decisions about Westland plc were made by the Government. Full accounts of these matters have already been given by Ministers in statements in Parliament, speeches in debates and Answers to Parliamentary Questions, and by the Head of the Home Civil Service in his evidence to the Committee. [The Government does not propose to rehearse yet again the sequence of events and decisions covered by the report.] The Government has, however, some comments to make on some of the Committee's judgments and conclusions.

2. In considering the record of events, and the Committee's comments upon it, it is necessary to emphasise the significance for the events described of a phenomenon upon which the Committee themselves remark. It was consistent with the policy of the Government that the possibility of a European option for the reconstruction of Westland plc should be explored, and, as the Committee recognise, there was good reason to suppose that, because of the involvement of other European governments with the relevant industries in their own countries, such a possibility could not be brought into being without some involvement of the British Government. But it was the Government's policy that the choice between options should be left to the commercial judgment of the company and its shareholders, and it was not consistent with that policy that a member of the Government should positively and publicly promote one option in preference to another. From about the middle of December 1985 one Secretary of State was pursuing a course which

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was increasingly out of line with the policy on which the Government as a whole was agreed. One of the difficulties at the time was to judge when exploring and bringing into being the possibility of a European option merged into the promotion of a European option in preference to the other option available. But there was during this period an increasingly sharply defined, and increasingly publicly apparent, difference of view within the Government which (once the policy of Government was authoritatively stated) put an increasing strain on collective responsibility, and from which sprang many of the tensions which coloured subsequent thoughts and actions.

3. The Committee comment critically on the inquiry into the circumstances in which the existence and part of the gist of the Solicitor General's letter of 6 January 1986 to the then Secretary of State for Defence came to be disclosed, on a number of grounds:

a. that the fact that the disclosure had been authorised by the then Secretary of State for Trade and Industry must have been known before the inquiry began to a number of people (paragraph 196);

b. that in undertaking the inquiry the Head of the Home Civil Service was inquiring into the conduct of someone whose direct Civil Service superior he was (paragraph 215);

c. that the inquiry did not result in disciplinary proceedings against any of the officials involved (paragraph 213).

4. The Attorney General has made clear in answer to Parliamentary Question (HC Official Report, 24 July 1986, Written Answers) that, at the time when he advised that an inquiry should be instituted, he did not know by whom the

disclosure had been made nor that it had been authorised. He also made clear that, although he had reason to believe when, some days after the inquiry was instituted, he agreed to an offer of immunity to the person concerned that the disclosure had been made by that official acting in complete good faith, he was not aware of the full circumstances.

5. The Head of the Home Civil Service had reason, before he began his investigations, to think that the disclosure had been made by an official who believed that due authority had been given for the disclosure. He did not, however, know at that time what that authority consisted of nor how it was conveyed or expressed. The view was taken - and the subsequent events suggest that it was reasonable for that view to be taken - that the formal inquiry should discover as fully as possible the circumstances in which the disclosure came to be made, and the accounts of those concerned of their parts in the affair, before findings were arrived at and reported.

6. The officials questioned in the inquiry were in the Department of Trade and Industry and the Prime Minister's office. The Head of the Home Civil Service is not the direct superior of officials in the Department of Trade and Industry. Nor is he the direct superior of those in the Prime Minister's office, save in the purely formal sense that the Prime Minister's office is treated for "pay and rations" purposes as part of the Cabinet Office (Management and Personnel Office), in exactly the same way as it has always been treated as part of the department of which the Head of the Home Civil Service has from time to time been the permanent head. He does not supervise the day-to-day work of members of the Prime Minister's office; they are answerable for that directly to the Prime Minister (in the case of the Private Secretaries through the Principal Private Secretary), though if any of them wished to consult a Permanent Secretary on some personal problem arising from the exercise of his duties, the official to whom he would

normally turn would be the Secretary of the Cabinet and Head of the Home Civil Service, as the Prime Minister's senior official adviser and the permanent head of the Department of which the Prime Minister's office is a part.

