PRIME MINISTER

DEFENCE COMMITTEE: WESTLAND PLC

There are three minutes from Robert Armstrong below on the response to the Defence Committee's Report.

First, the revised draft of the response (Flag A). This looks in much better shape now. The first 27 paragraphs deal with the Committee's Defence Implications Report, is innocuous and need not concern you. Paragraph 28 et seq deals with the Committee's Decision Making Report. You will want to read through this, in the light of Robert's covering minute. My comments are as follows:

(i) Paragraph 36: I strongly agree with Robert that if Mr. Brittan's defence of DTI officials is included, your defence of No. 10 officials ought to be included too. The essential question is whether this paragraph will help produce a calm reception to the Government's response, or whether it will stimulate a row. On balance, I think the paragraph is helpful and should be retained.
Do you agree? Yes - I agree MT.

(ii) Paragraph 40: This passage, dealing with Ministerial responsibility, is the most sensitive of all. I would certainly omit the quotation from Finer, which would only provoke unhelpful comments. I am not very happy with the rest of the paragraph and suggest it should be discussed at a short meeting with the Lord President, Lord Privy Seal, Chief Whip and Sir Robert Armstrong, which I recommend below.
What are your views?
Include the paragraph?

For the rest, the paragraphs look unexceptional.

The quotation from Finer should in my view be excluded. Once we quote one "expert" (from a very muddled article) for one authority - we shall have to quote many others. Moreover it is not a scholarly treatise. MT

Second, a minute on the procedural question: in which Ministers name(s) should the White Papers be presented to Parliament? (Flag B). This raises some difficult issues of Parliamentary handling (including who should speak in the debate) which I suggest you should discuss with the Lord President, Lord Privy Seal, Chief Whip and Robert Armstrong at a meeting early next week. There is a free space in Monday's diary at, say, 1530 hours.
Shall we try for a meeting then? Yes – can we [illegible] the paper with my addendum MT

Third, there is a personal note from Robert (Flag C) about Ministerial responsibility, with which I entirely agree. Fascinating as it is, I do not think you need to read Professor Finer's article. In this connection, I have looked through the Hola Camp debates in 1958 and 1959. I think that you must be recalling Enoch Powell's speech on 27 July 1959 (which Tim Flesher showed you in January 1984). But there is nothing in that speech or in the debate which is relevant.

N.L.W.

N. L. Wicks

26 September 1986

DG2BKE

Ref. A086/2689

MR WICKS

Defence Committee: Westland plc

--- I attach a minute covering the latest version of the draft response.

Agree with NLW

2. In the light of your private minute of 25 September I have looked with particular care at the drafting of what is now paragraphs 39 and 40. I really do not think that it leaves the Prime Minister vulnerable to calls for her resignation. She has made it clear that she did not know what her officials were doing (or rather saying), that they did not consult her (or think that they needed to consult her) before saying what they said, and that she did not and does not endorse the method of what was done. All that emerges clearly from the quotations now included in paragraph 36. Moreover she has amply fulfilled her duty to give Parliament an account of the matter, in her statement of 23 January, in her speech on 27 January and in sundry Answers to Parliamentary Questions.

3. The main authority on this subject is Professor Finer,
--- in an article in Public Administration in 1956. I attach a copy of extracts from that article, which I hope will meet the requirement in the third paragraph of your minute.

RA

ROBERT ARMSTRONG

25 September 1986

A.

Public Administration
Vol 34, 1956

(EXTRACTS)

The Individual Responsibility of Ministers

By Professor S. E. Finer

Recent events have focused attention on that important principle of the British constitution—Ministerial responsibility. Professor Finer here examines the cases in which a Minister has resigned or been removed to see what light they throw on the working of the convention.

Sir Thomas Dugdale's resignation over the Crichel Down affair was widely hailed as the timely application of a constitutional convention and the triumphant exercise of a constitutional remedy. The convention is familiarly known as the "individual responsibility of Ministers." The remedy, as *The Economist* expressed it, is that if Ministers "fail to take early and effective action to counter potential miscarriages of justice or policy within their departments they must expect to step down from office."[1]

There is a good deal of constitutional folk-lore on this subject, to be true, but whether it adds up to a convention is very questionable. And as to whether such enforced resignations as Sir Thomas's can be deemed a certain and effective constitutional remedy for mismanagement, the answer is not in any doubt. They cannot.

