

Ref. A090/2731

MR POWELL

cc Sir Percy Cradock  
Mr Appleyard

CA 15/11

The Iraqi Long-Range Gun Project

The remand hearings of the two men charged in connection with the Iraqi gun case, Mr Peter Mitchell, the Managing Director of Walter Somers Limited, and Dr Christopher Cowley of the Space Research Corporation, will be held by Sheffield Magistrates tomorrow sometime between 2.30 pm and 4 pm. The Commissioners of Customs and Excise have decided this afternoon, on the advice of Counsel and after consultation with the Attorney General, to drop all charges against the two men.

2. A summary of what will be said to the Court is attached (Annex A). The essential points are that there is insufficient evidence to give a realistic prospect of success in securing a conviction of Mr Mitchell by a jury (with the consequence that the charges against Dr Cowley are also dropped), but that the Commissioners are making clear their view that the seized items are indeed components of guns, and condemnation proceedings in respect of the steel tubes seized at Teesport in April will continue. Ministers are entitled to refer to the Commissioners' view in answering any criticisms in Parliament.

3. The timing of tomorrow's Court appearance is awkward in relation to Prime Minister's Questions. We do not know at what precise time the representative of the Commissioners will make his statement to the Court; it is possible that other cases will

be heard first. Immediately he does so the case will cease to be sub judice. However, the defendants' representatives will be aware of the Commissioners' intention beforehand, and it is possible that word of this will reach Westminster. (Indeed, there has already been a leak in the Sunday Correspondent - copy attached at Annex B.) Customs and Excise will make arrangements to let you know as soon as their representative has made his statement. Thereafter, the Prime Minister will be free to answer any questions on the subject. A suggested line to take is attached at Annex C. I have included a defensive point about Mr Paul Ashwell, the lorry driver detained in Greece when transporting another steel tube for the gun. An ex gratia payment of £35,000 has been made to Mr Ashwell. His MP, Mr Michael Morris, who took up his case, is aware of this.

4. Attached at Annexes D and E are question and answer briefs for, respectively, Treasury Ministers and the Customs and Excise press office, for use after the statement in Court. It would be inappropriate for other Departments to comment on the decision to drop charges or the reasons for it; any questions along these lines must be referred to Customs and Excise. There are however other aspects of the Iraqi gun case which concern other Departments. Should the ending of sub judice restrictions stimulate PQs about the case (of which there were a great many between April and June), I propose that the basis of allocation to Departments should be as shown at Annex F. Press enquiries should be handled on the same basis. It is of course essential that the responses of all Departments should be consistent, and the Cabinet Office will continue to co-ordinate answers to all PQs.

5. The Cabinet Office have led a study by Departments and Agencies of the lessons of the Iraqi gun episode, and their report will be circulated to OD. Looking further ahead, the

Trade and Industry Select Committee may confirm their intention to proceed with their own investigation after the sub judice restraints have been removed.

6. I understand the Chancellor of the Exchequer is being briefed to report the decision to drop charges to Cabinet at tomorrow's meeting.

7. I am sending copies of this minute to the Private Secretaries to the Foreign and Commonwealth Secretary, the Chancellor of the Exchequer, the Lord President, the Defence Secretary, the Trade and Industry Secretary and the Attorney General.

R.R.B.

ROBIN BUTLER

14 November 1990

# CONFIDENTIAL

Dr Cowley is charged with one offence contrary to section 68 of the Customs and Excise Management Act 1979 and one offence contrary to section 170 of the Customs and Excise Management Act 1979. Mr Mitchell is charged with one offence contrary to section 68 of the same Act. The offences contain allegations relating to the exportation of prohibited goods, being items forming parts of large guns, to Iraq.

As a result of the seizure in April this year at Teesport docks in Middlesbrough of eight pipes destined for Iraq, customs enquiries have continued. Customs are satisfied that these pipes and other items were parts of large guns destined for Iraq. However, the evidence in support of any offences against the defendant Mitchell is not sufficient to give a realistic prospect of a successful conviction before a jury and proceedings are being withdrawn against him. It would be inappropriate to continue against the only remaining defendant, Dr Cowley, and it has therefore been decided to withdraw the prosecution against him.