7. The Head of the Home Civil Service did not, by virtue of the "dual role" under which the post of Head of the Home Civil Service is combined with that of Secretary of the Cabinet, face any problem that his predecessors as Head of the Home Civil Service would not have faced in a similar situation. The Government made observations on the question of the dual role in its response to the Seventh Report of the Treasury and Civil Service Committee (Cmnd 9841, paras 36 to 42), and sees no reason to take a different view of the matter in the light of the Fourth Report of the Defence Committee.

8. The Government has already made clear to the House of Commons, in the Prime Minister's answers to questions on 24 July and in the speech by the Minister of State, Privy Council Office on 25 July, that it does not agree with the Committee's suggestion that the Head of the Home Civil Service failed to give a clear example and a lead in these matters. On the contrary, as the Minister of State said, his part in the matter demonstrated the exercise of leadership with great responsibility and integrity.

9. The Committee say (paragraph 173) that they do not believe that the authority of the Secretary of State was sufficient, or would be regarded by senior officials in key positions as sufficient, to make public parts of a document:

- which was classified;

- which did not originate in the Secretary of State's own department;

- which contained the advice of a Law Officer;

- which was to be disclosed without the knowledge or permission of the Law Officer.

10. The authority of a Secretary of State would be sufficient for the disclosure of a classified document originating in his Department, if classification was the only objection to disclosure. There is no written rule which forbids the disclosure by a Minister on his sole authority of a document not originating in his own department; but considerations of courtesy and of the maintenance of good relations between one Minister and his Department and another would suggest that in such circumstances the consent of the originating department (and if necessary its Minister) should be sought before disclosure. That was not done in this case.

11. As the Committee make clear, however, there is a rule that it is not permissible, save with the prior authority of the Law Officers, to disclose to anybody outside the United Kingdom Government service what advice the Law Officers have given in a particular question or whether they have given, or have been or may be asked to give, such advice. In this case the prior authority of the Law Officer concerned was not sought or given. The then Secretary of State for Trade and Industry did not instruct his officials to seek that authority, or make his own authority conditional upon the Solicitor General's agreement; and none of the officials concerned sought to look behind the Secretary of State's authority, in the sense that, though some of them had reservations on the point, none of them sought to discover whether the Solicitor General's authority had been obtained, or suggest that it should be, before the disclosure was made.

12. The Prime Minister, the then Secretary of State for Trade and Industry and the Head of the Home Civil Service have all expressed their regret that the Solicitor General's letter was disclosed in the way it was disclosed. But it remains the Government's view that in the circumstances it was entirely reasonable for those responsible to decide, having regard to all the circumstances, that disciplinary proceedings were not called for.

13. As the Committee note, the then Secretary of State for Trade and Industry made clear to the House of Commons on 27 January (Official Report, 27 January 1986, Col 671) that officials in his Department acted at all times in accordance with his wishes and instructions, that what they did was with his full authority, that they were not to be blamed, and that he accepted full responsibility for the fact and form of the disclosure. The Prime Minister told the House of Commons on 23 January and 27 January (Official Report, 23 January 1986, col 450, and 27 January 1986, col 655) that, when officials in her office were consulted, they were told that the then Secretary of State had authorised the disclosure; and that, though they did not seek her agreement and did not believe that they were being asked to give her authority, they considered - and were right to consider - that she would agree with the then Secretary of State for Trade and Industry that the fact that the then Secretary of State for Defence's letter of 3 January was thought by the Solicitor General to contain material inaccuracies should become public knowledge as soon as possible, and before Sir John Cuckney's press conference on the afternoon of 6 January, and they accepted, in view of the urgency of the matter, the means by which it was proposed the disclosure should be made. The Government is satisfied that those concerned acted in good faith, believing that Ministerial authority had been given for what was done. As the Prime Minister said in the House of Commons on 24 July, the Government has total confidence in the officials referred to in the Committee's Report.

