

1 (12.05 pm)

2 MR DAVID BRUMMELL

3 THE CHAIRMAN: Good morning.

4 MR DAVID BRUMMELL: Good morning.

5 THE CHAIRMAN: Welcome back everybody and welcome to our
6 witness, Mr David Brummell, legal secretary to the law
7 officers during the period 2000-/2004.

8 MR DAVID BRUMMELL: Yes.

9 THE CHAIRMAN: Thank you very much for your witness
10 statement. That was helpful.

11 Now, I do say to every witness that we recognise you
12 are giving evidence based in part on recollection, and
13 we cross-check your recollection with papers to which we
14 have access.

15 I also remind every witness that he will later be
16 asked to sign a transcript of evidence to the effect
17 that the evidence given is truthful, fair and accurate.

18 With that Mr Brummell, your helpful witness
19 statement gave a full account actually of the role and
20 responsibilities of the legal secretary, and I don't
21 know whether there is anything you would want to add to
22 that statement. Otherwise, we will take it as read and
23 on the record.

24 MR DAVID BRUMMELL: No, that's a complete statement of what
25 I did at the time, thank you.

1 THE CHAIRMAN: With time short, I think we should get to
2 substance. May I turn to Sir Martin regarding legal
3 issues and the No Fly Zones?

4 SIR MARTIN GILBERT: Mr Brummell, can you tell us what
5 advice Lord Williams of Mostyn, the previous
6 Attorney General, had given on the legal basis of the
7 maintenance of the No Fly Zones at that time?

8 MR DAVID BRUMMELL: Yes, he did, he gave advice in two
9 senses. He gave advice in particular cases where the
10 issue of self-defence arose when coalition pilots came
11 under attack when patrolling the northern and southern
12 No Fly Zones, and he would then wish to be satisfied
13 that the attack -- the use of force in that case was
14 both necessary and proportionate.

15 He also gave advice on the fundamental issue of
16 legality of the No Fly Zones as a matter of
17 international law, and he advised that on the basis that
18 it was necessary to avert an imminent humanitarian
19 catastrophe, it was justifiable for the No Fly Zone
20 policy to continue, but he recognised that it was
21 a controversial and exceptional instance of use of force
22 and he advised that it was really only a respectable
23 argument for saying that at the time. He recognised
24 that it was indeed a precarious principle on which to
25 base the use of force.

1 SIR MARTIN GILBERT: How did this affect the long-term
2 prospects of maintaining the No Fly Zones?

3 MR DAVID BRUMMELL: What we did, we sought a continuous
4 review from the Cabinet Office of the factual basis for
5 the evidence as to whether or not there would be
6 a continuing or a repetition of a humanitarian
7 catastrophe if the No Fly Zones were to cease. So we
8 had regular reviews and we received updates from the
9 Cabinet Office of the factual position for justification
10 of the No Fly Zones.

11 One particular review I remember was late
12 December -- late 2000, December 2000
13 and January/February 2001, and he received a fairly
14 detailed update of the assessment in relation to the
15 northern and southern zones.

16 It seemed the position in the north was still
17 a matter of some concern. The assessment in relation to
18 the south seemed a little more difficult. It was
19 a weaker case for arguing the continuation of the zones.
20 So following that assessment, we did probe it with the
21 Cabinet Office saying, "Is it really the case that there
22 would be serious humanitarian problems if we were to
23 cease the zones in the south as well as the north?"

24 The overall assessment that came back was there was
25 still a very serious risk of humanitarian distress if

1 the policy of patrolling zones were to cease, and, on
2 the basis of that updated assessment, he confirmed that,
3 on balance, it was still possible to argue that the use
4 of force, limited force, was possible in relation to the
5 No Fly Zone policy, but he attached to that advice some
6 pretty stringent conditions.

7 He said it had to be based on convincing evidence
8 that the need to operate the zones was justified by the
9 need to avert an imminent and overwhelming humanitarian
10 catastrophe. Not only that, but there had to be -- such
11 evidence had to be accepted by a substantial part of the
12 international community as a whole.

13 Also, there had to be no practical alternative of
14 saving lives to the No Fly Zone policy, and, thirdly,
15 the use of force had to be necessary and proportionate
16 to the aim of humanitarian relief that was being
17 pursued.

18 He also made it clear that, because the underlying
19 basis for the doctrine, for the principle, was
20 humanitarian, that it was very important to seek to
21 minimise, and, if at all possible, to avoid civilian
22 casualties.

23 Finally, he was very keen that the No Fly Zone
24 policy should not be used as a pretext for pursuing
25 other ulterior policy objectives such as any punitive

1 action against the regime or to promote other US or UK
2 policies such as the protection of the security of
3 adjoining states.

4 SIR MARTIN GILBERT: Because these were essentially joint UK
5 and US operations?

6 MR DAVID BRUMMELL: Very much, yes.

7 SIR MARTIN GILBERT: My final question on No Fly Zones is:
8 what assurances did the Attorney General seek with
9 regard to minimising the Iraqi civilian casualties,
10 which you mentioned?