I. The supposed convention of ministerial responsibility

"Each Minister," says Sir Ivor Jennings, "is responsible to Parliament for the conduct of his Department. The act of every Civil Servant is by convention regarded as the act of his Minister."[2]

This is as good a starting point as any. The statement looks very clear. In fact there are three important obscurities. First, what is this "Department" for which the Minister is said to be responsible? Next, what precise meaning is to be attached to the word "responsible"? Thirdly, in what sense is the Minister rather than his civil servants regarded as "responsible"?

1. *For what is the Minister Responsible to Parliament?*

Most authorities—lawyers, political scientists and politicians—concur in Sir Ivor Jenning's formulations: it is his Department for which the Minister is responsible.[3] But, as Mr. D. N. Chester has pointed out, "a ministerial department *is* a Minister of the Crown to whom powers have been given either explicitly by name of his office or in the name of a body which by convention or declaration is clearly understood to mean that Minister."[4] As he points out, it is the Minister who is normally charged, whether by statute or convention; powers not usually "being given to a department as a corporate body."

More strictly, one should say, "the Minister is responsible for the duties allocated to him." Some attach to him by virtue of his conventional duty (as manifested in certain formal documents, e.g., Orders in Council, Signs Manual and Letters Patent) to execute certain prerogative acts of the Crown, and others are recited by statute. This being so, the Minister is responsible

to Parliament, as a Clerk of the House put it, for " anything the Minister is allowed to do either by his administrative powers as Head of his Department or by powers which the Act gives him."[5]

From this a number of difficulties may arise.

(*a*) Sometimes it proves very hard to determine which Minister is responsible, or for precisely what he is responsible, or indeed whether *any* Minister is responsible. This may involve the midnight perusal of statutes, reports and stacks of old Hansards.[6]

(*b*) Occasionally, when the duties are charged upon a Board, it is unclear where the Minister's duties cease. Thus when Lowe was in trouble in 1864 as Vice-President of the Education Department of the Privy Council, it was unclear whether he, or Earl Granville the Lord President, was responsible for the delinquencies in the Education Department.[7]

(*c*) Currently, two quite serious difficulties have arisen : the difficulty of determining the exact extent of a Minister's responsibility for a nationalised industry[8] and the imbroglio over Sir Winston Churchill's " Overlords."[9] This case became confused by two questions : first, on which matters did the " Overlord " answer questions and on which did the departmental Minister ; and second, whether the allocation of duties to an " Overlord " by the Prime Minister was simply domestic to the secret sessions of the Cabinet or necessarily carried with it responsibility to Parliament also ?

It is not proposed to carry discussion of these matters further in this paper. It is sufficient to show that the issue may have important practical consequences for " the individual responsibility of Ministers." For present purposes, however, all that is necessary is to state that individual Ministers are charged with particular powers and duties, and it is these for which they are responsible to Parliament.

2. *What is Meant by " Responsible " ?*

It is clear that :

(*a*) Ministers are expected to explain and defend the exercise of their powers and duties in Parliament ;

(*b*) Any Minister who has lost the confidence of the House can by vote of censure or other devices, be compelled to resign ; and that

(*c*) The second may occur as a consequence of the first.

This set of propositions does not constitute a convention. It states a truism. To be a convention three qualities must be added : first that Proposition (*b*) must result from Proposition (*a*), next that this causal sequence tends to recur, and thirdly that this is imperative. In short, that " the second proposition tends to recur as a result of the first and it ought to do so."

Whether resignation does in fact tend to recur as a consequence of failures to explain and defend conduct satisfactorily will be dealt with in

Part II. But there seems to be some obscurity as to whether Ministers *should* as a rule resign in such circumstances and this is radical.

