THE CHAIRMAN: Good morning ladies and gentlemen. Good morning, Sir Michael.

Today, we are going to begin by hearing evidence on the legal issues surrounding the military action in Iraq. In particular, we will be examining the legal basis for military action, including the process by which legal advice was provided to government and the substance of that advice.

If time permits, we will also consider some of the legal issues in relation to the No Fly Zones, the conduct of the military campaign, and the duties and obligations of occupying powers.

We will not at the present time be considering legal issues in relation to Iraqi civilian human rights, detention or related matters.

Our first witness this morning is Sir Michael Wood, and you, Sir Michael, were legal adviser at the Foreign and Commonwealth Office during the period 2001 to 2006, although you held that post for longer, I think.

Sir Michael will be followed by David Brummell, who was the Legal Secretary to the Law Officers, that is the Attorney General, during 2001 to 2004, and this
afternoon we will hear from Elizabeth Wilmshurst, Deputy
Legal Adviser at the Foreign and Commonwealth Office

Finally and separately this afternoon, we shall hear
from Margaret Beckett about her time as Foreign
Secretary from May 2006 until June 2007.

It is important also to recall we shall be raising
legal issues with Jack Straw when he appears again on
8 February and with Mr Blair on Friday.

Now, we have witness statements, for which we are
grateful, from Sir Michael and from Mr Brummell and
Elizabeth Wilmshurst, which are being published on our
website now.

In addition, we have sought declassification of
a number of documents from the many we have read to
underpin the hearings with legal witnesses today and
with Lord Goldsmith tomorrow. Some of those documents
are being published today, there may be more tomorrow,
that does not, of course, affect the fact that the
Prime Minister has given us an undertaking that we can
have complete access to all official documents that are
relevant to our Inquiry.

Now, I say this on each witness hearing occasion: we
recognise that witnesses are giving evidence based in
part on their recollection of events, and we, of course,
cross-check what we hear against the papers to which we have access.

I remind each witness that they will later be asked to sign a transcript of the evidence they have given to the effect that the evidence given is truthful, fair and accurate.

With those preliminaries, can I start, Sir Michael, by asking you briefly to describe your role and responsibilities during the period 2001 to 2006? I know it is in your witness statement, but a brief oral account will be helpful.

SIR MICHAEL WOOD: I was the chief legal adviser to the Foreign and Commonwealth Office from 1999, the end of 1999, until February 2006, when I retired. I was the head of a group of lawyers. There are about 27 in London, nine or so posted overseas. The ones overseas came under the responsibility of their head of mission, but I kept in very close touch with them.

It is quite a close-knit group of people. They tend to stay in the Foreign Office throughout their careers -- at least, that was the practice -- and we worked together very much as a team. It is very informal. Each lawyer is allocated a certain part of the Foreign Office to advise on and, for example, a senior lawyer at the beginning of this period was
advising the Middle East Department, including Iraq, and the United Nations Department. But I kept an overview of everything and would talk to people on a daily basis about anything of significance that was going on.

So my responsibility was essentially keeping an eye on legal advice, oversight of the legal advice. There were certain things I did myself, particularly international litigation, on particular issues which I had experience in, and then, of course, quite a lot of management. I think probably about 40 per cent of my time was management.

THE CHAIRMAN: Sure. I wonder, could you just add a little to the particular areas of law on which you and your colleagues, specialising obviously on Iraq matters, among others, gave advice. What kind of issues? Litigation you have just mentioned. Much else?

SIR MICHAEL WOOD: In relation to Iraq, or more generally?

THE CHAIRMAN: Our interest is in relation to Iraq, but that derives from the general, I expect.

SIR MICHAEL WOOD: Indeed. The general position is that it is all legal matters of concern to the Foreign Office, which -- public international law, the laws of war, the law of the sea, international dispute settlement.

The second area would be European Union law, which didn't have any great relevance, I think, in relation to
Iraq.

A third area is international human rights law. We act as agents on behalf of the government in all the cases in Strasbourg. That did come to play a part in the Iraq area.

The fourth area is in relation to what used to be called colonies, now British overseas territories, where Diego Garcia certainly had a role in relation to Iraq, but not so much the colony, but as a base.

The fifth area is any matters of UK law which are of interest to the Foreign Office, and there were quite a lot of areas, both during the conflict, before, during, after, not least, just before I was leaving, the Freedom of Information Act came into play.

THE CHAIRMAN: Thank you. I don't think it is possible to answer a question that says how much time was spent on Iraq, but can you give us just some sense of how, over the whole period, the priority that Iraq demanded from you and your department changed?

SIR MICHAEL WOOD: Certainly. I mean, at the start of this period it was relatively routine. It was in a stable position. As I have said, a senior lawyer was spending, I would think, a good deal of his time on Iraq and on -- on Iraq, and I would be kept informed and talk with him over major issues, but then it very quickly got to
a crisis situation and we put together, in effect, a team with different stages, sort of four or five lawyers spending a lot of their time on the subject, including some quite junior ones, but some mid-ranking ones, the senior ones I talked about, myself, Elizabeth Wilmshurst. So we were constantly shifting the work -- this is something that happens all the time -- to give priority, and I think of the three or four, four or five, probably half of them were spending more or less full-time on it once the conflict was imminent, the conflict took place, and particularly, the post-conflict period kept my colleagues very busy.

Of course, one of them was then posted to Baghdad and we had a lawyer there pretty well continuously from, I think, May 2003 through to about six months ago.

THE CHAIRMAN: I think you also had a lawyer posted into the UK Mission in New York to the United Nations, at any rate, for particular periods.

SIR MICHAEL WOOD: Yes, there are always one or two lawyers at the mission in New York.

THE CHAIRMAN: Right. So a very considerable weight of work over the central period and the aftermath?

SIR MICHAEL WOOD: Certainly.

THE CHAIRMAN: How much of that would be seen by or go to ministers? I take it the great bulk of it -- I won't
say day-to-day work, but not requiring ministerial attention or decision.

SIR MICHAEL WOOD: It is difficult to say, because, most of the time, legal advice gets folded into the policy papers. So submissions that were going to ministers, were going to the Cabinet, were going everywhere, would have the legal imprint in them. The lawyers would have been involved in working them up.

The times on which you would send a formal minute from lawyer to minister, lawyer to official, on to minister, that was really exceptional. The normal thing would be, at the daily meetings throughout the crisis, the lawyers would be there, they would take part in the discussion, and papers that emerged would hopefully reflect the legal advice.

THE CHAIRMAN: You are describing a situation in which you did not need to wait to be asked to advise, the advice, was, you put it folded into the policy on a day-to-day footing, but were there occasions on which you would decide yourself formally to advise ministers on a key issue?

SIR MICHAEL WOOD: Certainly it has always been the culture in the Foreign Office that the lawyers don't wait to be asked. They give advice if they see something that needs some legal input, often in telegrams, whatever,
even in the newspapers. They send a minute. The Americans sometimes call that “aggressive” legal advising. But we don't wait to be asked.

THE CHAIRMAN: Thank you. Just to complete painting the backwash to the picture, sometimes key pieces of advice would go either direct or through the Foreign Secretary to Number 10, I take it.

Would you ever be asked to advise or would you volunteer advice directly to Number 10 or would that inevitably be part of your advice to the Foreign Secretary?

SIR MICHAEL WOOD: That would inevitably go from Foreign Office officials or Foreign Office ministers or the Foreign Secretary. I don't recall occasions, on Iraq, when I was asked for direct advice. The odd occasion where you get called over and asked for a view on something, but it didn't happen in the case of Iraq.

THE CHAIRMAN: Just to fill in more of the background, there is clearly a close working relationship between the Foreign Office legal advisers and the Attorney General's office. So how does that work day-to-day?

SIR MICHAEL WOOD: Well, there is a senior Foreign Office lawyer seconded to the Attorney General's office for a three or four-year period and that has been the case for as long as I can remember, 30/40 years.
THE CHAIRMAN: He/she would be a specialist in international law, I take it?

SIR MICHAEL WOOD: Not necessarily, because they often -- well, I think we are all specialists in international law in a sense, but there is also the EU work, which, certainly in the past, the Foreign Office lawyer would be doing, the human rights work.

So that's the easy link. A lot of informal contact with that person, constant contact, on a social level, and just making sure really that we are on the same page, as it were. And then, in formal terms, as it has been described, I think, in some of the papers, the normal thing could be to write a letter to the legal secretary or the Foreign Office secondee, asking for the Attorney's advice, often then followed by a meeting with the Attorney, followed by the advice coming back in writing.

