

Tuesday, 26 January 2010

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(10.00 am)

SIR MICHAEL WOOD

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

1 afternoon we will hear from Elizabeth Wilmshurst, Deputy  
2 Legal Adviser at the Foreign and Commonwealth Office  
3 between 2001 and 2003.

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

7 It is important also to recall we shall be raising  
8 legal issues with Jack Straw when he appears again on  
9 8 February and with Mr Blair on Friday.

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

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

23 Now, I say this on each witness hearing occasion: we  
24 recognise that witnesses are giving evidence based in  
25 part on their recollection of events, and we, of course,

1 cross-check what we hear against the papers to which we  
2 have access.

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

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

12 SIR MICHAEL WOOD: I was the chief legal adviser to the  
13 Foreign and Commonwealth Office from 1999, the end of  
14 1999, until February 2006, when I retired. I was the  
15 head of a group of lawyers. There are about 27 in  
16 London, nine or so posted overseas. The ones overseas  
17 came under the responsibility of their head of mission,  
18 but I kept in very close touch with them.

19 It is quite a close-knit group of people. They tend  
20 to stay in the Foreign Office throughout their  
21 careers -- at least, that was the practice -- and we  
22 worked together very much as a team. It is very  
23 informal. Each lawyer is allocated a certain part of  
24 the Foreign Office to advise on and, for example,  
25 a senior lawyer at the beginning of this period was

1           advising the Middle East Department, including Iraq, and  
2           the United Nations Department. But I kept an overview  
3           of everything and would talk to people on a daily basis  
4           about anything of significance that was going on.

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

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

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

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

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

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

1 Iraq.

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

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

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

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

20 SIR MICHAEL WOOD: Certainly. I mean, at the start of this  
21 period it was relatively routine. It was in a stable  
22 position. As I have said, a senior lawyer was spending,  
23 I would think, a good deal of his time on Iraq and on --  
24 on Iraq, and I would be kept informed and talk with him  
25 over major issues, but then it very quickly got to

1 a crisis situation and we put together, in effect,  
2 a team with different stages, sort of four or five  
3 lawyers spending a lot of their time on the subject,  
4 including some quite junior ones, but some mid-ranking  
5 ones, the senior ones I talked about, myself,  
6 Elizabeth Wilmshurst. So we were constantly shifting  
7 the work -- this is something that happens all the  
8 time -- to give priority, and I think of the three or  
9 four, four or five, probably half of them were spending  
10 more or less full-time on it once the conflict was  
11 imminent, the conflict took place, and particularly, the  
12 post-conflict period kept my colleagues very busy.

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

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

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

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

23 SIR MICHAEL WOOD: Certainly.

24 THE CHAIRMAN: How much of that would be seen by or go to  
25 ministers? I take it the great bulk of it -- I won't

1 say day-to-day work, but not requiring ministerial  
2 attention or decision.

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

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

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

22 SIR MICHAEL WOOD: Certainly it has always been the culture  
23 in the Foreign Office that the lawyers don't wait to be  
24 asked. They give advice if they see something that  
25 needs some legal input, often in telegrams, whatever,

1 even in the newspapers. They send a minute. The  
2 Americans sometimes call that "aggressive" legal advising.  
3 But we don't wait to be asked.

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

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

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

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

22 SIR MICHAEL WOOD: Well, there is a senior Foreign Office  
23 lawyer seconded to the Attorney General's office for  
24 a three or four-year period and that has been the case  
25 for as long as I can remember, 30/40 years.



1 THE CHAIRMAN: He/she would be a specialist in international  
2 law, I take it?

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

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

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

23 SIR MICHAEL WOOD: It depends on the subject. Certainly on  
24 this subject there was daily flow one way, in that  
25 I regarded -- we regarded it as very much our role to

1 keep the Attorney's office fully informed about every  
2 development. We sent it straight over, often without  
3 comment, but here is what has been said, so they are  
4 fully up to speed.