11 MR DAVID BRUMMELL: The assurances he received were that in
12 any case where force was going to be used, in the sense
13 of force being used to attack an Iraqi air defence
14 system installation, would be that that matter would be
15 referred to him for specific advice and we would then
16 receive a very detailed description from the
17 Ministry of Defence and from their targeting experts as
18 to the nature of the particular mission that was
19 proposed.

20 We would discuss that in detail -- there
21 would be briefing, oral briefing, there would be
22 a written account of that. So he was very scrupulous in
23 ensuring through that regular, if you like, advice, on
24 all instances of use of force in self-defence, to make
25 sure civilian casualties were avoided.

1 I think throughout that period I was involved in all
2 the targeting decisions and it was my recollection that
3 the advice he gave in relation to the need to minimise
4 and avoid civilian casualties was always accepted by the
5 Ministry of Defence.

6 SIR MARTIN GILBERT: Thank you.

7 THE CHAIRMAN: Was there any change when Lord Goldsmith
8 succeeded Lord Williams?

9 MR DAVID BRUMMELL: No, Lord Goldsmith adopted very much the
10 same approach, and he was very concerned that the same
11 stringent conditions should continue to be attached to
12 the policy. He was also very concerned that, again,
13 civilian casualties should be kept to the minimum, and
14 I recall one or two cases where he did question the
15 proposal that the Ministry of Defence had put forward,
16 and he was concerned in one particular case -- I think
17 it was January 2002 -- where there was a concern that
18 the attack was not proportionate because of the risk to
19 civilian casualties.

20 What happened, the Ministry of Defence were flexible
21 in their approach. They adapted the proposal and
22 they decided to use weaponry which had a narrower radius
23 of impact and to launch the attack at a time when there
24 was less risk of civilian casualties.

25 THE CHAIRMAN: It was put to us earlier in evidence that

1 there was some distinction -- not a major one, but there
2 was some degree of difference between the United Kingdom
3 targeting criteria and those of the United States, and
4 yet, we, under the regime under which the No Fly Zones
5 operate, had equal legal and indeed moral responsibility
6 for them both. Did that create a difficulty?

7 MR DAVID BRUMMELL: My recollection is that in any case
8 where we were involved in a joint mission and there was
9 any question of UK participation, we would make a clear
10 to the MoD that we could not legally participate,
11 whether that was reconnaissance or refuelling.

12 So as far as I recall, in any case where there was
13 a concern about legality, because of what the US
14 targeting proposal was, the Ministry of Defence would
15 not take part in that particular exercise.

16 THE CHAIRMAN: Thank you. Can I turn to Baroness Prashar?
17 Usha, do you want to take your first point or not?

18 BARONESS USHA PRASHAR: I don't particularly want to pursue
19 it.

20 THE CHAIRMAN: In that case, let's move to what is, I think,
21 the meat of the matter and I'll ask Sir Lawrence to talk
22 about the legal position after 1441.

23 SIR LAWRENCE FREEDMAN: We have just heard from
24 Sir Michael Wood an analysis of the process by which
25 legal advice was being taken. Did you hear --

1 MR DAVID BRUMMELL: I certainly did, yes.

2 SIR LAWRENCE FREEDMAN: He gave a critique of this process
3 which suggested that one of the problems was that the
4 Attorney General's views were not inserted into the
5 policy-making process early enough or, indeed,
6 consistently. Do you accept that as a valid critique?

7 MR DAVID BRUMMELL: I wouldn't altogether accept that,
8 because the Attorney was kept abreast of events as they
9 were developing, both throughout the negotiation of
10 Resolution 1441, which was obviously a key stage in the
11 development of our policy, and thereafter, and we were
12 copied in by the Foreign Office legal advisers to their
13 thinking and Lord Goldsmith, whilst having pretty
14 frequent conversations, discussions, with the
15 Prime Minister, with the Foreign Secretary and others,
16 in which his views as they were evolving, he
17 communicated to those senior ministers.

18 SIR LAWRENCE FREEDMAN: But did these views always have
19 a sort provisional draft quality to them?

20 MR DAVID BRUMMELL: Yes, that is correct, until his advice
21 of 7 March. Any views he expressed at that time, any
22 concerns that he had, they were very much provisional
23 views, and I have to say it was very much a fluid and
24 developing situation. I should say 1441 did determine
25 that Iraq was in material breach and I entirely agree

1 with Sir Michael that it did not give rise to an
2 immediate right to use force. There was no question of
3 any automaticity.

4 What the resolution did was to give Iraq a final
5 opportunity to comply. Until we had seen Iraq's
6 response to its obligation under operative paragraph 3
7 to produce a declaration as to its WMD, and until we had
8 seen whether Iraq would comply with its duties in
9 relation to the enhanced inspection regime and its
10 affording of access to the weapons inspectors, there
11 would be no question, until that state had been arrived
12 at, as to whether or not Iraq was in material breach.

13 SIR LAWRENCE FREEDMAN: But there is a question of
14 interpretation of the resolution that arises while it is
15 being drafted and once it has been adopted by the
16 Security Council.