Sunday Correspondent

Sunday 11 November 1990

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## Supergun men freed

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**By Christopher Elliott**

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ALL charges relating to the Iraqi supergun affair may be dropped. Eighteen people were interviewed by Customs investigators following the seizure of the barrel of a 40-metre cannon on a Teesside dockyard in April. Twelve were formally arrested and bailed.

Officially, inquiries by Customs officers are continuing, but all have been released apart from two men whose charges may be "compounded", a technical device used by Customs in VAT cases.

Such action would be unusual, but legally feasible. It would also avoid government embarrassment over the role of some Whitehall departments in the 18 months before the gun parts were seized.

Dr Christopher Cowley, a British scientist, has been charged with illegally exporting equipment with intent to evade export controls. Mr Peter Mitchell, 42, the managing director of Walter Somers, an engineering firm in Halesowen, West Midlands, has also been charged with illegally exporting equipment.

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Not be used until notified that the hearing  
on 15 November has taken place

IRAQI GUN: Q & A BRIEF FOR TREASURY MINISTERS

1. Why has the case been dropped?

This was a decision taken by the Commissioners of Customs and Excise in the exercise of their statutory function as an independent law enforcement body. The Commissioners' reasons for asking for the charges to be withdrawn were explained by their legal representative to Sheffield Magistrates' Court on 15 November.

2. What were the Commissioners' reasons for dropping the case?

The reasons were explained to Sheffield Magistrates' Court on 15 November by the legal representative of the Commissioners of Customs and Excise. I have nothing to add. I have arranged for a copy of what was said to the Court to be placed in the Library.

3. Has pressure been put on Customs to drop the case?

No. The conduct of investigations of possible criminal offences and any decisions to make arrests or lay criminal charges are the sole responsibility of the Commissioners of Customs and Excise. These matters have been handled by them alone at all times in the present case.

4. Were Ministers consulted before Customs took their decision?

Decisions on whether or not to prosecute offences under the Customs and Excise Management Act 1979 are a matter for the Commissioners of Customs and Excise.

## CONTINGENCY BRIEF

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5. Did Customs consult the Attorney General?

As is well known it is not the practice to disclose whether the Law Officers have been consulted.

6. What is the role of Commissioners in a case like this?

Under the provisions of the Customs and Excise Management Act 1979 decisions on whether or not to prosecute offences are a matter for the Commissioners of Customs and Excise.

7. Whom did Customs consult before taking their decision?

This is a matter for the Commissioners. The decision not to prosecute rests entirely with the Commissioners.

8. What will happen to the parts of the gun already seized by Customs?

Customs are in no doubt that the items they have seized are parts of guns. Because the Iraqi Ministry of Industry and Military Manufacturing has challenged the seizure, the Commissioners are a party to High Court proceedings for condemnation of the seized items - in effect a civil case to determine whether the goods were properly seized.

9. Will others be charged?

I understand the Commissioners do not envisage conducting any further enquiries.

10. Have Customs made a compounded settlement with the defendants?

No. The Commissioners of Customs and Excise have asked for the charges to be withdrawn.

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CONTINGENCY BRIEF

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11. Any effect on other cases involving exports to Iraq?

Any other cases will be a matter for the Commissioners to consider.

[If pressed. Matrix Churchill? - or any other case being investigated by Customs and Excise.

I cannot comment. This is a matter for the Commissioners.]

12. Will compensation/costs be paid to Mr Mitchell, Dr Cowley and others?

Costs. The matter of costs is for the Courts to decide.

Compensation I understand the Commissioners see no grounds for paying compensation.

13. Did the companies seek export licences for the gun?

This is a matter for my rt. hon. Friend the Secretary of State for Trade and Industry.

14. Is this not a serious blow to sanctions against Iraq?

No. Customs deserve highest praise for preventing the export to Iraq of some highly lethal weaponry.

15. Did Government turn a "blind eye" to the exports?

Government committed to rigorous enforcement of export prohibitions and restrictions. Matters of export licensing are the responsibility of my rt. hon. Friend the Secretary of State for Trade and Industry.

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CONTINGENCY BRIEF

Annex E

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QUESTIONS AND ANSWERS BRIEF - MEDIA ENQUIRIES

1. Are Customs dropping the big gun case?

(To be used if question asked before Court hearing on 15 November 1990.)