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

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

19 SIR MICHAEL WOOD: No, I think not. The normal process with  
20 the negotiation of a normal Security Council resolution,  
21 not 1441, is that it is basically done in New York among  
22 the missions there, but every night, they send back the  
23 draft and the lawyer advising the United Nations  
24 Department, or whichever is the most interested  
25 department, in the morning looks at it, feeds in

1 comment, usually to the policy department, who then send  
2 back their comments overnight, saying "Do this, do  
3 that".

4 Often it is just minor drafting points, sometimes it  
5 is points of major substance, but it would be fed in  
6 from the lawyer to the policy department in London, who  
7 then sends the telegram back to New York or a fax,  
8 saying, "Our suggestions are the following ..."

9 Then the next round of negotiations and so forth.  
10 It just goes backwards and forwards.

11 THE CHAIRMAN: Just to finish this off, would your legal  
12 adviser in New York sometimes, ever, feel he/she needed  
13 advice from yourself, as head of the Foreign Office  
14 legal advisers' department?

15 SIR MICHAEL WOOD: In my experience, I spent three years in  
16 New York -- that is pretty rare in terms of doing it  
17 directly, because there is this process overnight of it  
18 coming back on the policy link. If we saw a real  
19 problem, I suppose we might talk directly, but that is  
20 pretty rare. Partly the time difference, but there  
21 wasn't the need, because there was a very full flow of  
22 papers and drafts backwards and forwards.

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

1 BARONESS USHA PRASHAR: Thank you, Chairman.

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

12 SIR MICHAEL WOOD: It was such an obvious point that kept on  
13 coming up and we just stuck in the sentence:

14 "Regime change is not a legal basis for the use of  
15 force."

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

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

22 SIR MICHAEL WOOD: I can't. I can remember when we were  
23 first -- at least, I think I can remember, having  
24 refreshed my memory with the papers -- when we first  
25 looked at the general question of the legal basis for

1 the use of force prior to the adoption of 1441, if you  
2 would like me to set that out.

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

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

15 The second possibility would have been the  
16 exceptional right to use force in the case of an  
17 overwhelming humanitarian catastrophe. This was the  
18 Kosovo argument, the argument we used in 1999, and also  
19 used for the No Fly Zones. Apart from the No Fly Zones,  
20 it was clear that there was no basis, using that rather  
21 controversial argument, for the use of force, in  
22 2001/2002.

23 So that left the third basis, possible basis, which  
24 was with authorisation by the Security Council. There,  
25 of course, we had had a series of resolutions

1 culminating in 1205 of 1998, which was seen as the basis  
2 for Operation Desert Fox in December 1998, and so there  
3 was a slight question whether that finding of a breach,  
4 a serious breach, was still -- still had some force.

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

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

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

22 BARONESS USHA PRASHAR: You made that very clear --

23 SIR MICHAEL WOOD: We made it very clear throughout and  
24 I don't think it was controversial. Occasionally, you  
25 would get ministers saying the wrong thing, or the

1 Prime Minister saying the wrong thing privately, and  
2 I would just jump in and remind people of this basic  
3 position, but the basic position was set out by one of  
4 my colleagues as early as November 2001, when I think  
5 President Bush made some kind of statement which made it  
6 look as though force might be used. So we set out the  
7 position immediately.

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

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

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

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

21 SIR MICHAEL WOOD: That's correct.

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

24 SIR MICHAEL WOOD: Yes.

25 BARONESS USHA PRASHAR: I think this morning we have

1           actually published notes that you sent to the Foreign  
2           Secretary on 26 March, which is a -- records the  
3           Secretary of State's conversation with Colin Powell.

4   SIR MICHAEL WOOD:   Yes.

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

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

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

23  BARONESS USHA PRASHAR:  So if you think he didn't  
24           misunderstand, why did you take this step, what you  
25           yourself call "aggressive" briefing?



1 SIR MICHAEL WOOD: I don't call it "aggressive", the  
2 Americans call it "aggressive".

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

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

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

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

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

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

1 to him, but it doesn't appear to have done.