14. The Defence Committee's Fourth Report reverts, in its final paragraphs, to the matter of accountability.

15. The basic principles on this matter are clear:

- Each Minister is responsible to Parliament for the conduct of his Department, and for all the actions carried out by his Department in pursuit of Government policies or in the discharge of responsibilities laid upon him by Parliament.

- They ~~Ministers~~ are accountable to Parliament, in the sense that it is their responsibility to explain in Parliament the exercise of their powers and duties and the policies and actions of their departments.

- Civil servants are accountable to their Ministers for their actions and conduct.

16. As the Government's response to the Seventh Report of the Treasury and Civil Service Committee suggested, this has implications for the relationship of Select Committees to Ministers and civil servants. Select Committees exercise their formal powers to inquire into the policies and actions of Departments by virtue of the accountability of Ministers to Parliament, as the conventions and practices which they follow demonstrate. Civil servants who appear before them do so as representatives of, and subject to the instructions of, the Minister. The civil servant is accountable to his Minister for the evidence he gives to a Select Committee on his Minister's behalf. A Select Committee is given by Standing Orders the right to send for any person whom it chooses; but it does not, and should not attempt to, oblige a civil servant to answer a question or to disclose information which his Minister has instructed him not to answer or disclose, or which it is contrary to his duty of confidentiality to answer or disclose.

If in giving evidence to a Select Committee a civil servant refuses to answer a question on the ground that his Minister has instructed him to do so, the Committee's recourse must in the end be to the Minister. As the Procedure Committee stated in its First Report of 1977-78:

> "it would not, however, be appropriate for the House to seek directly or through its Committees to enforce its right to secure information from the Executive at a level below that of the Ministerial head of the department concerned, since such a practice would tend to undermine rather than strengthen the accountability of Ministers to the House".

17. Similarly, if a Select Committee is not satisfied with the manner in which or the extent to which the Minister's accountability has been discharged, the Committee should not insist upon calling on a civil servant to remedy the deficiency, and thus in effect to exercise an accountability to Parliament separate from and overriding his accountability to his Minister. The Select Committee's remedy against the Minister lies in other means - in the last resort, if it remains dissatisfied, in its ability to report its dissatisfaction to the House.

18. The individual civil servant is accountable through his senior officers to his Minister, and if he has done amiss, it is to his Minister that he and his seniors are ultimately answerable. There are established means available - eg internal inquiry, disciplinary proceedings - whereby the Head of a Department can bring an individual civil servant to account, and can penalise him if penalties are called for, with safeguards and rights of appeal as appropriate.

19. The Select Committee is an apt instrument for inquiring into the policies and actions of a Minister and the Department for which he is responsible, but the Government does not believe

that it is a suitable instrument for inquiring into or passing judgment upon the actions or conduct of an individual civil servant. As a witness he could be constrained in his answers by his instructions from or his accountability to his Minister or by his duty of confidentiality, and therefore unable to speak freely in his own defence. The fact that a Select Committee's proceedings are privileged does not absolve him from that duty, or form the risks of breaking it. Particularly if politically controversial matters are involved, there is a risk that the process of questioning may be distorted by the temptation to look for opportunities of making political capital out of the inquiry. A Select Committee inquiry into the actions and conduct of an individual civil servant, conducted in public and protected by privilege, would give the civil servant concerned no safeguards and rights, though his reputation and even his career might be at risk. For these reasons the Government considers that Select Committees should not seek to extend their inquiries to cover the conduct of individual civil servants, and proposes to make it a standing instruction to civil servants giving evidence to Select Committees not to answer questions which are or appear to be directed to the conduct of themselves or of other named individual civil servants.