The difficulty seems to be linguistic. "Responsible" may mean "answerable to." It may also mean "answerable for" in the sense of "censurable for," and in this sense carries the implication that a penalty may be exacted. The language of some authorities is so cautious on the subject of resignation as to identify "responsibility" with simple "answerability *to* Parliament." Wade and Phillips seem to take it in such a sense. They concede (p. 67) that "Ministers may in the last resort be dismissed (by whom?) on political grounds," but this statement occurs two pages later than the discussion of the individual responsibility of Ministers and this is defined in terms of the anonymity of the Civil Servant. "For every act or neglect of his department a Minister must answer. . . . For what an unnamed official does or does not do, his Minister alone must answer in Parliament."

If we have interpreted this correctly, then "individual ministerial responsibility" means simply that Ministers and nobody but Ministers must explain and defend to Parliament the actions carried out on their behalf. In which case there is self-evidently no convention imposing the duty to resign on a Minister as a result of Parliamentary dissatisfaction. If there is no such convention then there is no correlated constitutional remedy for departmental mismanagement, and we have answered our original question.

It is open to the reader to take this view: to dismiss *The Economist*'s comments as idle chatter and to set aside similar views expressed in Parliament during the Crichel Down debate. But another view exists supported by good authority: a political tradition exists: and a mass of folk-lore exists—to the effect that responsible means "the liability to lose office."[10]

As Macaulay pointed out, impeachment—quite certainly a constitutional remedy for mismanagement—was abandoned only because a tenderer age deemed "the loss of office and public disapprobation as punishments sufficient for errors in the administration not imputable to public corruption."[11] This sentence was approved by Todd (1867).[12] Bagehot expresses a similar view (1872).[13] Sidney Low reformulates it (albeit only to depreciate its importance as a remedy).[14] Keith (1939) says specifically that "under the doctrine of ministerial responsibility Ministers may be punished by Parliament for improper advice given to the Crown by loss of office, censure or, in theory, impeachment."[15] And Sir Ivor Jennings also defines individual responsibility in terms of possible forfeiture of office in face of disapproval by the House.[16] Supporting this is a veritable canon of Parliamentary *obiter dicta*, culminating in the Crichel Down debate.

The view to be explored then is that the individual responsibility of Ministers means two things:

(*a*) Each Minister has a positive duty to answer to the House for the matters with which he, specifically, is charged.

(*b*) Arising from or because of the expressed feeling of the House the Minister may be constrained to tender his resignation.

In short, responsible means "answerable to" and "answerable for."

3. *Why the Minister?*

If we follow the formal language of the grant of powers then, as we have seen, the " department " is the Minister. He alone is charged by statute; or, in the case of prerogative powers, he alone is designated by the formal Order, Warrant, Commission or Letter Patent through which the prerogative power is conveyed to him.

In this case, it must follow that only the Minister gives explanations to the House, never his officials: and that he is answerable for any misdeeds of his officials.

In fact it does not appear that the relationship of civil servant to Minister and to Parliament, has ever been settled by reference to this *formal* situation. On the contrary, as Sir Ivor Jennings says in the quotation under discussion, " the act of every civil servant is *by convention* regarded as the act of his Minister."

It is certainly true that the only channel is *via* the appropriate Minister. In broad principle this position has never been in serious doubt, the logic being this. In the sixteenth and seventeenth centuries the King, personally, is the head of the Executive branch, and even in the eighteenth century this is still to some extent so in practice, and wholly so in theory. In the eighteenth and nineteenth centuries the prerogative power of the Crown comes to be (except for personal prerogatives) wholly undertaken by Ministers, who can be held to account for this by Parliament. Thus the exercise of administration is nominally the Crown's but in fact carried out by Ministers.