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

6 SIR MICHAEL WOOD: Yes.

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

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

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

1           which -- where the Foreign Secretary might be getting  
2           the law wrong.

3 BARONESS USHA PRASHAR: Did you at any stage discuss that  
4           with him? Because in your paragraph 4 you say:

5                   "More troublesome is the statement in paragraph 24,  
6           that we do not regard existing Security Council  
7           Resolutions as an inadequate basis." Did you discuss  
8           that with him?

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

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

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

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

23 SIR MICHAEL WOOD: No, no.

24 BARONESS USHA PRASHAR: So what you were doing, you were  
25          consistently giving legal advice and responding to the

1 concerns that you had, if you saw anything that was said  
2 publicly, and you felt that you were fulfilling your  
3 responsibility?

4 SIR MICHAEL WOOD: Yes, and I was doing other things too.

5 I was particularly trying to keep the Law Officers'  
6 department fully informed about everything, making sure  
7 they saw what was being said, so that they could step in  
8 as well, if necessary.

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

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

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

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

19 BARONESS USHA PRASHAR: We need to move on.

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

23 Sir Roderic, over to you.

24 SIR RODERIC LYNE: Sir Michael, I would like to go forward  
25 now to the time when Security Council resolution 1441

1 has been adopted. That's on 8 November 2002. In your  
2 witness statement to this inquiry you have said in  
3 paragraph 15 -- this is referring to the whole of the  
4 period:

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

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

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

20 When -- I think I did that, for example, on  
21 6 November -- the resolution was adopted on 8 November  
22 but at earlier stages, too, during the development of  
23 the resolution, I put my views down pretty clearly.

24 SIR RODERIC LYNE: So you disagreed with any who might argue  
25 that in 1441 the Security Council had already given

1 authorisation for the use of force?

2 SIR MICHAEL WOOD: Yes, I disagreed with that.

3 SIR RODERIC LYNE: Now, in your view, did it follow from  
4 that that, if the Security Council had already  
5 determined material breach, it was then for the  
6 Prime Minister to decide that Iraq had failed to take  
7 the final opportunity, which was afforded to Iraq in  
8 operative paragraph 2 of Resolution 1441?

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

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

17 Now, those who took the different view to you, that  
18 1441 authorised force without necessarily having  
19 a second resolution, relied in large part on the  
20 negotiating history that preceded the adoption of 1441  
21 and argued that the French Government and others had  
22 tried to include in the resolution, in the drafting  
23 stage, an express requirement for the Council to decide,  
24 but they had failed to achieve this.

25 What did you think of that argument?

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

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

23 SIR RODERIC LYNE: So if it did not make a clear case, on  
24 your reading, what effect did the preparatory work have  
25 on the interpretation of the text of the resolution?

1 SIR MICHAEL WOOD: In my view, the preparatory work  
2 confirmed the view that a further decision of the  
3 Security Council was needed, and, you know, I could cite  
4 many things. I could cite some of the things that the  
5 British negotiators said to some of those they were  
6 negotiating with, which were inconsistent.

7 As reported, they said different things to different  
8 people, which is what happens in a negotiation perhaps.  
9 But if you look at what was said during the meeting on  
10 8 November, when the resolution was adopted, France, for  
11 example, said that, if there was a report of  
12 non-compliance, "the Council would meet immediately to  
13 evaluate the seriousness of the violations" - so it is  
14 the Council to evaluate the seriousness of the  
15 violations - "and draw the appropriate conclusions. France  
16 welcomes the fact that all ambiguity on this point and  
17 all elements of automaticity have disappeared from the  
18 resolution." You can see what Mexico, Ireland, Russia,  
19 Bulgaria, Syria -- they all said similar things.

20 You then had the tripartite statement issued by  
21 France, Russia and China immediately after the meeting,  
22 at which they said that it would -- I have not got the  
23 text in front of me, but they said that it would be for  
24 the Council to pronounce. It would come back and the  
25 Council would pronounce.



1           Now, on the British --

2   SIR RODERIC LYNE:  It said, I think:

3           "The Council would take position ..."