THE CHAIRMAN: So the layers of connection are not only the recorded meetings with the Attorney himself, or the formal letters exchanged between you and your department and the Attorney General's office, but also a daily flow of informal contact?

SIR MICHAEL WOOD: It depends on the subject. Certainly on this subject there was daily flow one way, in that I regarded -- we regarded it as very much our role to
keep the Attorney's office fully informed about every
development. We sent it straight over, often without
comment, but here is what has been said, so they are
fully up to speed.

THE CHAIRMAN: I have just got one other question as part of
this context, and it is to do with New York and the
United Nations work. You have got your own -- a member
of your own department, or sometimes two, in the
United Kingdom mission.

We have heard evidence from Jeremy Greenstock that
much of the time the negotiations on UNSCRs is done, as
it were, at ambassadorial level by the mission. Would
much of that generate the need for advice from London,
from your department in London, or is it only at the
point when, as happened in the case of the UNSCR 1441,
foreign ministers became directly engaged in the
negotiation? Would that change the centre of gravity of
the legal advice from you or back to London?

SIR MICHAEL WOOD: No, I think not. The normal process with
the negotiation of a normal Security Council resolution,
not 1441, is that it is basically done in New York among
the missions there, but every night, they send back the
draft and the lawyer advising the United Nations
Department, or whichever is the most interested
department, in the morning looks at it, feeds in
comment, usually to the policy department, who then send
back their comments overnight, saying "Do this, do
that".

Often it is just minor drafting points, sometimes it
is points of major substance, but it would be fed in
from the lawyer to the policy department in London, who
then sends the telegram back to New York or a fax,
saying, "Our suggestions are the following ..."
Then the next round of negotiations and so forth.
It just goes backwards and forwards.

THE CHAIRMAN: Just to finish this off, would your legal
adviser in New York sometimes, ever, feel he/she needed
advice from yourself, as head of the Foreign Office
legal advisers’ department?
SIR MICHAEL WOOD: In my experience, I spent three years in
New York -- that is pretty rare in terms of doing it
directly, because there is this process overnight of it
coming back on the policy link. If we saw a real
problem, I suppose we might talk directly, but that is
pretty rare. Partly the time difference, but there
wasn't the need, because there was a very full flow of
papers and drafts backwards and forwards.

THE CHAIRMAN: Thank you very much. I think I'll ask
Baroness Prashar to pick up the questions at this point.

Usha?
BARONESS USHA PRASHAR: Thank you, Chairman.

Sir Michael, thank you for your statement. What I want to cover is the legal position on the use of force before the Security Council 1441 and also what happened in terms of practical advice giving and the concerns you might have raised, but I think it would be very helpful if you can just tell us whether you were ever asked to advise on the provisions of international law relevant specifically to regime change in Iraq, and who asked you, and when was this, and what advice did you give?

SIR MICHAEL WOOD: It was such an obvious point that kept on coming up and we just stuck in the sentence: "Regime change is not a legal basis for the use of force."

It wasn't really controversial, so -- I can't remember if and when I personally put that sentence in, but it went constantly into documents and was not, as far as I can recall, challenged by anyone.

BARONESS USHA PRASHAR: So you can't remember when you were specifically asked that question and by whom?

SIR MICHAEL WOOD: I can't. I can remember when we were first -- at least, I think I can remember, having refreshed my memory with the papers -- when we first looked at the general question of the legal basis for
the use of force prior to the adoption of 1441, if you
would like me to set that out.

BARONESS USHA PRASHAR: I would actually. That was my next
point. I really wanted you to briefly give your view on
the legal position of the use of force before.

SIR MICHAEL WOOD: I think the legal position was pretty
straightforward and pretty uncontroversial. The first
possible basis would be self-defence, and it was clear
to all the lawyers concerned that there was no --
a factual basis for self-defence was not present, unless
circumstances changed, because there was not -- Iraq was
not engaged in an armed attack, nor was there an
imminent armed attack on us or its neighbours or anybody
else. So self-defence was ruled out.

The second possibility would have been the
exceptional right to use force in the case of an
overwhelming humanitarian catastrophe. This was the
Kosovo argument, the argument we used in 1999, and also
used for the No Fly Zones. Apart from the No Fly Zones,
it was clear that there was no basis, using that rather
controversial argument, for the use of force, in

So that left the third basis, possible basis, which
was with authorisation by the Security Council. There,
of course, we had had a series of resolutions
culminating in 1205 of 1998, which was seen as the basis for Operation Desert Fox in December 1998, and so there was a slight question whether that finding of a breach, a serious breach, was still -- still had some force.

But I think all the lawyers who looked at it were pretty -- were very clearly of the view that it was not, and that if we sought to rely on that resolution of some years before, we wouldn't have had a leg to stand on.

So the advice that was given was that there was no basis for the use of force in late 2001, when it first arose, I think, in 2002, without a further Security Council decision.

There was one point that kept on coming up. Occasionally ministers, people, would say, "Well, Kosovo, we can do what we did in Kosovo. We didn't need a Security Council resolution there". They remembered that we hadn't had a resolution, but, of course, Kosovo was very specific. It was based on the overwhelming humanitarian catastrophe, the hundreds of thousands of Kosovars being driven from their homes and their country.

BARONESS USHA PRASHAR: You made that very clear --

SIR MICHAEL WOOD: We made it very clear throughout and I don't think it was controversial. Occasionally, you would get ministers saying the wrong thing, or the
Prime Minister saying the wrong thing privately, and
I would just jump in and remind people of this basic
position, but the basic position was set out by one of
my colleagues as early as November 2001, when I think
President Bush made some kind of statement which made it
look as though force might be used. So we set out the
position immediately.

It was repeated in a document that was attached to
a Cabinet Office paper, I think, in March, but then got
repeated in documents that went to that famous meeting
on 23 July. These, I think, are --

BARONESS USHA PRASHAR: What you are saying is that you and
your colleagues were consistent in the advice you were
giving prior to this period?

SIR MICHAEL WOOD: We were, and I'm sure the Attorney was
aware of what we were saying and agreed with it. It
just wasn't really a controversial business at that
stage.

BARONESS USHA PRASHAR: During this period, nobody
challenged you, nobody disagreed with you?

SIR MICHAEL WOOD: That's correct.

BARONESS USHA PRASHAR: This was the consistent view of you
and your colleagues?

SIR MICHAEL WOOD: Yes.

BARONESS USHA PRASHAR: I think this morning we have
actually published notes that you sent to the Foreign Secretary on 26 March, which is a -- records the Secretary of State's conversation with Colin Powell.

SIR MICHAEL WOOD: Yes.

BARONESS USHA PRASHAR: I mean, were you concerned what he said, that he felt entirely comfortable making a case for military action to deal with Iraq's WMD? What were your concerns and why did he choose to write in this way?

SIR MICHAEL WOOD: I was obviously quite concerned by what I saw him saying. I mean, often reports are not accurate. They are summaries, they are short. He may well not have said it in quite the form it came out in the telegram, but whenever I saw something like that, whether from the Foreign Secretary or from the Prime Minister or from officials, less often perhaps, I would do a note just to make sure they understood the legal position.

This is just an example of quite a few notes, but I don't think -- it certainly wasn't my impression that the Foreign Secretary really misunderstood the legal position at this stage.

BARONESS USHA PRASHAR: So if you think he didn't misunderstand, why did you take this step, what you yourself call "aggressive" briefing?
SIR MICHAEL WOOD: I don't call it "aggressive", the Americans call it "aggressive".

Well, just to make sure that everybody was clear about the position. This was quite early. It was before it had got into the bloodstream, if you like, of the Foreign Office and others, what the legal position was. So it was necessary just to remind people of what was the accepted view.

BARONESS USHA PRASHAR: So you were fulfilling your responsibility, making sure that everybody was fully aware of what was within the bounds --

SIR MICHAEL WOOD: That's right, and I see that I made the other very important point at the end of the note that it is, of course, ultimately for the Attorney General to advise when it comes to questions of use of force.

So although this was clear, I was setting this out, I said I was pleased that we weren't being drawn into public statements and reminded them, as I reminded them frequently, that, at the end of the day, it would be for the Attorney to advise if they were going to war.

BARONESS USHA PRASHAR: Was the Attorney made aware of this?

SIR MICHAEL WOOD: I'm not sure that he was. This was an internal note just to keep people on the straight and narrow on this particular day, as it were. It wasn't a major piece, I don't think. It might have gone across
to him, but it doesn't appear to have done.

BARONESS USHA PRASHAR: Then there is another document, which is on 4 October, which is -- when you wrote to the Foreign Secretary after you read the transcript of what he said to the Foreign Affairs Committee.