20. The accountability of Ministers to Parliament means just that: that the Minister has a duty to give an account to Parliament of what is done by him in his capacity as a Minister or by his department. This does not mean that a Minister is bound to endorse the actions of his officials, whatever they may be, if he did not know of them and would have disapproved of them had he known of them. Nor does the fact that he is accountable mean that he has necessarily to accept a personal sanction. There is not and never has been a convention that a Minister is bound to resign in the event of any instance of wrongful action or misconduct of his department. If something has gone wrong in his department, he remains constitutionally responsible to Parliament, and he is accountable to Parliament

in the sense that it is his duty to give Parliament an account of what has gone wrong, and of what has been done or will be done to deal with and put right (so far as possible) what has gone wrong and to prevent it from happening again. What his personal position then is - whether he should resign or not - is a matter of political judgment in all the circumstances, of whether he retains the confidence of the Prime Minister and his other colleagues in the Government, of his backbench colleagues in his Parliamentary party, and of the House of Commons as expressed in a vote on a motion of censure, if it comes to that.

AEROSPACE : Westland : PES.

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DEFENCE COMMITTEE: THIRD REPORT

Draft Government Response

Draft of 19 September 1986

The Third Report from the Defence Committee ("The Defence Implications of the Future of Westland plc": HC518, Session 1985-86) was published on 24 July 1986. The Government welcomes this report on a matter of considerable public concern, and notes with interest the discussion of the various issues raised and the Committee's views on a number of points. These are the subject of more detailed comments in the following paragraphs.

THE DEVELOPMENT OF THE MILITARY HELICOPTER

Future Developments (paragraphs 30-32)

2. The Government shares the Committee's view of the growing importance of helicopters in the land battle. Their inherent flexibility and mobility when allied to improving anti-armour weapons is likely to secure them a growing role in anti-armour operations, and the advent of systems to allow more comprehensive use at night and in bad weather will enhance their utility in all roles. Like any system, however, helicopters have their limitations and due regard will continue to need to be given both to the threats to their operations (which may be expected to grow in the battle area, not least in response to their own effectiveness) and to competing systems in each role for their relative cost effectiveness.

Helicopters in service with British forces (paragraphs 33-40)

3. The Government agrees generally with the Committee's analysis, but considers that the "sacrifice of quantity"

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referred to in paragraph 36 should not be exaggerated. The current holding is 867 helicopters (excluding the 60 or so referred to in the Committee's report as awaiting disposal or beyond economic repair) as against 940 in 1975.

4. The Government notes the Committee's reference (paragraph 37) to replacement of current helicopter types. The EH101 is, as the Committee says, planned to replace the ASW Sea King (in this case, Sea King V/VI). It is, however, the Sea King IV which is already replacing the Wessex 5 in the Commando role.

Future British Requirements (paragraphs 41-75)

5. The Government notes the Committee's support for the idea of equipping EH101 with the Sea Eagle anti-ship missile (paragraph 46) and will bear this in mind in future consideration of the possibility. It remains to be seen, however, whether such an enhancement of capability is feasible and can be afforded.

6. As regards support helicopters, the Government agrees that the options for the future are much as the Committee have described them in paragraph 71, though for the sake of completeness it could have been added that additional medium lift capacity could be obtained by purchasing additional Chinooks instead of additional EH101s (paragraph 71(c)). It follows from the Committee's analysis of the options that the statement in paragraph 68 that there is no doubt that a new support helicopter will be needed in substantial numbers in the early 1990s goes too far at this stage, though plainly there is a strong possibility that such a requirement will be identified as a result of the studies currently being undertaken. The possibility of acquiring more medium lift capacity, which the Committee believes should remain open (paragraph 55), is being actively addressed in these studies.

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7. The Government accepts the Committee's view that the Services's requirement for support helicopters, and the way in which any such requirement might be met, should be resolved quickly (paragraph 67). The Government welcomes the Committee's recognition of the desirability of reappraising the military requirement for support helicopters from first principles before procurement decisions are taken (paragraph 68).