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

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

9   SIR MICHAEL WOOD:  Yes.

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

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

24           But I think what I would say is that, on balance, if  
25   you look both at the informal negotiations and at what

1           was said on the record, I cannot read that as otherwise  
2           than being pretty heavily weighted towards the view that  
3           it was for the Council to take the decision on whether  
4           force could be used.

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

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

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

16          The United Kingdom representative then said that:

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

19          What was the thinking behind those sentences?

20   SIR MICHAEL WOOD: I would -- my guess is that the thinking  
21          behind those sentences was very much to keep open our  
22          options as to whether we would regard a further decision  
23          of the Council as being necessary, but to do so in a way  
24          that didn't upset the other countries who thought that  
25          such a decision was necessary and, for example, the "no

1       automaticity", I think, you can justify that as an  
2       accurate description of the position. It was not  
3       automatic in the sense that the matter - there would have to be  
4       a report of a breach, followed by a meeting of the  
5       Council. So in that sense it was not automatic, but how  
6       other members of the Council understood the reference to  
7       "no automaticity", "no hidden triggers", is another matter.

8               So that's how I interpret it. I think it is  
9       an honest and accurate statement to make, but it was  
10      a very subtle statement.

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

17   SIR MICHAEL WOOD: That's certainly one way of understanding  
18      what was said, but it doesn't actually say that. It  
19      says something like, "We would expect the Council to  
20      meet its responsibilities." It leaves open what the  
21      position would be if the Council didn't, but clearly the  
22      hope was very much that the Council would take  
23      a decision, would adopt a second resolution.

24               But they kept open the option, which was perfectly  
25      reasonable, if you like, of being able to argue the

1           opposite, because that's what they thought the outcome  
2           of the negotiations allowed them to do. I think it is  
3           a subtle statement, an accurate statement, but it may  
4           have been a bit of a misleading statement.

5   SIR RODERIC LYNE: Mr Chairman.

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

12                 Back in ten minutes.

13   (10.40 am)

14                         (Short adjournment)

15   (10.53 am)

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

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

24                 So, Sir Roderic, back to yourself.

25   SIR RODERIC LYNE: Sir Michael. I'm sorry that I had to

1 interrupt my line of questioning, but it so happens that  
2 just at the moment I was going to seek answers in this  
3 area, we were informed that the government had agreed to  
4 the declassification of these documents.

5 There are four that I would like to refer to, but  
6 I would like to check first that you have had a chance  
7 to refresh your memory of them. The ones I want to  
8 refer to -- others may want to refer to some of the  
9 others -- are your minute of 24 January 2003 to the  
10 Private Secretary to Mr Jack Straw, and then to the  
11 Foreign Secretary's reply to you, directly from him to  
12 you, on 29 January, and then the Attorney General, on  
13 3 February --

14 SIR MICHAEL WOOD: Yes.

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

19 So if you have got all those documents in front of  
20 you, can we take, firstly, your advice of  
21 24 January 2003 to the Private secretary? Here you are  
22 commenting on something that the Foreign Secretary had  
23 said in a meeting with the American Vice-President in  
24 Washington. You say in this minute that the Foreign Secretary will  
be aware of your

1 advice, I quote now:

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

6 You go on in this minute to say:

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

13 Finally, you say:

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

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

21 SIR MICHAEL WOOD: It is something I didn't normally have to  
22 do, but I did it quite frequently during this period.

23 It was because of the statement that he was recorded as  
24 saying to the Vice-President:

25 "We would much prefer a second resolution. We would

1 be OK if we tried and failed (à la Kosovo)."

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

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

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

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

16 SIR RODERIC LYNE: So first you had a discussion.

17 SIR MICHAEL WOOD: Yes.

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

20 SIR MICHAEL WOOD: It was very amicable.

21 SIR RODERIC LYNE: Amicable?

22 SIR MICHAEL WOOD: Yes.

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

25 SIR MICHAEL WOOD: Yes.

1 SIR RODERIC LYNE: Yes. Then the Foreign Secretary wrote  
2 back to you confirming in writing the points he had made  
3 in that discussion. This is in his minute of  
4 29 January.