SIR MICHAEL WOOD: Yes.

BARONESS USHA PRASHAR: Can you just spell out what your concerns were there, please?

SIR MICHAEL WOOD: This was at the stage when resolution 1441 was under negotiation, so everyone was very conscious of the issue: will the first resolution be sufficient to authorise the use of force or will we need a second resolution?

The Foreign Secretary, I think, was personally involved in the negotiation. I don't know he was as early as this date, but I was therefore watching very carefully everything that he and others said about that issue and he seemed to have -- this was a very long, as I recall, appearance before the FAC and there were just one or two points where I thought he had said things which it would be better if he hadn't said about the law, because saying things in public about the law might box in the Attorney and others, the more one said in public, without having -- or following the full proper legal advice. There were dangers of stepping into areas
which -- where the Foreign Secretary might be getting
the law wrong.

BARONESS USHA PRASHAR: Did you at any stage discuss that
with him? Because in your paragraph 4 you say:
"More troublesome is the statement in paragraph 24,
that we do not regard existing Security Council
Resolutions as an inadequate basis." Did you discuss
that with him?

SIR MICHAEL WOOD: I don't think I discussed it with him
directly.

BARONESS USHA PRASHAR: Did you get any response from him?
Or his office?

SIR MICHAEL WOOD: I just don't recall on that particular
occasion. There were plenty of responses from time to
time, and I would see him on these issues, but I can't
recall whether on that particular issue. It was water
under the bridge in a sense. This was something he had
said a few days before, and I was just making sure that,
for the next time, he was aware that it would be better
to avoid this kind of statement.

BARONESS USHA PRASHAR: But you didn't establish why he was
making these statements?

SIR MICHAEL WOOD: No, no.

BARONESS USHA PRASHAR: So what you were doing, you were
consistently giving legal advice and responding to the
concerns that you had, if you saw anything that was said
publicly, and you felt that you were fulfilling your
responsibility?

SIR MICHAEL WOOD: Yes, and I was doing other things too.
I was particularly trying to keep the Law Officers'
department fully informed about everything, making sure
they saw what was being said, so that they could step in
as well, if necessary.

SIR MARTIN GILBERT: Were there occasions when you would
have given advice to the Foreign Secretary orally
without there being a written document?

SIR MICHAEL WOOD: Yes, there were occasions when we would
be at a meeting or I might even have a bilateral with
him on this subject.

BARONESS USHA PRASHAR: But you don't recall having
a bilateral during this period when you raised these
concerns with him?

SIR MICHAEL WOOD: Not on this particular occasion, no.

BARONESS USHA PRASHAR: We need to move on.

THE CHAIRMAN: Sir Michael, it would help the stenographer
if your voice level could rise a little. We have been
having problems on and off with these things.

SIR RODERIC LYNE: Sir Michael, I would like to go forward
now to the time when Security Council resolution 1441
has been adopted. That's on 8 November 2002. In your witness statement to this inquiry you have said in paragraph 15 -- this is referring to the whole of the period:

"I considered that the use of force against Iraq in March 2003 was contrary to international law. In my opinion, that use of force had not been authorized by the Security Council, and had no other legal basis in international law."

Now, at the time that 1441 was adopted, what was your view on whether force would have been lawful without a second -- or a following resolution?

SIR MICHAEL WOOD: My view was the same as it was in March 2003, and I made that clear, in fact, during the negotiation of 1441 on a number of occasions, on drafts that were very close to the final draft. I made it clear that, in my view, the draft that they were working towards did not authorise the use of force without a further decision of the Security Council.

When -- I think I did that, for example, on 6 November -- the resolution was adopted on 8 November but at earlier stages, too, during the development of the resolution, I put my views down pretty clearly.

SIR RODERIC LYNE: So you disagreed with any who might argue that in 1441 the Security Council had already given
authorisation for the use of force?

SIR MICHAEL WOOD: Yes, I disagreed with that.

SIR RODERIC LYNE: Now, in your view, did it follow from

that that, if the Security Council had already
determined material breach, it was then for the
Prime Minister to decide that Iraq had failed to take
the final opportunity, which was afforded to Iraq in
operative paragraph 2 of Resolution 1441?

SIR MICHAEL WOOD: No, my view was that it was for the
Security Council, when the matter went back to it in
accordance with paragraphs 4, 11 and 12, to take
a decision on whether there had been a material breach
that was sufficiently grave to justify the use of force.
That was my interpretation of resolution 1441.

SIR RODERIC LYNE: Right. So it had to go back to the
Security Council in your view.

Now, those who took the different view to you, that
1441 authorised force without necessarily having
a second resolution, relied in large part on the
negotiating history that preceded the adoption of 1441
and argued that the French Government and others had
tried to include in the resolution, in the drafting
stage, an express requirement for the Council to decide,
but they had failed to achieve this.

What did you think of that argument?
SIR MICHAEL WOOD: I didn't think it was a particularly strong argument; I know that's the view that particularly the negotiating negotiators felt, Jeremy Greenstock and the Foreign Secretary, but I have to say that, if you look at the negotiating history of instruments like this, of a treaty, of a resolution, and you place a great deal of weight on particular events or particular changes that were made or were not made, it can be very misleading, and I think that - I was not directly involved in negotiation - I think that's actually an advantage when it comes to looking at a text objectively.

My own view is that, if you read the resolution as a whole, if you particularly see what was said about it in the Security Council at the meeting at which it was adopted by a large number of countries, if you look at the negotiating record insofar as you can deduce it from the documents that the Foreign Office has, the reporting telegrams and the like, none of that makes anything like a clear case as was seen by those who took the view that it established that a decision was not required, it was sufficient to have consideration.

SIR RODERIC LYNE: So if it did not make a clear case, on your reading, what effect did the preparatory work have on the interpretation of the text of the resolution?
SIR MICHAEL WOOD: In my view, the preparatory work confirmed the view that a further decision of the Security Council was needed, and, you know, I could cite many things. I could cite some of the things that the British negotiators said to some of those they were negotiating with, which were inconsistent. As reported, they said different things to different people, which is what happens in a negotiation perhaps. But if you look at what was said during the meeting on 8 November, when the resolution was adopted, France, for example, said that, if there was a report of non-compliance, “the Council would meet immediately to evaluate the seriousness of the violations” – so it is the Council to evaluate the seriousness of the violations – “and draw the appropriate conclusions. France welcomes the fact that all ambiguity on this point and all elements of automaticity have disappeared from the resolution.” You can see what Mexico, Ireland, Russia, Bulgaria, Syria -- they all said similar things. You then had the tripartite statement issued by France, Russia and China immediately after the meeting, at which they said that it would -- I have not got the text in front of me, but they said that it would be for the Council to pronounce. It would come back and the Council would pronounce.
Now, on the British --

SIR RODERIC LYNE: It said, I think:

"The Council would take position ..."

Which effectively is the same -- we can provide you the text, if you want, in a minute.

What you are quoting from there, if I understand you rightly, are explanations of vote given on the public record in the Security Council.

SIR MICHAEL WOOD: Yes.

SIR RODERIC LYNE: What weight would you give to such statements on the public record as compared to accounts that were given of informal, private negotiations in the drafting stage?

SIR MICHAEL WOOD: If this matter came before a court, a court would, in my view, give very little weight to private conversations, which are recorded by one side. No one is ever quite sure, everyone has a different view of what was said and done. They would give some weight to what is said on the public record. The degree of weight, it is quite a subtle thing obviously. The principal thing is the language of the resolution, but the extent to which you can pray in aid other statements made to the side depends very much on the circumstances.

But I think what I would say is that, on balance, if you look both at the informal negotiations and at what
was said on the record, I cannot read that as otherwise than being pretty heavily weighted towards the view that it was for the Council to take the decision on whether force could be used.

SIR RODERIC LYNE: One more final question and then I think we are going to take a short break.

I would like to ask you what the thinking was behind the United Kingdom's explanation of vote in the Security Council on Resolution 1441 and I think it would help if I just summarised the key points in it:

"The United Kingdom said that there was no automaticity in the resolution and that, in the event of a further Iraqi breach of its disarmament obligations, the matter would return to the Council for discussion as required in paragraph 12."

The United Kingdom representative then said that:

"The UK would expect the Security Council to meet its responsibilities."

What was the thinking behind those sentences?