8. The Government notes the Committee's preliminary view that there is a very good case for maintaining a fully airmobile brigade (paragraph 70), following the mechanisation of the present 6th Air Mobile Brigade which together with the addition of a new armoured regiment will begin in 1988. The Government will take account of the Committee's view in its further consideration of the possibility of retaining an airmobile capability.

9. The Government notes the Committee's view that there is a strong case for giving the Army, as users of support helicopters, full responsibility for them (paragraph 75). Nevertheless, account has to be taken of the breadth of helicopter tasks undertaken outside the Central Region and of the implications of transfer not only for command and control, but for training, manning and support arrangements. Nevertheless, the Government is bearing the Committee's views in mind in their current examination.

International Helicopter Production (paragraphs 76-90)

10. The Government accepts the analysis of the international helicopter market set out in the Committee's report; and it is specifically in acknowledgement of the high level of capital investment required for the design and development of advanced new helicopter types (paragraph 77) that the Government has for many years been looking towards collaborative solutions to its helicopter requirements whenever these are practicable. In the

innovative arrangements established for the EH101 project the United Kingdom and Italian Governments, together with Westland and Agusta, have also recognised the benefits that may be derived from maximising the market potential of a single basic design with military, commercial and utility variants.

11. The Government has confirmed its continued adherence to the 1978 Four Nation Declaration of Principles, and our partner nations also maintain their support.

The Recession in the Helicopter Industry and Westland's Situation (paragraphs 91-98)

12. The Government notes and generally accepts the Committee's analysis of the effects of over capacity in the world helicopter industry and the decline in opportunities in the civil and military markets.

European Collaboration in Helicopter Production (paragraphs 99-118)

13. Whilst the Committee is correct in pointing out that the collaborative projects launched in pursuance of the Declaration of Principles have not taken the precise form originally envisaged (paragraph 104), they do nevertheless offer the prospect of a substantial improvement in rationalisation within Europe. The EH101 would be the European transport/ASW helicopter in the 13 tonne class, and NH90 could still continue if the United Kingdom were to decide not to continue its participation due to lack of a requirement. Although for historical reasons it has not proved possible to arrive at a single anti-tank helicopter project, it must be remembered that the United Kingdom, France, Germany and Italy currently each operate different helicopters in this role.

14. It should also be remembered that NH90 and A-129 MKII have attracted the support of nations who were not signatories to the 1978 Declaration - respectively the Netherlands, and the Netherlands and Spain. In addition, collaborative arrangements have been established with Europe for the development and production of a range of engines capable of powering all four of the collaborative helicopters.

15. Following the acquisition by UTC of a stake in Westland, the Government has considered the status of the various collaborative helicopter projects in which the United Kingdom is participating. The current position is as follows.

EH101

16. The EH101 programme remains a high priority project for the United Kingdom, and the Government is continuing to provide for its share of the cost of the helicopter development and introduction into service. The Italian Government and Agusta have indicated to us that their position has not changed.

Light Attack Helicopter

17. It is intended that a Memorandum of Understanding (MOU) for a Feasibility Study to be undertaken on a Light Attack Helicopter based on the Agusta A-129 will be signed shortly by the Ministries of Defence of Italy, Netherlands, Spain and the United Kingdom. The association between UTC and Westland has not hindered the negotiations which have led to this satisfactory conclusion.

18. Following agreement by the Secretary of State for Defence and his Italian counterpart, the French and German Governments have been notified of the intention to proceed with this collaborative project; and that we remain ready to discuss the possibility of harmonisation of the work on the A-129 with that

of France and Germany on the PAH2/MAP/HAC3G if they so wish. This readiness to continue discussions on harmonisation has been noted by our allies.

NH90

19. The NH90 Feasibility Study is continuing and the participating companies are due to report to the five Governments during the autumn. United Kingdom future participation in this project will depend on the results of this study and of the extensive work being carried out within the Ministry of Defence on the future requirement for support helicopters. The next stage in the NH90 programme would be a Project Definition Study.

