1 Tuesday, 26 January 2010

2 (10.00 am)

3 SIR MICHAEL WOOD

4 THE CHAIRMAN: Good morning ladies and gentlemen. Good

5 morning, Sir Michael.

6 Today, we are going to begin by hearing evidence on

7 the legal issues surrounding the military action in

8 Iraq. In particular, we will be examining the legal

9 basis for military action, including the process by

10 which legal advice was provided to government and the

11 substance of that advice.

12 If time permits, we will also consider some of the

13 legal issues in relation to the No Fly Zones, the

14 conduct of the military campaign, and the duties and

15 obligations of occupying powers.

16 We will not at the present time be considering legal

17 issues in relation to Iraqi civilian human rights,

18 detention or related matters.

19 Our first witness this morning is Sir Michael Wood,

20 and you, Sir Michael, were legal adviser at the Foreign

21 and Commonwealth Office during the period 2001 to 2006,

22 although you held that post for longer, I think.

23 Sir Michael will be followed by David Brummell, who

24 was the Legal Secretary to the Law Officers, that is the

25 Attorney General, during 2001 to 2004, and this

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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,

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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

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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

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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

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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

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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,

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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.

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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

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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

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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?

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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

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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

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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

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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

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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?

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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

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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

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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

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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

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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

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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?

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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?

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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.

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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

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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

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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.

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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

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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

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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

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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?

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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,

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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

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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

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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

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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

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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

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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?

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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

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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

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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,

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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,

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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

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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

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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

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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

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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.

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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

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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,

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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

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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

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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

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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

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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

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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,

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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

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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.

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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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