SIR MICHAEL WOOD: I would -- my guess is that the thinking behind those sentences was very much to keep open our options as to whether we would regard a further decision of the Council as being necessary, but to do so in a way that didn't upset the other countries who thought that such a decision was necessary and, for example, the "no
automaticity”, I think, you can justify that as an
accurate description of the position. It was not
automatic in the sense that the matter - there would have to be
a report of a breach, followed by a meeting of the
Council. So in that sense it was not automatic, but how
other members of the Council understood the reference to
“no automaticity”, “no hidden triggers”, is another matter.
So that's how I interpret it. I think it is
an honest and accurate statement to make, but it was
a very subtle statement.

SIR RODERIC LYNE: Would the idea of the Security Council
having met for discussion, then being expected to meet
its responsibilities, imply, at least in the minds of
some listeners, that the Security Council was going to
need to take a decision? Is that how it would meet its
responsibilities?

SIR MICHAEL WOOD: That's certainly one way of understanding
what was said, but it doesn't actually say that. It
says something like, "We would expect the Council to
meet its responsibilities." It leaves open what the
position would be if the Council didn't, but clearly the
hope was very much that the Council would take
a decision, would adopt a second resolution.
But they kept open the option, which was perfectly
reasonable, if you like, of being able to argue the
opposite, because that's what they thought the outcome
of the negotiations allowed them to do. I think it is
a subtle statement, an accurate statement, but it may
have been a bit of a misleading statement.

SIR RODERIC LYNE: Mr Chairman.

THE CHAIRMAN: Thank you. Sir Michael, we have just
learned, while this session has been going on, that
further documents relevant to today and tomorrow have
just been declassified. So I think it would be sensible
for us to take a ten-minute break so that you and we can
consider best how to use that material.

Back in ten minutes.

(10.40 am)

(Short adjournment)

(10.53 am)

THE CHAIRMAN: I should like to express my regret to the
witness for this rather sudden series of
declassifications coming not at the ideal moment in the
course of the hearing.

However, we have them, so, if we may, we will resume
our questioning on the basis of those additional
declassified documents, which will be going up on the
website as this hearing continues.

So, Sir Roderic, back to yourself.

SIR RODERIC LYNE: Sir Michael. I'm sorry that I had to
interrupt my line of questioning, but it so happens that
just at the moment I was going to seek answers in this
area, we were informed that the government had agreed to
the declassification of these documents.

There are four that I would like to refer to, but
I would like to check first that you have had a chance
to refresh your memory of them. The ones I want to
refer to -- others may want to refer to some of the
others -- are your minute of 24 January 2003 to the
Private Secretary to Mr Jack Straw, and then to the
Foreign Secretary's reply to you, directly from him to
you, on 29 January, and then the Attorney General, on
3 February --

SIR MICHAEL WOOD: Yes.

SIR RODERIC LYNE: -- sent the Foreign Secretary a minute
commenting on his reply to you, and then, finally,
I would like to refer to the Foreign Secretary's reply
to the Attorney General of 20 February.

So if you have got all those documents in front of
you, can we take, firstly, your advice of
24 January 2003 to the Private secretary? Here you are
commenting on something that the Foreign Secretary had
said in a meeting with the American Vice-President in
Washington. You say in this minute that the Foreign Secretary will be aware of your
advice, I quote now:

"... ie, that a further decision of the Security Council is necessary if the use of force is to be lawful."

You go on in this minute to say:

"I hope there is no doubt in anyone's mind that without a further decision of the Council, and absent extraordinary circumstances (of which, at present, there is no sign), the United Kingdom cannot lawfully use force against Iraq to ensure compliance with its S[ecurity] C[ouncil] R[esolution] WMD obligations."

Finally, you say:

"Kosovo is no precedent", and you set out the arguments that you have already made this morning, as to why Kosovo is no precedent.

Can I ask why you felt it necessary -- and you said earlier that minuting the Foreign Secretary directly was not something you normally had to do -- why you felt it necessary to send this advice?

SIR MICHAEL WOOD: It is something I didn't normally have to do, but I did it quite frequently during this period. It was because of the statement that he was recorded as saying to the Vice-President:

"We would much prefer a second resolution. We would
be OK if we tried and failed (à la Kosovo)."

That was so completely wrong, from a legal point of view, that I felt it was important to draw that to his attention.

SIR RODERIC LYNE: How did he react to that advice?

SIR MICHAEL WOOD: I think the first thing was that we had a bilateral meeting, I think, at which he took the view that I was being very dogmatic and that international law was pretty vague and that he wasn't used to people taking such a firm position.

When he had been at the Home Office, things had often -- he had often been advised things were unlawful and he had gone ahead anyway and won in the courts, this kind of a line, which is what he recorded in the minute to me.

SIR RODERIC LYNE: So first you had a discussion.

SIR MICHAEL WOOD: Yes.

SIR RODERIC LYNE: How would you describe the tone of that discussion?

SIR MICHAEL WOOD: It was very amicable.

SIR RODERIC LYNE: Amicable?

SIR MICHAEL WOOD: Yes.

SIR RODERIC LYNE: A friendly discussion, but a strong disagreement?

SIR MICHAEL WOOD: Yes.
SIR RODERIC LYNE: Yes. Then the Foreign Secretary wrote back to you confirming in writing the points he had made in that discussion. This is in his minute of 29 January.

How infrequent would it have been for the Foreign Secretary to sign personally a minute to you as the senior legal adviser in the Foreign Office?

SIR MICHAEL WOOD: Well, it happened from time to time when he had something of particular legal interest to report, but a minute like this is quite unusual, I would say.

SIR RODERIC LYNE: Quite unusual. He said --

SIR MICHAEL WOOD: But it wasn't taken amiss by me.

SIR RODERIC LYNE: It wasn't taken amiss.

He said in this minute:

"I note your advice but I do not accept it."

He then makes some points about his experiences in the Home Office, where there had been disagreements over what the law said, and then, turning to international law, in the penultimate paragraph of his minute he said the following:

"I am as committed as anyone to international law and its obligations, but it is an uncertain field. There is no international court for resolving such questions in the manner of a domestic court. Moreover, in this case, the issue is an arguable one capable of
honestly and reasonably-held differences of view."

Two points about this, if I may. Firstly, how often
did you have a minister telling you that your advice was
not accepted in these very frank terms?

SIR MICHAEL WOOD: I think this was probably the first and
only occasion.

SIR RODERIC LYNE: Would you agree with the Foreign
Secretary's characterisation that international law is
an uncertain field?

SIR MICHAEL WOOD: It is rather a general statement.

Obviously, there are some areas of international law
which can be quite uncertain. This was, however --
turned exclusively on the interpretation of a specific
text and it is one on which I think international law
was pretty clear, or could certainly be pretty clear if
the resolution was clear, as in my view it was.

So I think that that general statement is -- it has
got some truth in it, but it is far too general. It is
certainly -- where I would strongly disagree is the
implication of the following sentences, where he says:

"Because there is no court", "often or usually no
court to decide these matters", he is somehow implying
that one can therefore be more flexible, and that,
I think, is probably the opposite of the case.

I think, because there is no court, the legal
adviser and those taking decisions based on legal
advice, have to be all the more scrupulous in adhering
to the law, because it is one thing if -- I mean,
lawyers have two functions, in-house lawyers: one is to
give advice before a decision; the other is to defend
the position after the decision.

As part of giving advice and the client accepting
the advice, the absence of a court, I think, is a reason
for being more scrupulous in adhering to the advice,
because it cannot be tested.

It is one thing for a lawyer to say, "Well, there is
an argument here. Have a go. A court, a judge, will
decide in the end". It is quite different in the
international system, where that's usually not the case.
You have a duty to the law, a duty to the system. You
are setting precedents by the very fact of saying things
and doing things.

So I would draw the opposite conclusion to that
drawn by the Foreign Secretary from the absence of
a general court.

SIR RODERIC LYNE: The Foreign Secretary says at the end:

"But there is a strong case to be made that
UNSCR 687 and everything which has happened since,
assuming that Iraq continues not to comply, provides
a sufficient basis in international law to justify
military action."

What was your reaction to that sentence?

SIR MICHAEL WOOD: I noted it, but did not accept it. No, that was clearly not the view of the law that I took. The fact of the matter was, of course, that, in a sense, none of this mattered, my view, Jack Straw's view, because what mattered, at the end of the day, would be the Attorney General's view, and that was very clear to all of us throughout. So in a way this is a bit of a game.

SIR RODERIC LYNE: "The Attorney General's view was clear to all of us throughout" --

SIR MICHAEL WOOD: No, what I was saying -- sorry.

SIR RODERIC LYNE: It was clear that it would be the Attorney General's view that mattered? Thank you. Let us turn, therefore -- the Foreign Secretary copied his minute to the Attorney General, and the third document I referred to was the Attorney General's response to 3 February.