20. Whilst there are clearly a number of factors to take into account in determining how the United Kingdom should best work towards the replacement of the Wessex and Puma helicopters, the relationship between UTC and Westland has not so far been a problem in respect of the NH90 studies. The Government reiterates its view that future participatin by the United Kingdom in the NH90 programme should not be precluded by that relationship. In that context the Government notes the Committee's arguments in paragraphs 116-118, including the references to the potential relationship between the Super Puma and NH90.

Control (paragraphs 119-152)

21. The Government notes the Committee's statement that "it is the responsibility of Government to satisfy itself that the ownership of shares in defence contractors of national importance has no implications for national security" (paragraph 144). It is important to distinguish between the influence that a foreign shareholder might bring to bear on commercial operation of a UK defence contractor on the one hand,

and the protection of classified information or technology, in the interests of national security, on the other. The Committee can be assured that, whenever a foreign company becomes involved with a contractor to the Ministry of Defence, the Government takes the necessary steps to ensure that classified information is protected. Indeed, in the particular example of the Libyan involvement in Fiat, and therefore in Westland (after the company's reconstruction), the protection of classified matters has been positively confirmed.

22. On the subject of commercial control, as noted by the Committee, action may be taken in certain circumstances under the Fair Trading Act 1973 to refer the acquisition by a foreign company of material influence over the policy of a defence contractor for investigation by the Monopolies and Mergers Commission if the Secretary of State considers that the acquisition raises public interest issues. In the event of an adverse public interest finding by the Commission, powers are available to the Secretary of State to prevent or reverse the acquisition or to impose conditions. Moreover, powers under the Industry Act 1975 are available if the Government considers that commercial involvement by foreign parties is in itself against the national interest. The Secretary of State's powers under the Companies Act 1985 to investigate the ownership of shares may also be used where there is good reason to do so. All these powers are currently exercised by the Secretary of State for Trade and Industry.

23. It is noted that the Committee wishes to examine this aspect when taking evidence on the next Statement on the Defence Estimates.

<u>The Defence Industrial Base (paragraphs 153-175)</u>

24. The Government notes the Committee's discussion of the defence industrial base and Westland's importance to it. The

defence industrial base is a major national asset whose health and future are of great importance. The pursuit of value for money in defence procurement, to which the Committee refer in paragraph 156 of their report, takes full account of the longer-term considerations which bear on the continued existence of companies or capabilities within the defence industrial base. The considerations were set out in the Open Government Document "Value for Money in Defence Equipment Procurement" (OGD 83/01) published by the Ministry of Defence in 1983. While the various considerations, short and longer term, will not always point in the same direction when selecting a procurement source, it is the Government's view that only by bearing them all in mind can long-term value for money be secured. In this respect, as the Committee noted (paragraph 163), the benefits of collaboration have to be fully taken into account, though this may involve difficult decisions.

25. As regards the importance of Westland to the defence industrial base, the Government notes the Committee's conclusion (paragraph 175) that the Board of Westland had the right and responsibility to make and defend its decision whether to associate with UTC-Sikorsky or the European consortium. This was and remains the view of the Government.

26. The Government attaches at least as much importance as the Committee to the quality of the working relationships between the Ministry of Defence and the Department of Trade and Industry. It repeats the assurances given to the Committee in evidence that these relationships, both formal and informal, are excellent. For example, the Department of Trade and Industry is represented at meetings of the Ministry of Defence's Equipment Policy Committee and Defence Research Committee, and both Departments are represented at senior level on the Board of Management of the British National Space Centre. Among the many less formal links Ministers of both Departments meet from time to time to discuss industrial issues of mutual interest, as do

officials. Nevertheless, both Departments are always on the look-out for ways of strengthening the links and making consultation more effective. The Government does not believe, however, that the quality of these relationships would be enhanced by imposing on them the formal structure of a Ministerial Aerospace Board.