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

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

11 SIR RODERIC LYNE: Quite unusual. He said --

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

13 SIR RODERIC LYNE: It wasn't taken amiss.

14 He said in this minute:

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

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

21 "I am as committed as anyone to international law  
22 and its obligations, but it is an uncertain field.  
23 There is no international court for resolving such  
24 questions in the manner of a domestic court. Moreover,  
25 in this case, the issue is an arguable one capable of



1 honestly and reasonably-held differences of view."

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

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

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

10 SIR MICHAEL WOOD: It is rather a general statement.  
11 Obviously, there are some areas of international law  
12 which can be quite uncertain. This was, however --  
13 turned exclusively on the interpretation of a specific  
14 text and it is one on which I think international law  
15 was pretty clear, or could certainly be pretty clear if  
16 the resolution was clear, as in my view it was.

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

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

25 I think, because there is no court, the legal

1       adviser and those taking decisions based on legal  
2       advice, have to be all the more scrupulous in adhering  
3       to the law, because it is one thing if -- I mean,  
4       lawyers have two functions, in-house lawyers: one is to  
5       give advice before a decision; the other is to defend  
6       the position after the decision.

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

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

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

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

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

1 military action."

2 What was your reaction to that sentence?

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

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

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

14 SIR RODERIC LYNE: It was clear that it would be the  
15 Attorney General's view that mattered? Thank you. Let  
16 us turn, therefore -- the Foreign Secretary copied his  
17 minute to the Attorney General, and the third document  
18 I referred to was the Attorney General's response to  
19 3 February.

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

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

1 important. So I was happy to see that.

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

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

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

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

12 SIR MICHAEL WOOD: Yes.

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

20 SIR MICHAEL WOOD: Yes. I don't recall. I doubt it,  
21 certainly not on this particular issue. There is quite  
22 a gap between the 3rd and the 20th, so I don't recall if  
23 I talked to him about these things, but he obviously  
24 found the Attorney's bit of paper in his in-tray and  
25 decided he would reply three weeks later.

1 SIR RODERIC LYNE: In his reply he says that he fully  
2 respects the integrity of Michael Wood and his colleague  
3 legal advisers, but he concludes by arguing that the  
4 full range of views ought to be reflected in the advice  
5 offered by our legal advisers.

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

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

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

23 They were more in the nature of operational notes  
24 than the kind of advice where you reflect the full range  
25 of views. If I had been asked, I could have written him

1 a 50-page paper explaining, "On the one hand ... on the  
2 other hand ..."

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

7 SIR MICHAEL WOOD: Hm-mm.

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

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

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

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

24 SIR RODERIC LYNE: So you are providing him with material to  
25 help him take a position. As you said earlier, it is

1 the Attorney General's view which is key in this, not,  
2 ultimately, your view, and you also said that part of  
3 the problem at the time we are talking  
4 about, January/February 2003, is that the Attorney  
5 General has not yet been asked to give his advice.

6 What do you mean by "problem" here? Was it creating  
7 a problem, the absence of a view from the Attorney  
8 General?

9 SIR MICHAEL WOOD: Well, it was certainly a problem for me  
10 within the Foreign Office, because I was having to react  
11 to public statements by ministers, to prepare briefings  
12 for people, on the basis of my views, without having  
13 a definitive view from the Attorney, although I think  
14 I know what his thinking was at that time.

15 So I think it was a problem in terms of giving legal  
16 advice within the Foreign Office. I think in the  
17 broader sense, but it is perhaps less for me to say so,  
18 it was a problem for the government as a whole, because  
19 they really needed advice, even if they didn't want it  
20 at that stage, in order to develop their policy in the  
21 weeks leading up to the failure to get the second  
22 resolution.

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

1           it come about?

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

6   SIR RODERIC LYNE: Sorry, can I just interrupt there?  
7           Stages where a decision was taken deliberately not to  
8           ask him for it or almost to ask him not to put it  
9           forward at that stage?