How did you view the Attorney General's reaction to the Foreign Secretary's minute?

SIR MICHAEL WOOD: Well, I was very pleased that the Attorney General had written in these terms. I didn't expect him to do so, but the fact that he spoke in strong support of the role of government lawyers was
important. So I was happy to see that.

He repeats in that note, I think, that he has not yet given legal advice and he will give legal advice in due course. That, of course, is part of the problem.

SIR RODERIC LYNE: So, for the record, you were pleased that the Attorney General had said in his minute:

"If a government legal adviser genuinely believes that a course of action would be unlawful, then it is his or her right and duty to say so."

That's a reasonable characterisation of the thrust of the whole of his minute, is it?

SIR MICHAEL WOOD: Yes.

SIR RODERIC LYNE: Yes. Now, how did the Foreign Secretary respond to this minute by the Attorney General? He sent a further minute. Did you have another discussion with him before he sent his minute of 20 February, which is perhaps on the reverse side of your copy of the Foreign Secretary's -- of the Attorney's minute to the Foreign Secretary. Do you have it in front of you?

SIR MICHAEL WOOD: Yes. I don't recall. I doubt it, certainly not on this particular issue. There is quite a gap between the 3rd and the 20th, so I don't recall if I talked to him about these things, but he obviously found the Attorney's bit of paper in his in-tray and decided he would reply three weeks later.
SIR RODERIC LYNE: In his reply he says that he fully respects the integrity of Michael Wood and his colleague legal advisers, but he concludes by arguing that the full range of views ought to be reflected in the advice offered by our legal advisers.

Now, had you and your colleagues been offering the Foreign Secretary a full range of views or had you been arguing only for one view?

SIR MICHAEL WOOD: I had been setting out my view, and I had been doing that consistently whenever there was a need to do so.

On the other hand, at an earlier stage, when I wrote a letter to the Attorney General's office, a full letter, a ten-page letter, setting out the pros and cons of the two views, I did set out both views. But most of my minutes to the Foreign Secretary, at this time, or to officials, were not really detailed pieces of legal advice where one would expect, "On the one hand ... on the other hand", they were more operational notes to say, "Hang on, you shouldn't be saying this", or, "Leave the matter open. We have still got to wait for the Attorney".

They were more in the nature of operational notes than the kind of advice where you reflect the full range of views. If I had been asked, I could have written him
a 50-page paper explaining, "On the one hand ... on the
other hand ..."

SIR RODERIC LYNE: But essentially, you are saying you had
written a paper exploring what you regarded as the full
range of views at an earlier stage which had gone to the
Attorney General's office?

SIR MICHAEL WOOD: Hm-mm.

SIR RODERIC LYNE: Had you, in that paper, come down on one
side or the other of the argument, or had you just set
out the differing arguments?

SIR MICHAEL WOOD: No, in that paper I deliberately left the
matter open, because it was made clear to me in the
office that I should leave the matter open in that
paper. It was also made clear to me that I should say
we didn't need legal advice at that stage.

There is nothing unusual about that, because in
consulting the Attorney, one can either write a letter
setting out the problem and expressing a view, or write
a letter and simply ask him for advice.

This letter was actually not even going as far as
that. It was just setting out the full background so
that the Attorney would be well placed to take
a position, as and when he had to do so.

SIR RODERIC LYNE: So you are providing him with material to
help him take a position. As you said earlier, it is
the Attorney General's view which is key in this, not, ultimately, your view, and you also said that part of the problem at the time we are talking about, January/February 2003, is that the Attorney General has not yet been asked to give his advice. What do you mean by "problem" here? Was it creating a problem, the absence of a view from the Attorney General?

SIR MICHAEL WOOD: Well, it was certainly a problem for me within the Foreign Office, because I was having to react to public statements by ministers, to prepare briefings for people, on the basis of my views, without having a definitive view from the Attorney, although I think I know what his thinking was at that time. So I think it was a problem in terms of giving legal advice within the Foreign Office. I think in the broader sense, but it is perhaps less for me to say so, it was a problem for the government as a whole, because they really needed advice, even if they didn't want it at that stage, in order to develop their policy in the weeks leading up to the failure to get the second resolution.

SIR RODERIC LYNE: They needed advice even if they didn't want it. Does that mean that they had been deliberately not asking for advice that they needed? I mean, how did
it come about?

SIR MICHAEL WOOD: I think it was clear to me that the Attorney would give advice when he was asked for it, and there were various stages where he was not asked for it, and, in my view, the fact of leaving it to so late --

SIR RODERIC LYNE: Sorry, can I just interrupt there?

Stages where a decision was taken deliberately not to ask him for it or almost to ask him not to put it forward at that stage?

SIR MICHAEL WOOD: It is difficult for me to say, but my impression was that there was a reluctance in some quarters to seek the Attorney's advice too early --

THE CHAIRMAN: Because, for example, events were still unfolding and negotiations were still happening?

SIR MICHAEL WOOD: That could well be one of the reasons, but then advice is a rolling thing; you give advice at one stage, and then, of course, you say, "This is subject to anything that may happen", and I must keep my advice up-to-date, as it were. That, I think, is what should have had happened.

THE CHAIRMAN: You spoke in your earlier remark about the custom, convention, in the Foreign Office, of folding in legal advice to the policy-making, as it developed. But in this case, looking at the Attorney's role of giving legal advice and policy-making, that was not happening?
SIR MICHAEL WOOD: I don't know that it was not happening, but the formal advice did not come until very late in the day --

THE CHAIRMAN: Yes.

SIR MICHAEL WOOD: -- as I see it.

THE CHAIRMAN: Okay, thank you. I think we'd like to ask one question, Sir Martin, and then we'll come back to the post 1441 --

SIR MARTIN GILBERT: Again, to turn to two of the documents that have been declassified this morning, on 15 October 2002, you were asked by the Foreign Secretary, as a matter of urgency, to advise on the consequences of the United Kingdom using force against Iraq without there being any international legal authority. You gave your advice to him that same day.

Can you tell us the main points of your advice?

SIR MICHAEL WOOD: Well, it is set out in the document which I understand has been declassified, but this was rather a curious request and I'm not sure what -- I'm still not entirely sure what the purpose was, but I think it was to send something over to Number 10. It did go to Number 10, who said, "Why has this been put in writing?"

That is my recollection. I would have to check that. But my advice was firstly that, for the government to act contrary to legal advice,
international legal advice, would be a breach of the Ministerial Code, which says clearly that ministers have to comply with the law, including international law. The words "including international law", are added every time the law is mentioned.

Likewise, the Diplomatic Service Code and, no doubt, the Civil Service Code. More importantly -- no, that's very important, but equally important, I think, would be the effect on the United Kingdom's standing internationally, if we had a reputation for acting unlawfully on a matter as serious as this, or, indeed, on any matter.

I then made the obvious point that, without a sound legal backing, there would be less political support, both domestically and internationally. I then turned to the question of international criminal law, the fact that -- it is quite complicated there. I wouldn't like to try and summarise the position, but I think the MoD view is that soldiers would not themselves be committing a crime because the government had gone to war unlawfully, but obviously there are issues there.

The risk of litigation was increasing. We had already had an attempt before -- well, in November/December, by CND to bring an action in the English courts for a declaration that going to war was
unlawful without a second resolution.

One could envisage a considerable amount of further litigation, and then, of course, there was the question of the crime of aggression, which would be committed if something as serious as this were to take place without a proper legal basis.

SIR MARTIN GILBERT: Who would be the -- by what process could the crime of aggression --

SIR MICHAEL WOOD: Exactly. That's the point. I think it was certainly possible, in my view, that there could be a prosecution in the English courts, but I think the House of Lords subsequently held that the crime of aggression was not yet a crime under English law. There is no court with jurisdiction. The International Criminal Court does not have jurisdiction then, or does not yet have jurisdiction over the crime of aggression. So I just raised the point.

Then I looked at the possibility of action in the International Court of Justice and thought that this was unlikely, given -- looking through the list of states who had accepted the jurisdiction of the Court.

SIR MARTIN GILBERT: What point did you make about the potential risk to individual UK servicemen? Was that something which came up?

SIR MICHAEL WOOD: Well, it came up, but I recorded the
MoD's view, I think, that this would not put them at risk. I think in the case of the International Criminal Court, which does have jurisdiction over war crimes and the like, it was my view that, if the underlying legal basis was unsound, that could heighten the risk of actions in the International Criminal Court, as much for the atmospheric -- because of the atmospherics, as because of any real increase in risk.