There is a hearing at Sheffield Magistrates' Court in the afternoon of 15 November. You must await the outcome. (If pressed). The Commissioners of Customs and Excise will, if necessary, make a statement in the light of that hearing.

2. Why is the case against Mr Mitchell and Dr Cowley not being prosecuted?

After taking advice from Senior Treasury Counsel the Commissioners of Customs and Excise have decided not to pursue the case against Mr Mitchell on the basis of advice received about the prospect of success were the prosecution to continue. The Commissioners decided that it would be inappropriate to institute proceedings against Dr Cowley alone.

[If pressed. Why inappropriate to prosecute Dr Cowley?

Not the practice to discuss the detailed reasons why the prosecution has been dropped.]

~~3. Are Customs taking action against Sheffield Forgemasters or Walter Somers? Are Customs taking action against any of those previously arrested/questioned?~~

The Commissioners do not intend instituting any other criminal proceedings arising from their investigations in this case.

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CONTINGENCY BRIEF

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4. Is the investigation closed?

Commissioners do not envisage conducting any further enquiries.

5. Which other Government Departments did Customs consult before reaching their decision not to prosecute?

None. The decision not to prosecute rests entirely with the Commissioners of Customs and Excise.

6. Was the decision not to prosecute taken at Ministerial level?

No. The alleged offences were under the Customs and Excise Management Act 1979. Decisions on whether or not to prosecute under that Act lie with the Commissioners of Customs and Excise.

7. Were Ministers consulted?

Decisions on whether or not to prosecute offences under the Customs and Excise Management Act 1979 are a matter for the Commissioners of Customs and Excise.

8. Did Customs consult the Attorney General before deciding to prosecute?

As is well known it is not the practice to disclose whether or not the Law Officers have been consulted..

9. The decision not to prosecute was taken to avoid making Government "mistakes" public?

No.

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CONTINGENCY BRIEF

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10. What about the seized pipes/gun?

Customs are in no doubt that the items they have seized were parts of guns. Because the Iraqi Ministry of Industry and Military Manufacturing has challenged the seizure, the Commissioners are a party to High Court proceedings for condemnation of the seized items - in effect a civil case to determine whether the goods were properly seized.

11. Is it normal practice to arrest and charge people but not to prosecute them?

The withdrawal of a case before committal proceedings is a perfectly proper procedure.

12. Unnecessary to arrest and charge people at all?

Customs are satisfied that they had adequate grounds for arresting and charging Mr Mitchell and Dr Cowley. That is a different issue from whether or not there was, after investigation, adequate evidence to support proceedings with a reasonable prospect of success.

13. Why has it taken so long to decide not to prosecute?

This is a very complex case. There has been a long investigation with a considerable volume of evidence to be considered.

14. Have Customs made a compounded settlement with the defendants?

No. Customs have asked for the charges to be withdrawn.

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15. Does this decision not to prosecute affect other cases in hand?

No. Customs will investigate and decide upon each case on its own merits.

16. Does the withdrawal of the case mean that compensation and costs will be paid to the defendant?

The matter of costs is for the court to decide. [If pressed about compensation: The Commissioners see no grounds for paying compensation.]

17. Does withdrawal of the case mean that Parliament/Select Committees, etc can enquire into the case?

Since the case is no longer sub judice, they would be free to do so. But that is a matter for them to decide.

18. Is this not a serious blow to sanctions against Iraq?

Not at all. Customs deserve the highest praise for preventing the export to Iraq of a major piece of weaponry.

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ANNEX F

FUTURE ALLOCATION OF PQs RELATING TO THE IRAQI GUN

Treasury Ministers (Customs and Excise)

Questions related to the dropping of charges.

Questions relating to the material (including written material) seized or confiscated at Teesport, in industrial premises, in Greece or in Turkey.

DTI

Questions relating to decisions on whether or not an export order is subject to licence under the strategic exports control legislation.

MOD

Questions relating to assessments of military use or potential.

Questions relating to military and related activities in Iraq.

FCO

Questions relating to relations with the Government of Iraq, or to the actions of the British Embassy in Baghdad.

Questions relating to compensation for Mr Paul Ashwell.

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