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

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

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

21   THE CHAIRMAN: You spoke in your earlier remark about the  
22           custom, convention, in the Foreign Office, of folding in  
23           legal advice to the policy-making, as it developed. But  
24           in this case, looking at the Attorney's role of giving  
25           legal advice and policy-making, that was not happening?



1 SIR MICHAEL WOOD: I don't know that it was not happening,  
2 but the formal advice did not come until very late in  
3 the day --

4 THE CHAIRMAN: Yes.

5 SIR MICHAEL WOOD: -- as I see it.

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

9 SIR MARTIN GILBERT: Again, to turn to two of the documents  
10 that have been declassified this morning, on  
11 15 October 2002, you were asked by the Foreign  
12 Secretary, as a matter of urgency, to advise on the  
13 consequences of the United Kingdom using force against  
14 Iraq without there being any international legal  
15 authority. You gave your advice to him that same day.

16 Can you tell us the main points of your advice?

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

23 That is my recollection. I would have to check  
24 that. But my advice was firstly that, for the  
25 government to act contrary to legal advice,

1 international legal advice, would be a breach of the  
2 Ministerial Code, which says clearly that ministers have  
3 to comply with the law, including international law. The  
4 words "including international law", are added every  
5 time the law is mentioned.

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

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

22 The risk of litigation was increasing. We had  
23 already had an attempt before -- well,  
24 in November/December, by CND to bring an action in the  
25 English courts for a declaration that going to war was

1 unlawful without a second resolution.

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

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

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

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

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

25 SIR MICHAEL WOOD: Well, it came up, but I recorded the

1           MOD's view, I think, that this would not put them at  
2           risk. I think in the case of the International Criminal  
3           Court, which does have jurisdiction over war crimes and  
4           the like, it was my view that, if the underlying legal  
5           basis was unsound, that could heighten the risk of  
6           actions in the International Criminal Court, as much for  
7           the atmospheric -- because of the atmospherics, as  
8           because of any real increase in risk.

9   SIR MARTIN GILBERT: Action in terms of --

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

14   SIR MARTIN GILBERT: Thank you.

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

17   SIR LAWRENCE FREEDMAN: There are a number of questions.

18           I apologise for somewhat improvising a bit, but I want  
19           to just start with the understanding of resolution 1441.

20           In his evidence to us, Jack Straw reminded us of the  
21           statement he had made in the House on 25 November 2002.

22           This is what he said to the Commons:

23                    "That brings me to the next question I posed: will  
24           there be a second Security Council Resolution if  
25           military action proves necessary? Resolution 1441 does

1 not stipulate that there has to be a second  
2 Security Council Resolution to authorise military action  
3 in the event of a further material breach by Iraq."

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

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

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

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

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

25 "... but we must reserve our position in the event that

1 it does not."

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

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

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

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

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

25 SIR LAWRENCE FREEDMAN: So just again to understand the

1 process that you were describing, what you are saying is  
2 you are content with the ambiguity in how this could be  
3 interpreted, because, in a way, the purpose of 1441 was  
4 to threaten Iraq that, if they continued to violate  
5 UN resolutions, something terrible could happen,  
6 something could happen. You didn't see a need at this  
7 stage to resolve that ambiguity?

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

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

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

23 SIR LAWRENCE FREEDMAN: Can I now move to another aspect of  
24 argument that we have heard from both Jeremy Greenstock  
25 and Jack Straw, that their objectives of 1441 were to

1 replicate the position that had been reached in late  
2 1998, before Desert Fox?

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

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

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

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

25 Now, the position was then taken that, if Iraq was



1 in material breach of the conditions of the ceasefire,  
2 that undermined the ceasefire and the states concerned  
3 could resume the use of force against Iraq in order to  
4 ensure its compliance with the conditions of the  
5 ceasefire; for example, with the weapons of mass  
6 destruction provisions.

