

1. The Inquiry has asked for a statement as to my role and involvement in advising on legal issues relating to Iraq.
2. I joined the FCO in 1974. Between 1999 and April 2003 I was a deputy legal adviser at the FCO, with a six month break between March and September 2001. In the course of my career, I have given legal advice on various issues relating to Iraq: for example, in relation to the first Gulf war, when I was in the Law Officers' Department in 1990; and, during 1998 in the FCO, in relation to self-defence in the No Fly Zones, military action to enforce Iraq's obligations and targeting decisions.
3. In 2002 and 2003, my role as a deputy legal adviser included primary responsibility for some legal issues, and shared responsibility for others such as those concerning Iraq. It is probably true to say that all major legal issues leading up to the 2003 conflict were fully discussed between the Legal Adviser Sir Michael Wood, myself and the relevant Legal Counsellor. We worked as a team.
4. Before the adoption of UN Security Council resolution 1441, the advice given by FCO legal advisers was that an invasion of Iraq would be contrary to international law in the absence of a new Security Council resolution. I shared and contributed to this view. The legal principles are well-known. In summary, the UN Charter prohibits the use of force against another State; the exceptions to this prohibition are first, action in self-defence, as referred to in Article 51 of the UN Charter, second, action authorised by UN Security Council resolutions and, as a possible third, more controversial, exception, action to avert a humanitarian catastrophe. Of these exceptions, force in self-defence may be used only against an attack, actual or imminent; only where it is necessary to use force in the absence of other means; and only where the force is proportionate to the object of averting the attack. In the circumstances of Iraq, the facts did not justify the use of force in self-defence. Existing Security Council resolutions did not authorise the use of force. There was no other legal justification. A desire to change the regime did not give a legal basis for military action.
5. After the adoption of resolution 1441, the legal advice given in the FCO, and to which I contributed, was that a second Security Council decision was necessary if military action were to be lawfully taken against Iraq; resolution 1441 was not sufficient. The reasoning has been sufficiently explained elsewhere. In summary, the resolution had introduced an enhanced

inspection regime to give Iraq a final opportunity to comply with its obligations; it stated that reports of non-compliance by Iraq would be referred to the Security Council for assessment. 'Assessment' did not mean merely an inconclusive discussion in the Council. The decision that Iraq had failed to take its final opportunity was to be one for the Council and not simply for individual governments. Advice that a second resolution was legally required was given by the FCO Legal Adviser consistently after the adoption of resolution 1441 and in the following three months.

6. An alternative view was discussed in the Attorney General's minute of 7 March 2003. The view was that resolution 1441 itself constituted the decision of the Council to revive the authorisation - given in resolution 678 in 1990 - to use force in order to restore international peace and security in the region. The Government participated in the invasion of Iraq on this basis.

7. I regarded the invasion of Iraq as illegal, and I therefore did not feel able to continue in my post. I would have been required to support and maintain the Government's position in international fora. The rules of international law on the use of force by States are at the heart of international law. Collective security, as opposed to unilateral military action, is a central purpose of the Charter of the United Nations. Acting contrary to the Charter, as I perceived the Government to be doing, would have the consequence of damaging the United Kingdom's reputation as a State committed to the rule of law in international relations and to the United Nations.

Elizabeth Wilmshurst  
18 January 2010