The precise degree to which Parliament could interfere with the Executive, however, had never been settled even in the eighteenth century, and the modern convention does not seem to have become quite settled till about 1870. The abolition of recruitment by patronage in the Civil Service did much to render the civil servant anonymous, since it severed personal allegiances between Minister and civil servants so that personal cases were less frequently debated.[17] But as late as 1864, when civil servants carried complaints about their department to M.Ps. who used this against the Minister (Lowe) with such deadly effect as to force his resignation, Lord Robert Cecil could say, unrebuked, that civil servants had the right of direct approach to M.Ps. on what seemed to them to be abuses in their departments.[18] The authentic modern note was struck in 1873, however, in the Scudamore scandal, where Scudamore, a high official of the Post Office, took personal blame for a misappropriation of funds, and where the Chancellor of the Exchequer, the responsible Minister, was disposed to accept this view. The Commons tending to take the same view, Bernal Osborne (a Tory M.P.) stated what is today the firm convention: " This House has nothing to do with Mr. Scudamore. He is not responsible to us. We ought to look at the Heads of Departments."[19] This view had its repercussions in the Crichel Down affair. As *The Times* said, for the House to demand further disciplinary action from the Minister would be " the most direct form of political interference with the Civil Service possible." It was not the Common's right but the Minister's to prescribe disciplinary measures.[20] Indeed, many M.Ps. reproached Sir Thomas with having ever established the facts by public enquiry, and with the fact that disciplinary measures had

been left to a special committee. In these ways, they claimed, he had both abdicated his own responsibilities as a Minister and necessarily dragged civil servants, by name, into public controversy.[21] The Minister, in short, is not only a channel between Parliament and Civil Service: he is a wall.

Although the doctrine became established that Ministers alone are answerable to Parliament in respect of every act or omission of their civil servants, there seems no evidence that it was also established that—in the words of Wade and Phillips— " no Minister can shield himself by blaming his official " (p. 65). And indeed, as Sir David Maxwell Fyfe himself observed, it is not true that " Ministers are obliged to extend total protection to their officials and endorse their acts," or that " well justified criticism of civil servants cannot be made on a suitable occasion."[22] But it is clear from the cases to be cited below that Ministers do not have to defend subordinates who defy instructions or who act reprehensibly in circumstances of which the Minister could not have become aware. It is equally clear that Ministers have defended themselves by blaming their officials and firing them. And it is also true that the House does not censure the Minister who can show that the delinquency was against his express instructions, or that he could not physically have known of it—provided he makes it clear, by speech or action, that the offender has been dealt with and that therefore the delinquency is unlikely to recur.

The following four cases are instructive on these points :

(1) *The Lowe Affair*, 1864

Lowe was accused of censoring the reports of H.M.Is. contrary to Parliament's intentions, denied this, and was confronted with evidence produced by the H.M.Is. themselves. Six days later he resigned, alleging that his honour had been impugned, and then explained that although the censorship was indeed continuing, contrary to his original statement to the Commons, he did not know this at the time ; he had forbidden the practice, but could not know of its continuance because owing to his poor sight (he was nearly blind) he never read the reports but had them read to him. A Select Committee confirmed this story and later the House was told that Lowe's resignation " was totally and entirely unnecessary."[23]

(2) *The Captain Affair*, 1870-71

By the Order in Council of 1869 Childers, as First Lord, took responsibility for all that passed at the Admiralty.[24] In 1870 the *Captain*, an ironclad of novel design, perished at sea with enormous loss of life. Despite the verdict of a court martial which acquitted the Chief Controller of blame, Childers, after an inquiry, published a minute laying responsibility on this Chief Controller, Sir Spencer Robinson. The case was vigorously debated in the Lords, but Sir Spencer was not reappointed to his office as Controller (the term of which had just expired) and was superseded in his other capacity of Third Lord.[25]

(3) *The Trafalgar Square Riots*, 1886

Childers took office as Home Secretary on the very day that serious

debate, also, that the Opposition were more tender towards him than were his own side. Evidently his back benchers disliked the policy of his department as well as his administration, whereas many Labour M.Ps. applauded his policy and regretted his departure as a "surrender of the 1947 Act."

In the light of these examples, it seems then that a precondition of the fall of the Minister is either the fluidity of party lines or a back bench revolt.

III. CONCLUSION

The convention implies a form of punishment for a delinquent Minister. That punishment is no longer an act of attainder, or an impeachment, but simply loss of office.