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

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

24 SIR LAWRENCE FREEDMAN: Although there wasn't  
25 a Security Council resolution for it?

1 SIR MICHAEL WOOD: No, but there had been a -- I think there  
2 was a statement by the President of the Council, if not  
3 two, stating that there had been a material breach and  
4 that there would be serious consequences, and those  
5 statements are agreed unanimously by Council members.

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

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

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

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

22 SIR MICHAEL WOOD: By the Council.

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

25 Now, in your statement you cite an article by

1 Sean Murphy on the legality of the Iraq war, which is  
2 very long and I did read. As far as I understand, he  
3 actually questions the whole revival argument.

4 SIR MICHAEL WOOD: He does, yes.

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

8 SIR MICHAEL WOOD: No.

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

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

16 SIR LAWRENCE FREEDMAN: That's very interesting indeed.

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

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

19 SIR MICHAEL WOOD: Sorry.

20 SIR LAWRENCE FREEDMAN: Perhaps you can just take us through  
21 the sequence that got us to Desert Fox in December 1998,  
22 because there were two resolutions, weren't there?  
23 There was 1154 and then 1205 -- 1158, sorry.

24 SIR MICHAEL WOOD: I don't actually have 1154 with me, but  
25 I think that indicated that there was a serious

1 violation or some such phrase.

2 SIR LAWRENCE FREEDMAN: Is threatens severest consequences.

3 SIR MICHAEL WOOD: Yes, but then it goes on to say that the  
4 Council is going to work on this, I think, in effect.

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

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

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

23 That's why I think the case based on 1205, though it  
24 was very controversial, the case for revival under -- in  
25 1998 is stronger than the one based simply on 1441,

1 without a second resolution.

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

4 SIR MICHAEL WOOD: It was.

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

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

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

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

25 SIR MICHAEL WOOD: Well, a flagrant violation sounds worse,

1 but a material breach maybe is. "Material breach" is  
2 simply the technical term in the law of treaties for  
3 a breach that is sufficiently serious as to undermine  
4 the basis for the treaty. So it is a technical, legal  
5 word, but I think "flagrant violation" conveys the same  
6 meaning.

7 SIR LAWRENCE FREEDMAN: Can we --

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

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

13 SIR MICHAEL WOOD: I use that phrase quite often.

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

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

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

1 way without coming to a conclusion?

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

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

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

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

14 SIR MICHAEL WOOD: Certainly.

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

19 SIR MICHAEL WOOD: Hm-mm.

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

1 that this issue may have been dealt with.

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

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

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

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

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

25 Can I just then, to conclude, go to the final



1 paragraph? Because I think it is relevant for our  
2 discussions tomorrow with Lord Goldsmith as well.

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

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

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

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

1 the use of force.

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

4 SIR MICHAEL WOOD: A new material breach.

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

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

11 SIR LAWRENCE FREEDMAN: Thank you very much.

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

15 BARONESS USHA PRASHAR: Sir Michael, I want to really find  
16 out what was your particular role in developing the  
17 arguments and the papers published on the legal basis  
18 for use of force, because we know that in  
19 Lord Goldsmith's answer to a Parliamentary question on  
20 25 February 2005, he said that three officials from the  
21 FCO worked on the answer to the Parliamentary question  
22 given by Lord Goldsmith on 17 March and the Foreign  
23 Secretary's memorandum to the Foreign Affairs Select  
24 Committee. Were you one of those officials?

25 SIR MICHAEL WOOD: I'm trying to work out the mathematics.

1 I was certainly present in the Attorney General's office  
2 on the Sunday with a lot of other lawyers.

3 BARONESS USHA PRASHAR: Which Sunday was this?

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

6 BARONESS USHA PRASHAR: Right.

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

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

23 Now, what my role was -- I have only got a pretty  
24 vague recollection, but I think I was more or less on  
25 the sidelines, because my views were known, but

1 I probably did read through the drafts and no doubt in  
2 my usual way made editorial suggestions and the like,  
3 but I don't think I had a major part in the preparation  
4 of those questions -- of the Parliamentary question and  
5 the longer FCO note, though I did take the longer FCO  
6 note back to the Foreign Office and got it typed up and  
7 sent to the Foreign Secretary.