SIR MARTIN GILBERT: Action in terms of --

SIR MICHAEL WOOD: By the Prosecutor deciding to investigate the matter, as indeed the Prosecutor did investigate and concluded that there was no basis for bringing action against any British soldier. That's my recollection.

SIR MARTIN GILBERT: Thank you.

THE CHAIRMAN: May we turn now to the views of the Attorney as you understood them? Sir Lawrence?

SIR LAWRENCE FREEDMAN: There are a number of questions. I apologise for somewhat improvising a bit, but I want to just start with the understanding of resolution 1441. In his evidence to us, Jack Straw reminded us of the statement he had made in the House on 25 November 2002. This is what he said to the Commons:

"That brings me to the next question I posed: will there be a second Security Council Resolution if military action proves necessary? Resolution 1441 does
Not stipulate that there has to be a second Security Council Resolution to authorise military action in the event of a further material breach by Iraq."

Then he goes on to say that -- the point we have already discussed, that this was part of the negotiating process, but that was -- but was rejected, and no draft ever came to the vote on that, and every member of the Security Council had accepted his text:

"I should make it clear that the preference for the government in the event of any material breach is that there should be a second Security Council Resolution authorising military action.

"However, the faith now being placed in the Security Council by all members of the United Nations, including the United States, requires the Council to show a corresponding level of responsibility. So far it has done so, and I believe it will do so in the future, but we must reserve our position in the event that it does not."

Now, this is putting a statement of view, going beyond what you described as the rather subtle statement by Sir Jeremy Greenstock in the United Nations. This is more definite. Is that correct?

SIR MICHAEL WOOD: I think it is still quite subtle:

"... but we must reserve our position in the event that
it does not."

He doesn't expressly say we have the right to use force, even if it does not. I mean, it is threatening, it is probably good politics, vis-à-vis Saddam, if he is listening. It is good politics to keep one's options open, if you can. So I have no complaints about that statement as such, but it is a subtle one.

SIR LAWRENCE FREEDMAN: It is a bit less subtle in some ways because it -- my question is really whether it moves us along a position from saying that there absolutely has to be a second Security Council Resolution to a point where things can happen without a second Security Council Resolution.

SIR MICHAEL WOOD: I don't think I read it at the time, and I don't read it now, as being so definite as to box us in to a public position, that there is no need for a second resolution before we go to war. It is sufficiently well drafted to avoid that, I think.

SIR LAWRENCE FREEDMAN: Were you avoiding -- involved in the drafting?

SIR MICHAEL WOOD: I don't think so. I can't recall. I think Jack Straw said the legal advisers approved of this. So it may have been one of my colleagues, but I don't have a problem with it.

SIR LAWRENCE FREEDMAN: So just again to understand the
process that you were describing, what you are saying is
you are content with the ambiguity in how this could be
interpreted, because, in a way, the purpose of 1441 was
to threaten Iraq that, if they continued to violate
UN resolutions, something terrible could happen,
something could happen. You didn't see a need at this
stage to resolve that ambiguity?

SIR MICHAEL WOOD: I would like -- I wanted the government
and ministers to know what the true legal position was.
It is quite another thing what you say publicly at this
kind of a stage, where you are trying to keep maximum
pressure on Iraq.

SIR LAWRENCE FREEDMAN: But there is always a risk
presumably in that, that you may suggest options that
aren't really available to the UK Government in
maintaining this level of ambiguity?

SIR MICHAEL WOOD: My trouble was that some people thought
genuinely in their own minds there were these options.
I was more concerned about that than what might be said
in public, so long as it didn't expressly contradict my
view of the law and my view of the Attorney General's
view of the law.

SIR LAWRENCE FREEDMAN: Can I now move to another aspect of
argument that we have heard from both Jeremy Greenstock
and Jack Straw, that their objectives of 1441 were to
replicate the position that had been reached in late 1998, before Desert Fox?

I would like to examine that in two respects: first, how valuable a precedent was Desert Fox, by which the action took place in December 1998; and second, did 1441 replicate the position?

It would be helpful, I think, because this argument comes up so much, that you could describe what has been called the revival argument, which goes back to Security Council resolution 678 of November 1990. Could you very briefly indicate the nature of that argument?

SIR MICHAEL WOOD: Yes. Well, the revival argument in brief is that in 678, the Security Council authorised Member States co-operating with Kuwait to use all necessary measures to eject Iraq from Kuwait and to secure international peace and security in the region -- to restore international peace and security in the region.

Following the conflict at the beginning of 1991, there was the so-called ceasefire resolution, 687, which set a whole series of conditions upon Iraq, very stringent conditions, notably in the field of weapons of mass destruction, which formed the basis for a ceasefire.

Now, the position was then taken that, if Iraq was
in material breach of the conditions of the ceasefire,
that undermined the ceasefire and the states concerned
could resume the use of force against Iraq in order to
ensure its compliance with the conditions of the
ceasefire; for example, with the weapons of mass
destruction provisions.

A key element of this theory, if you like, was that
that decision on whether there had been a material
breach or a flagrant violation, call it what you will,
had to be a decision taken by the Security Council,
a collective decision, because it was the Security
Council which had laid down the conditions for the
ceasefire.

It could not be, in our view, a decision taken by
individual states. It is important to recognise that
the US had a different view on that point. The point of
view that we took was one that was upheld, I believe, by
the United Nations Legal Counsel, which had led the
Secretary-General in 1993, when this was first
exercised, if you like, the revival of the right to use
force, it was exercised in January 1993, and the UN --
the Secretary-General, stated that that use of force had
been done with a Security Council mandate.

SIR LAWRENCE FREEDMAN: Although there wasn't
a Security Council resolution for it?
SIR MICHAEL WOOD: No, but there had been a -- I think there was a statement by the President of the Council, if not two, stating that there had been a material breach and that there would be serious consequences, and those statements are agreed unanimously by Council members.

I have always been careful to say that there had to be, in our case, a second Council decision. It didn't have to be in the form of a resolution; it could have been in the form of a statement.

THE CHAIRMAN: The statement was that a breach would be followed by serious consequences, not by all necessary measures, not repeating the 678 formula?

SIR MICHAEL WOOD: That's correct. It was simply an indication that the Council, as such, agreed that Iraq was in material breach of the resolution. That was understood in 1993, including by the UN Secretary-General, as reviving the authorisation to use force in 678.

SIR LAWRENCE FREEDMAN: The importance of the sequence is that first comes the material breach, which has to be determined --

SIR MICHAEL WOOD: By the Council.

SIR LAWRENCE FREEDMAN: -- by the Council and then action will follow.

Now, in your statement you cite an article by
Sean Murphy on the legality of the Iraq war, which is very long and I did read. As far as I understand, he actually questions the whole revival argument.

SIR MICHAEL WOOD: He does, yes.

SIR LAWRENCE FREEDMAN: He argues that, essentially, resolution 678 was dealing with a specific thing at a specific time, but you don't accept that view?

SIR MICHAEL WOOD: No.

SIR LAWRENCE FREEDMAN: So you accept that there is a possibility of the revival argument?

SIR MICHAEL WOOD: Yes. I was quoting his article essentially as a source of materials, because it has got very good footnotes and it is very thorough and he does go through the whole sort of onion rings, as it were, of argument.

SIR LAWRENCE FREEDMAN: That's very interesting indeed.

SIR MICHAEL WOOD: Did you want me to say a word about 1205?

SIR LAWRENCE FREEDMAN: I was about to come on to that.

SIR MICHAEL WOOD: Sorry.

SIR LAWRENCE FREEDMAN: Perhaps you can just take us through the sequence that got us to Desert Fox in December 1998, because there were two resolutions, weren't there?

There was 1154 and then 1205 -- 1158, sorry.

SIR MICHAEL WOOD: I don't actually have 1154 with me, but I think that indicated that there was a serious
violation or some such phrase.

SIR LAWRENCE FREEDMAN: Is threatens severest consequences.
SIR MICHAEL WOOD: Yes, but then it goes on to say that the Council is going to work on this, I think, in effect.

Then we have 1205, which was adopted at the beginning of November 1998, just after the Iraqi authorities had decided to -- that they would cease all cooperation with the inspectors. So this was quite a serious moment.

Resolution 1205 is quite a brief one, and in paragraph 1 it condemns Iraq's decision to cease cooperation with the inspectors as a flagrant violation of resolution 687, then demands that Iraq rescinds that decision, and, at the end, it decides, in accordance with its primary responsibility under the Charter for the maintenance of peace and security, to remain actively seized of the matter.