If each, or even very many charges of incompetence were habitually followed by the punishment, the remedy would be a very real one: its deterrent effect would be extremely great. In fact, that sequence is not only exceedingly rare, but arbitrary and unpredictable. Most charges never reach the stage of individualisation at all: they are stifled under the blanket of party solidarity. Only when there is a minority Government, or in the infrequent cases where the Minister seriously alienates his own back benchers, does the issue of the individual culpability of the Minister even arise. Even there it is subject to hazards: the punishment may be avoided if the Prime Minister, whether on his own or on the Minister's initiative, makes a timely re-shuffle. Even when some charges get through the now finely woven net, and are laid at the door of a Minister, much depends on his nicety, and much on the character of the Prime Minister. Brazen tenacity of office can still win a reprieve. And, in the last resort—though this happens infrequently—the resignation of the Minister may be made purely formal by reappointment to another post soon afterwards.

We may put the matter in this way: whether a Minister is forced to resign depends on three factors, on himself, his Prime Minister and his party. On himself—as Austen Chamberlain resigned though possessing the confidence of his Prime Minister and his party, whereas Ayrton remained in office despite having neither. On the Prime Minister—as Salisbury stood between Matthews, his Home Secretary, and the party that clamoured for his dismissal.[67] On the party—as witness the impotence of Palmerston to save Westbury, Balfour to save Wyndham, Asquith to save Birrell. For a resignation to occur all three factors have to be just so: the Minister compliant, the Prime Minister firm, the party clamorous. This conjuncture is rare, and is in fact fortuitous. Above all, it is indiscriminate—which Ministers escape and which do not is decided neither by the circumstances of the offence nor its gravity. A Wyndham and a Chamberlain go for a peccadillo, a Kitchener will remain despite major blunders.

A remedy ought to be certain. A punishment, to be deterrent, ought to be certain. But whether the Minister should resign is simply the (necessarily) haphazard consequence of a fortuitous concomitance of personal, party and political temper.

Is there then a "convention" of resignation at all?

A convention, in Dicey's sense, is a rule which is not enforced by the Courts. The important word is "rule." "Rule" does not mean merely

an observed uniformity in the past; the notion includes the expectation that the uniformity will continue in the future. It is not simply a description; it is a prescription. It has a compulsive force.

Now in its first sense, that the Minister alone *speaks* for his Civil Servants to the House and to his Civil Servants for the House, the convention of ministerial responsibility has both the proleptic and the compulsive features of a "rule." But in the sense in which we have been considering it, that the Minister *may be punished, through loss of office* for all the misdeeds and neglects of his Civil Servants which he cannot prove to have been outside all possibility of his cognisance and control, the proposition does not seem to be a rule at all.

What is the compulsive element in such a "rule"? All it says (on examination) is that if the Minister is yielding, his Prime Minister unbending and his party out for blood—no matter how serious or trivial the reason—the Minister will find himself without Parliamentary support. This is a statement of fact, not a code. What is more, as a statement of fact it comes very close to being a truism: that a Minister entrusted by his Prime Minister with certain duties must needs resign if he loses the support of his majority. The only compulsive element in the proposition is that if and when a Minister loses his majority he ought to get out rather than be kicked out.

Moreover, even as a simple generalisation, an observed uniformity, the "convention" is, surely, highly misleading? It takes the wrong cases: it generalises from the exceptions and neglects the common run. There are four categories of delinquent Ministers: the fortunate, the less fortunate, the unfortunate, and the plain unlucky. After sinning, the first go to other Ministries; the second to Another Place; the third just go. Of the fourth there are but twenty examples in a century: indeed, if one omits Neville Chamberlain (an anomaly) and the "personal" cases, viz., Mundella, Thomas and Dalton, there are but sixteen. Not for these sixteen the honourable exchange of offices, or the silent and not dishonourable exit. Their lot is public penance in the white sheet of a resignation speech or letter. (Sir Ben Smith is the only exception: neither shuffle nor white sheet for him, but highly uncommunicative disappearance: Sir Winston put it as *spurlos versunken*, "sunk without trace.") It is on some sixteen or at most nineteen penitents and one anomaly that the generalisation has been based.

"*When Diagoras, the so-called atheist, was at Samothrace one of his friends showed him several votive tablets put up by people who had survived very dangerous storms. 'See,' he says, 'you who deny a Providence, how many people have been saved by their prayers to the Gods.' 'Yes,' rejoins Diagoras, 'I see those who were saved. Now show me the tablets of those who were drowned.'*"[68]

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[1]*The Economist*, 24th July, 1954, p. 263.