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

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

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

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

23 SIR MICHAEL WOOD: I suspect I didn't do much more than that  
24 because others were really doing the work on the  
25 Parliamentary question, and not least the Attorney,

1 I think it was largely his work.

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

5 SIR MICHAEL WOOD: On 16 March?

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

7 SIR MICHAEL WOOD: I don't think --

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

11 SIR MICHAEL WOOD: No.

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

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

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

21 SIR MICHAEL WOOD: Or even the Parliamentary answer. No,  
22 I imagine that the Cabinet, when it gets advice from the  
23 Attorney, as it does, no doubt, frequently, gets it in  
24 conclusive terms. It just gets -- this is -- "The  
25 Attorney's advice is A, B, C, D". It doesn't get the

1           20 pages of why that is so, but as I say --

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

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

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

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

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

21   SIR MICHAEL WOOD:   No.

22   BARONESS USHA PRASHAR:   I mean, she requested early  
23          retirement, but she indicated in her letter that would  
24          constitute a notice of resignation, if that was not  
25          possible.   I mean, were you very clear about her reasons

1           when -- I mean, can you spell out what you think her  
2           reasons were? I know it is stated in the letter, but  
3           I would like to hear from you what you thought her  
4           reasons were.

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

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

13   SIR MICHAEL WOOD: Yes.

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

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

22           I did not, in fact, find myself having to defend  
23           this legal decision at great length or in a personal way  
24           thereafter. We quickly moved on to other matters, which  
25           were very important, such as the conduct of the conflict

1 which is something quite separate from the legality of  
2 the decision to go to war, and the other very important  
3 things were going on.

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

11 BARONESS USHA PRASHAR: But in your statement, the last  
12 paragraph, 37, you say that:

13 "In my view, the seriousness of the matter and the  
14 absence of a court places a special responsibility on  
15 lawyer to do his or her best to ensure that the law is upheld."

16 Did you feel that had happened in this instance?

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

22 That's something that is in itself quite impressive.  
23 That's not necessarily what you would find in other  
24 capitals. So I think that this country has a good  
25 record of upholding international law and taking it very



1 seriously, even at that level, even on matters such as  
2 this, especially on matters such as this.

3 Obviously, I was of a different legal view, but once  
4 the Attorney had spoken, that was the government's view  
5 and we had to act on that basis.

6 BARONESS USHA PRASHAR: I mean --

7 SIR MICHAEL WOOD: My --

8 BARONESS USHA PRASHAR: Carry on.

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

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

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

24 BARONESS USHA PRASHAR: Because I was also interested in  
25 your statement, when you are talking about the

1 Joint Committee on the constitutional renewal bill. You  
2 say that:

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

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

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

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

1 leaving aside what happened on this occasion.

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

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

8 BARONESS USHA PRASHAR: Thank you.

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

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

18 SIR MICHAEL WOOD: Yes, you could put it that way. I mean,  
19 1441 has its fire-break. So you had to have something  
20 that happened after that that was found to be a material  
21 breach. It could be a continuing one, it could be a new  
22 one, and in fact, they were new ones because there were  
23 failures to co-operate fully with the inspectors, even  
24 though Dr Blix said cooperation was improving.

25 THE CHAIRMAN: In effect, there was both a continuing status

1 of material breach by reason of non-compliance but also  
2 a new failure to comply --

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

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

14 SIR MICHAEL WOOD: Yes.

15 THE CHAIRMAN: Thank you.

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

25 THE CHAIRMAN: That's very helpful to hear, thank you.

1           Any final comments you want to offer from what has  
2           been a long morning? Well, we are extremely grateful to  
3           our witness and to those of you who have been here  
4           through the morning so far. We are going to break for  
5           ten minutes or so, and then we will be taking evidence  
6           from David Brummell, Legal Secretary for the Law  
7           Officers, up to the lunch break. Thank you.

8           (11.55 am)

9    (Short break)

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