So it is a very short resolution, and I think the difference between 1205 and 1441 is that 1205 doesn't have that fire-break that you get in 1441. It doesn't say, "You are in serious violation, and you must do A, B and C, and then we will come back and look at it".

That's why I think the case based on 1205, though it was very controversial, the case for revival under -- in 1998 is stronger than the one based simply on 1441,
without a second resolution.

SIR LAWRENCE FREEDMAN: But it was criticised quite strongly by other Security Council members at the time.

SIR MICHAEL WOOD: It was.

SIR LAWRENCE FREEDMAN: So there was a view that you did need a decision by the Security Council before military action was authorised, which was not the British and American view at the time?

SIR MICHAEL WOOD: I mean, I think that we thought a reasonable case could be made out for saying that 1205 was a sufficient finding by the Council of a violation of 687 to revive the authority to use force.

As you said, that was not a universally shared view but we believed that the Council had done enough in November/December 1998 to act.

SIR LAWRENCE FREEDMAN: There is another issue, which is, in December 1998, the head of UNSCOM more or less reported directly a material breach, that they had been obstructed in the work that they were trying to do. So you did have an independent statement from the authorised UN official that a material breach had occurred or a flagrant -- perhaps you can also explain the difference between a material breach and a flagrant violation?

SIR MICHAEL WOOD: Well, a flagrant violation sounds worse,
but a material breach maybe is. "Material breach" is simply the technical term in the law of treaties for a breach that is sufficiently serious as to undermine the basis for the treaty. So it is a technical, legal word, but I think "flagrant violation" conveys the same meaning.

SIR LAWRENCE FREEDMAN: Can we --

SIR MICHAEL WOOD: I should say that I was not, as I recall, directly involved in 1998 and 1205 and I have only studied that by looking at the back papers.

SIR LAWRENCE FREEDMAN: So you say in your statement, this was the UK view --

SIR MICHAEL WOOD: I use that phrase quite often.

SIR LAWRENCE FREEDMAN: You say things are the UK view without necessarily saying it is you.

There is a lot we would like to get through, but time is short. You have mentioned your advice, I think it was, of December, your material you sent to the -- December 2002, the material you sent to the Attorney General, which has been declassified, and it is a very long document and goes through.

You mentioned before, in answer to Sir Roderic Lyne, that you were -- well, did you say that you were encouraged to write this in a certain way without coming to a conclusion, or did you choose to write it in this
way without coming to a conclusion?

SIR MICHAEL WOOD: I was -- it was the view in the
Foreign Office that it would be better to write this
thing, "On the one hand ... on the other hand", at this
stage and without asking for advice.

SIR LAWRENCE FREEDMAN: Was that discussed with the Foreign
Secretary?

SIR MICHAEL WOOD: It came from him. I'm not sure
I discussed it, because I was perfectly happy with that
at this stage. The purpose of this letter was precisely
to set the full picture before the Attorney.

SIR LAWRENCE FREEDMAN: But on other occasions, before and
after this document, you made clear your own views?

SIR MICHAEL WOOD: Certainly.

SIR LAWRENCE FREEDMAN: Then can I finally just ask you
about another document which we have just had
declassified, which is the Foreign Secretary's advice or
letter to the Attorney General of 6 February?

SIR MICHAEL WOOD: Hm-mm.

SIR LAWRENCE FREEDMAN: Now, again, just to be clear what's
going on, the -- you have made it very clear that
whatever disagreements you may have had with Jack Straw,
in the end, a decision was for the Attorney General, and
your memorandum, which you have just mentioned, of
December, sets out in full detail all the different ways
that this issue may have been dealt with.

Now, we don't actually have the document of the Attorney General to which Jack Straw was responding, but it is pretty clear here that he is responding in terms which reflect the view that he has been arguing throughout, which is that, if 1441 was meant to require a second resolution, it would have said so, and it didn't because those who wanted it had tried and lost. Therefore, we do have an option of going forward without one. Is that a fair summary?

He also reverts to some of the issues he has been discussing with you earlier about his -- the paradoxical nature of international law that we have already discussed those.

Were you -- did you know that this letter was going off in these terms?

SIR MICHAEL WOOD: No, I don't think I saw this letter at the time, but I have no problem with it because, effectively, he was informing the Attorney what he, as a negotiator, recalled, and the Attorney, at this stage, was very interested, and rightly so, in finding out as much about the negotiations as he could.

SIR LAWRENCE FREEDMAN: So you had no problems with the letter as such?

Can I just then, to conclude, go to the final
paragraph? Because I think it is relevant for our
discussions tomorrow with Lord Goldsmith as well.

Is that -- putting all this together, he says:

"I think the better interpretation of the scheme
laid out in 1441 is that (i) the fact of material
breach, (ii) possibly the further UNMOVIC report and
(iii) consideration in the Council."

All I'm interested in at the moment is the sequence,
and this goes back to the point about Desert Fox, that
in a sense, the trigger for all of this you would expect
to be a material breach and possibly UNMOVIC saying it
is a material breach, rather than members of the
Security Council deciding that 1441 in itself allowed
them to go forward. You needed something else, even if
it wasn't a second resolution, you needed something
else.

SIR MICHAEL WOOD: The view that the Foreign Secretary was
taking was that you needed a material breach. There had
to be a new material breach, that this was self-evident,
and the inspectors reported that there was a further
material breach and all that the Council had to do was
to consider the matter. The view that I took was
that you needed the material breach, a report to the
Council and a decision by the Council that this was
a sufficiently serious breach to merit the resumption of
the use of force.

SIR LAWRENCE FREEDMAN: But even in this sequence you needed --

SIR MICHAEL WOOD: A new material breach.

SIR LAWRENCE FREEDMAN: And you needed UNMOVIC to say so?

SIR MICHAEL WOOD: Well, I think on one view of the resolution, the report could have come either from a Member State or from UNMOVIC, but, in practice, it came from UNMOVIC anyway. There were plenty of reports from Blix saying that there were breaches.

SIR LAWRENCE FREEDMAN: Thank you very much.

THE CHAIRMAN: Thank you. With time pressing hard on us now, can I ask Baroness Prashar to pick up one more question?

BARONESS USHA PRASHAR: Sir Michael, I want to really find out what was your particular role in developing the arguments and the papers published on the legal basis for use of force, because we know that in Lord Goldsmith's answer to a Parliamentary question on 25 February 2005, he said that three officials from the FCO worked on the answer to the Parliamentary question given by Lord Goldsmith on 17 March and the Foreign Secretary's memorandum to the Foreign Affairs Select Committee. Were you one of those officials?

SIR MICHAEL WOOD: I'm trying to work out the mathematics.
I was certainly present in the Attorney General's office on the Sunday with a lot of other lawyers.

BARONESS USHA PRASHAR: Which Sunday was this?

SIR MICHAEL WOOD: Is it the 16th? It is the 16th, yes, the day before the Parliamentary answer.

BARONESS USHA PRASHAR: Right.

SIR MICHAEL WOOD: We spent most of the day at the Attorney's office and work was going on on a whole series of different aspects of the matter.

Firstly, there was the drafting of the Parliamentary answer. Secondly, there was the drafting of the longer note that the Foreign Secretary sent to members of Parliament, the so-called Foreign Office note, but it was drafted at the Attorney's. Thirdly, we drafted a question and answer paper for use with the media if we were asked difficult questions. Fourthly -- no, I think that's probably what we were doing. No, there was also an official -- a non-lawyer, who prepared a detailed description of the negotiating history of 1441, and we went through all the papers and very rapidly produced a full account of the negotiating history. So there were various people working on different things.

Now, what my role was -- I have only got a pretty vague recollection, but I think I was more or less on the sidelines, because my views were known, but
I probably did read through the drafts and no doubt in my usual way made editorial suggestions and the like, but I don't think I had a major part in the preparation of those questions -- of the Parliamentary question and the longer FCO note, though I did take the longer FCO note back to the Foreign Office and got it typed up and sent to the Foreign Secretary.

I should stress that I think this is the -- by that stage, as I saw it, we were in the advocacy mode as opposed to the advisory decision-making mode. This was a matter of presentation: how is this to be presented in public?

BARONESS USHA PRASHAR: So is that why you were on the sidelines?

SIR MICHAEL WOOD: I may not have been on the sidelines, but my recollection of the day is fairly hazy and I don't think I played a major role in the drafting. I may well have read over them towards the end of the day.

BARONESS USHA PRASHAR: So you would come to the view that was the Attorney General's view, this was a question of presentation, an advocacy role, and you were just making editorial changes?