[2]*Law and the Constitution* (4th edition), pp. 189-190.

[3]A. B. Keith, *Constitutional Law* (7th edition), p. 155. Wade and Phillips, *Constitutional Law* (4th edition), p. 65.

[4]" Public Corporations and the Classification of Administrative Bodies." (*Political Studies*, Vol. I, pp. 43-44.) My italics.

[5]*Report from the Select Committee on Nationalised Industries* (H.C. 332-1 of 1952), Minutes of Evidence, Q. 398.

(Anthony H. Birch: The British System of Government, 6th Ed. 1983, George Allen + Unwin.)

B.

constantly being made, and from time to time they are exposed or admitted, but it is quite exceptional for a minister to resign on this account. The most conspicuous failures of postwar British governments have led to stormy debates in Parliament and to scathing comments in the press, but they have not led to the resignation of the ministers concerned. The total failure of British policy in Palestine between 1945 and 1948 did not lead the Foreign Secretary to think of resigning, even though he had said in a rash moment that he would stake his political future on his ability to deal with the problem. The fiasco of the groundnuts scheme in 1949 did not lead the Minister of Food to resign, though he was urged to do so by the Opposition and the majority of newspapers. The humiliating collapse of British policy towards Egypt at the time of the Suez expedition was not followed by the resignation on political grounds of any of the ministers concerned, though ill-health forced the Prime Minister to resign a few weeks later. The waste of vast sums of public money on the design of missiles and aircraft which have never been produced has not led to the resignation of any of the Ministers of Aviation and Defence who were responsible for it. The list could be extended to include the various failures of economic policy in the past twenty years, the minor fuel crises that occur whenever the weather is unseasonably cold, the slaughter of eleven prisoners in a Mau-Mau detention camp in Kenya who were clubbed to death by warders acting in pursuance of their instructions to force the prisoners to work, and many other examples.

Looking at the matter another way, S. E. Finer has traced only sixteen cases of a minister resigning as the result of parliamentary criticism of his department between 1855 (when the first case occurred) and 1955.[2] Since there were no cases between 1955 and 1979, this makes sixteen cases in 124 years. The smallness of the number indicates that it is only in exceptional circumstances that failure leads to loss of office, and Finer has shown that what made these cases exceptional was not the gravity of the failures but, in general, the fact that the ministers had lost popularity or respect within their own party. The only clear postwar example of resignation, that of Sir Thomas Dugdale in 1954, is a good instance. Dugdale did not mention resignation when he made his statement to the House of Commons following the publication of the Crichel Down report, and his decision to resign five weeks later was the result of backbench criticism expressed at private meetings of the Conservative Party's Food and Agriculture Committee.

Of course, the exposure of departmental failings may affect a minister's career even though it does not lead to his resignation. In the next Cabinet reshuffle he may find that he is transferred to a less attractive ministry or 'moved upstairs' to the House of Lords. But

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Ref. A086/2690

MR WICKS

Defence Committee: Westland plc

file with NLW

Thank you for your minute of 25 September, recording the Prime Minister's comments on my minutes of 19 and 23 September and on the shorter version of the draft Government response to the Defence Committee's Fourth Report attached to my submission of 23 September.

2. I attach a draft of the combined response to the two Reports from the Defence Committee. The first part - the response to the Third Report - is fully agreed with Departments and remains unchanged, save for editorial changes as a result of combination. The second part - the response to the Fourth Report - has been revised in the light of the Prime Minister's comments.

3. At the suggestion of the Department of Trade and Industry, I have also reinstated in paragraph 36 of the new draft, references - in the form of quotations from Hansard - to what the then Secretary of State for Trade and Industry and the Prime Minister said in January about Ministerial authority for the disclosure of the Solicitor General's letter. The Department of Trade and Industry consider that it strengthens the defence of the decision not to institute disciplinary proceedings against DTI officials if the then Secretary of State's acceptance of full responsibility for the fact and the form of the disclosure is quoted. If the then Secretary of State's statements are to be quoted, it seems to me that it will also be necessary to quote the Prime Minister's statements relating to officials in her office.

SECAAH

4. I have recast the paragraphs about Ministerial accountability somewhat, to reflect the Prime Minister's comments. One sentence which she suggested deleting I have retained, because it seems to me indispensable to the argument; but I have sought to present the paragraph in question (paragraph 40 in this draft) as (in effect) a summary of the constitutional authorities, so as to distance it from particular situations.

5. 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

25 September 1986

SECAAH

DEFENCE COMMITTEE: THIRD REPORT AND FOURTH REPORTS

Draft Government Response

Draft of 25 September 1986

In this paper the Government responds to the two reports from the Select Committee on Defence relating to Westland plc which were published on 24 July 1986:

Third Report (HC 518, Session 1985-86)
The Defence Implications of the Future of Westland plc

Fourth Report (HC 519, Session 1985-86)
Westland plc: the Government's decision-making

THIRD REPORT

2. The Government notes with interest the discussion of the various issued raised and the Committee's views on a number of points. These are the subject of more detailed comments in the following paragraphs.

Future Developments of the Military Helicopter (paragraphs 30-32)

3. 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)

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

5. The Government notes the Committee's reference (paragraph 37) to replacement of current helicopter types. The EH101 is, as the Committee say, 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)

6. 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.

7. 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.

8. 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).

9. 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.

10. 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)

11. 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.

12. 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)

13. 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)

14. 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.

15. 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.

16. 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

17. 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

18. 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.

19. 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

20. 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.

21. 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 participation 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)

22. 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.

23. 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.

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

The Defence Industrial Base (paragraphs 153-175)

25. 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.

26. 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.

27. 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

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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.

FOURTH REPORT

28. Full accounts of the matters with which the Fourth Report is concerned 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, sees no reason to qualify or add to them, nor any point in repeating yet again the sequence of events and decisions covered by the report.

should be "or"

29. The Committee make 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 to a number of people before the inquiry began (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).

30. The Attorney General said in his answer to a Parliamentary Question on 24 July (House of Commons Offical Report, 24 July 1986, Written Answers):

"At the time when I advised that an inquiry be instituted I did not know by whom the disclosure had been made or that it had been authorised by the then Secretary of State for Trade and Industry or at all.

At the time when I granted immunity to the official concerned, while I had reason to believe that the disclosure had been made by the official concerned and that the official concerned had acted in complete good faith, I was not aware of the full circumstances. It was important that the inquiry should discover as fully as possible the circumstances in which the disclosure came to be made, and should provide those concerned with the opportunity of giving their accounts of their part in the affair".

31. 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. Like the Attorney General, he took the view that it was important to discover as fully as possible the circumstances in which the disclosures came to be made, and to hear the accounts of those concerned (all of whom co-operated fully in

Should be "or"

his inquiry), before reporting his findings, so that conclusions and decisions could be based on as full a knowledge as possible of the facts and circumstances.

32. 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. 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.

33. As to the questions of the "dual role", the duties of the Head of the Home Civil Service as such are not sufficient to justify it as a full-time appointment on its own: the title, and the duties that go with it, need to be attached to a Permanent Secretary post at the centre of government. The decision as to the post to which they should be attached will depend upon a number of factors, including the distribution of functions and the organisation of business at the centre of government. As the Government said in its response to the Seventh Report of the Treasury and Civil Service Committee
(Cmnd 9841):

> "41. The current arrangement, under which the post of Head of the Home Civil Service is combined with the

Secretaryship of the Cabinet, has clear benefits. The Secretary of the Cabinet, although not "the Prime Minister's Permanent Secretary", is of all the Permanent Secretaries the closest to the Prime Minister. As Permanent Secretary for the Cabinet Office (including the Management and Personnel Office), he is responsible to the Minister of State, Privy Council Office, and to the Prime Minister for the matters for which she has particular responsibility as Minister for the Civil Service. He also sees many of the senior staff in action and is therefore in a good position to advise the Prime Minister, as Minister for the Civil Service, on Grade 1 and 2 appointments. As to the matter of the load of work, the Government believes that, provided that the incumbent delegates sensibly, his burden is manageable.