SIR MICHAEL WOOD: I suspect I didn't do much more than that because others were really doing the work on the Parliamentary question, and not least the Attorney,
I think it was largely his work.

BARONESS USHA PRASHAR: Were you, on that day, by 16 March, aware that these documents were also to be used to present legal advice to the Cabinet?

SIR MICHAEL WOOD: On 16 March?

BARONESS USHA PRASHAR: Yes, when this was being done.

SIR MICHAEL WOOD: I don't think --

BARONESS USHA PRASHAR: So you weren't aware that the same documents would be used to present legal advice to the Cabinet?

SIR MICHAEL WOOD: No.

BARONESS USHA PRASHAR: I mean, you have enormous experience, are you able to say whether this was the way legal advice of this sort is presented to the Cabinet?

SIR MICHAEL WOOD: I don't think I have got enormous experience of how legal advice is presented to the Cabinet. I have to say it didn't surprise me.

BARONESS USHA PRASHAR: It didn't surprise you that the paper that went to the Foreign Affairs Committee was used as a way of presenting legal advice to the Cabinet?

SIR MICHAEL WOOD: Or even the Parliamentary answer. No, I imagine that the Cabinet, when it gets advice from the Attorney, as it does, no doubt, frequently, gets it in conclusive terms. It just gets -- this is -- "The Attorney's advice is A, B, C, D". It doesn't get the
20 pages of why that is so, but as I say --

BARONESS USHA PRASHAR: So you are not aware why that
decision was taken to present this to the Cabinet in the
way that it did?

SIR MICHAEL WOOD: Only because of papers I have read
subsequently.

BARONESS USHA PRASHAR: Okay. Can I now move to the
question of your response to Elizabeth Wilmshurst's
request for early retirement? When did you first become
aware that Elizabeth Wilmshurst was considering her
position?

SIR MICHAEL WOOD: I think probably on the Monday. The
letter is dated the Tuesday, I think, so discussion --
I mean, I knew that from talking to her -- we were
constantly talking about things. I was aware, even
before that, that she would be deeply unhappy if things
got ahead in the way that, in fact, they did. So when
I got the letter, it did not come as a particular
surprise to me.

BARONESS USHA PRASHAR: It didn't come as a surprise?

SIR MICHAEL WOOD: No.

BARONESS USHA PRASHAR: I mean, she requested early
retirement, but she indicated in her letter that would
constitute a notice of resignation, if that was not
possible. I mean, were you very clear about her reasons
when -- I mean, can you spell out what you think her reasons were? I know it is stated in the letter, but I would like to hear from you what you thought her reasons were.

SIR MICHAEL WOOD: I think it is absolutely clear. She was firmly of the view that what was happening was unlawful and that it was such a serious matter that she felt, as a matter of conscience, that she could not continue to work in the Foreign Office.

BARONESS USHA PRASHAR: I mean, as you said earlier, your views and hers were not dissimilar, you were consistently giving similar advice.

SIR MICHAEL WOOD: Yes.

BARONESS USHA PRASHAR: Why do you think she felt the need to consider her position and you didn't? What were your reasons for not considering your position?

SIR MICHAEL WOOD: I was expecting that question. People react differently to different circumstances. I may have briefly considered the matter. Certainly I did when Elizabeth resigned, but my conclusion was that I should carry on.

I did not, in fact, find myself having to defend this legal decision at great length or in a personal way thereafter. We quickly moved on to other matters, which were very important, such as the conduct of the conflict
which is something quite separate from the legality of
the decision to go to war, and the other very important
things were going on.

I think I didn't feel -- you know, questions of
conscience are very individual questions. I carried on,
and I think -- I wouldn't say this was the only
consideration, but it would have certainly been even
more disruptive for the legal advisers in the
Foreign Office if there had been a whole host of
resignations.

BARONESS USHA PRASHAR: But in your statement, the last
paragraph, 37, you say that:
"In my view, the seriousness of the matter and the
absence of a court places a special responsibility on
lawyer to do his or her best to ensure that the law is upheld."

Did you feel that had happened in this instance?

SIR MICHAEL WOOD: Well, one thing I do feel is that the
government took the law very seriously and, as you have
heard from Jonathan Powell and I think you heard from
Mr Hoon, they would not have gone to war if the legal
advice had been otherwise.

That's something that is in itself quite impressive.
That's not necessarily what you would find in other
capitals. So I think that this country has a good
record of upholding international law and taking it very
seriously, even at that level, even on matters such as this, especially on matters such as this. Obviously, I was of a different legal view, but once the Attorney had spoken, that was the government's view and we had to act on that basis.

BARONESS USHA PRASHAR: I mean --

SIR MICHAEL WOOD: My --

BARONESS USHA PRASHAR: Carry on.

SIR MICHAEL WOOD: My chief complaint or problem with the way these things came about was the question of timing. I think that it was -- it was unfortunate that the advice was not given at an earlier stage at the level at which it should be given. My advice was being given throughout, but the Attorney should, in my view, have been asked at an earlier stage and given, in effect, rolling advice as the situation developed.

BARONESS USHA PRASHAR: So you think the Attorney wasn't involved in a timely way? Is that what you were suggesting?

SIR MICHAEL WOOD: I think his formal advice came very late. Of course, he did -- as you will have seen from the papers, his views were known pretty much throughout the period, known to the Prime Minister and others.

BARONESS USHA PRASHAR: Because I was also interested in your statement, when you are talking about the
Joint Committee on the constitutional renewal bill. You say that:

"On balance, however, we are not persuaded" -- you agreed with them that:

"On balance, however, we are not persuaded of the case for separating the Attorney General's legal and political functions. We therefore support the current arrangement, which combines his functions, and support the retention of the Attorney General's present status as a government minister."

Now, at one level, he is not involved in a timely manner and you said earlier that you need to incorporate legal views with the policy development. I mean, do you think that worked well in this particular instance?

SIR MICHAEL WOOD: Well, I think it could have worked well in this particular instance, and my view on the general question is very firmly that the best way of the government receiving legal advice at the highest level is through a figure like the Attorney and someone who is a minister, someone who is a colleague of the other ministers, and I think particularly in a field like international law, that is the way to ensure that the law is taken seriously and that they get advice -- that they follow. I can't think of any other system that would work -- that in principle would work as well,
leaving aside what happened on this occasion.

BARONESS USHA PRASHAR: Finally, do you have any other observations to make, or your views on the process of obtaining legal advice and the decision-making process, the way it worked?

SIR MICHAEL WOOD: I think my views have come out in what I have said so far, thank you.

BARONESS USHA PRASHAR: Thank you.

THE CHAIRMAN: Thank you. Time is against us. So I think we will close in a moment. Just two things, if we may, Sir Michael. The first is just a point of detail.

When you were answering Sir Lawrence, when he said that a new material breach would be needed to establish the basis for military action, was it a new decision by the Security Council that there was still a material breach? Because, as we understood 1441, there is an ongoing serious material breach.

SIR MICHAEL WOOD: Yes, you could put it that way. I mean, 1441 has its fire-break. So you had to have something that happened after that that was found to be a material breach. It could be a continuing one, it could be a new one, and in fact, they were new ones because there were failures to co-operate fully with the inspectors, even though Dr Blix said cooperation was improving.

THE CHAIRMAN: In effect, there was both a continuing status
of material breach by reason of non-compliance but also
a new failure to comply --

SIR MICHAEL WOOD: Yes, I think the structure of the
resolution means that you have to be able to point to
something that has happened after the final chance has
been given. It is the failure to take that chance.

THE CHAIRMAN: Thank you. Had time not been against us, and
that's partly because of the declassification phenomenon
this morning, we were going to ask you about the duties
and responsibilities of occupying powers under
UNSCR 1483. We don't have any time for that, I am
afraid. If you do have any reflections and you wanted
to offer that in a note, it would be helpful.

SIR MICHAEL WOOD: Yes.

THE CHAIRMAN: Thank you.

SIR MICHAEL WOOD: If I could just say on that, on that
matter, which was very important, the system of
consulting the Attorney, the close cooperation between
the Ministry of Defence lawyers, the Foreign Office
lawyers and the Attorney and his office worked extremely
well and there were very difficult issues. For months,
we had to wrestle with them, and there was daily
cooperation which worked very well. That's an example
of how things do work.

THE CHAIRMAN: That's very helpful to hear, thank you.
Any final comments you want to offer from what has been a long morning? Well, we are extremely grateful to our witness and to those of you who have been here through the morning so far. We are going to break for ten minutes or so, and then we will be taking evidence from David Brummell, Legal Secretary for the Law Officers, up to the lunch break. Thank you.

(11.55 am)

(Short break)