42. Against this background the Government sees no grounds for changing the existing organisation at the present time."

34. The Government has already made clear to the House of Commons, in the Prime Minister's answers to questions on 24 July (House of Commons, Official Report, 24 July 1986, cols 587 to 590) and in the speech by the Minister of State, Privy Council Office on 25 July (ibid, 25 July 1986, cols 858 to 862), 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 of his part in the matter:

> "Far from that being a failure of leadership, it demonstrates the exercise of leadership with great responsibility and integrity." (Official Report, 25 July 1986, col 862).

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35. 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 having regard to all the circumstances, disciplinary proceedings were not called for.

36. Mr Leon Brittan, who was the Secretary of State for Trade and Industry at the relevant time, said in a speech in the House of Commons on 27 January (House of Commons, Official Report, 27 January 1986, col 671):

> "As my right hon. Friend said in her statement to the House last Thursday, I made it clear to my officials at the Department of Trade and Industry that - subject to the agreement of No 10 - I was giving authority for the disclosure of the Solicitor General's letter to be made. I therefore accept full responsibility for the fact and the form of that disclosure.
>
> The House knows of the extraordinary, perhaps unprecedented circumstances in which we were working - the circumstances of the persistent campaigning of my right hon. Friend the former Secretary of State for Defence and the urgency of the need to ensure that the contents of the Solicitor

General's letter should become known. But for all that, and in retrospect, I must make it clear to the House that I accept that the disclosure of that information - urgent and important as it was - should not have taken place in that way, and I profoundly regret that it happened.

I must also make it clear that at all times the Department of Trade and Industry officials acted in accordance with my wishes and instructions. What they did was with my full authority. They are not to be blamed. Indeed, they gave me good and loyal service throughout my time as Secretary of State for Trade and Industry."

The Prime Minister said in the House of Commons on 23 and 27 January:

"Officials in the Department of Trade and Industry approached officials in my office, who made it clear the it was not intended to disclose the Solicitor General's letter from 10 Downing Street; but, being told that the Secretary of State for Trade and Industry had authorised the disclosure, they accepted that the Department of Trade and Industry should make it and they accepted the means by which it was proposed that the disclosure should be made.

My officials made it clear to the inquiry that they did not seek my agreement. They told the inquiry that they did not believe that they were being asked to give my authority, and they did not do so."

(Official Report, 27 January 1986, col 655)

"They considered - and they were right - that I should agree with my right hon. Friend the Secretary of State for Trade and Industry that the fact that the then Defence Secretary's letter of 3 January was thought by the Solicitor General to contain material inaccuracies which

> needed to be corrected should become public knowledge as soon as possible, and before Sir John Cuckney's press conference. It was accepted that the Department of Trade and Industry should disclose the fact and that, in view of the urgency of the matter, the disclosure should be made by means of a telephone communication to the Press Association. Had I been consulted, I should have said that a different way must be found of making the relevant facts known."
>
> (Official Report, 23 January 1986, col 450)

37. 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:

> "My right hon. Friend and I have total confidence in our officials referred to in the Report."
>
> (Official Report, 24 July 1986, cols 588 and 589).

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

39. The basic principles on this matter are clear:

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

- A Minister is accountable to Parliament, in the sense that he has a duty to explain in Parliament the exercise of his powers and duties and to give an account to Parliament of what is done by him in his capacity as a Minister or by his department.

- Civil Servants are responsible to their Ministers for their actions and conduct.

40. As to the implications of these principles for the individual responsibility of Ministers, it is clear from the authorities that the received and established doctrine is that a Minister is not bound to endorse the actions of his officials, if he did not know of them and would have disapproved of them had he known of them. 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. But there is not, and there never has been, a convention that a Minister is bound to resign in the event of any instance whatever of wrongful action or misconduct of his department. One authority, summing up his conclusions on this point, put it as follows:

> "Whether the Minister should resign is simply the (necessarily) haphazard consequence of a fortuitous concomitance of personal, party and political temper."
>
> (S E Finer, The Individual Responsibility of Ministers, <u>Public Administration</u> vol 34 (1956), page 393).

41. 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.

42. 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".

43. 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.

44. 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 is liable to 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 the obligation to comply with those instructions and 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.

45. 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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