17 We have heard that both Jeremy Greenstock and
18 Jack Straw put statements on the record about how it
19 should potentially be interpreted, but they did this
20 without direct advice from the Attorney General about
21 the question of whether a second resolution would be
22 needed?

23 MR DAVID BRUMMELL: That is correct. The Attorney's views
24 were not formally sought on the terms of
25 Resolution 1441.

1 SIR LAWRENCE FREEDMAN: Were you aware of any concerns by
2 the Attorney that his views were not being sought on
3 these matters, and did he feel an urge to clarify them?
4 MR DAVID BRUMMELL: He certainly did. I remember
5 conversations he had with the Foreign Secretary
6 in October and in the course of that he made it clear
7 that he did have concerns about the way in which things
8 were going, the way in which things were developing, and
9 he was concerned that he should advise to make the
10 position clear.
11 SIR LAWRENCE FREEDMAN: Did that conversation have any
12 effect in terms of his advice being sought more
13 formally?
14 MR DAVID BRUMMELL: No, not as far as I can recall.
15 SIR LAWRENCE FREEDMAN: So we went through this whole
16 Security Council drafting process, which left an
17 important ambiguity, to say the least, in terms of what
18 would have to happen next, without the Attorney General
19 actually giving formal advice to the government on what
20 this might mean and what the requirements for the future
21 would be?
22 MR DAVID BRUMMELL: Yes, that's my recollection.
23 SIR LAWRENCE FREEDMAN: As we move on to the period when the
24 inspectors are starting to move in, you have indicated
25 that a lot depended on how things were going to turn out

1 with the inspections process.

2 Were you aware of other occasions where the Attorney

3 wished to make his views known but was discouraged from

4 doing so?

5 MR DAVID BRUMMELL: Yes. Throughout November, I recall that

6 he expressed concerns about the fact that it appeared

7 that in certain quarters he had thought to be taking an

8 optimistic view and that was certainly not his view at

9 that stage.

10 SIR LAWRENCE FREEDMAN: So let's be clear, this is an

11 optimistic view of what 1441 might allow. He was

12 concerned that other people -- and it has to be senior

13 Cabinet ministers -- were taking an optimistic view, or

14 maybe I'm wrong, but --

15 THE CHAIRMAN: Or ascribing an optimistic view.

16 MR DAVID BRUMMELL: I should make it clear. They were

17 ascribing an optimistic view to him that he would be

18 satisfied there was no need for a second resolution.

19 SIR LAWRENCE FREEDMAN: Let's be clear again. These are

20 important matters. He was concerned that the

21 Attorney General was claimed to have a view, which he

22 did not, in fact, hold at that time?

23 MR DAVID BRUMMELL: Yes.

24 SIR LAWRENCE FREEDMAN: How did he seek to correct that

25 impression?

1 MR DAVID BRUMMELL: Well, he had a telephone conversation
2 with the Foreign Secretary about that at the time on
3 12 November and he had had a telephone conversation the
4 previous day, I believe with Jonathan Powell.

5 SIR LAWRENCE FREEDMAN: As a result of these, was he able to
6 get his concerns more on the record?

7 MR DAVID BRUMMELL: Well, he did so, I recall, because
8 I took a note of the telephone conversation at the time,
9 the telephone conversation with Jonathan Powell on
10 11 November 2002, and the Attorney suggested to
11 Jonathan Powell, in view of these concerns, wouldn't it
12 be a good idea that he should give advice at that stage,
13 and, as I recall, I believe you have the notes -- the
14 contemporaneous note of the conversation --
15 Jonathan Powell's view was that there were no illusions
16 in Number 10 as to the Attorney's then current view of
17 the situation, but that it was pretty apparent that Iraq
18 would not decline to accept Resolution 1441.

19 In other words, the belief was -- as it did
20 indeed -- that Iraq did accept 1441. It would then be
21 a question, as I said earlier, as to whether Iraq had
22 taken the final opportunity and whether there were
23 issues as to Iraq's compliance with the obligations in
24 1441, and, as I recall it, Jonathan Powell suggested
25 that, "Let's review the position at that stage and let's

1 see what we -- the legal issue will then obviously
2 become important".

3 SIR LAWRENCE FREEDMAN: Again, just to be sure we understand
4 the process, the Attorney General is concerned, he has
5 a conversation with Jonathan Powell. It is made clear
6 to him that his concerns are understood --

7 MR DAVID BRUMMELL: Yes.

8 SIR LAWRENCE FREEDMAN: -- but that there is no need to take
9 this matter further until we are a bit further down the
10 road?

11 MR DAVID BRUMMELL: Exactly.

12 SIR LAWRENCE FREEDMAN: When we are a bit further down the
13 road, the Prime Minister is going to see President Bush
14 at the end of January 2003. Was there a need then to --
15 when the question of a second resolution could well
16 arise, did the Attorney then think it was necessary to
17 make his views known?

18 MR DAVID BRUMMELL: Absolutely. So, 30 January 2003, he
19 sent a minute to the Prime Minister in which, again, he
20 recorded his continuing concerns about the position. He
21 was still reviewing the position. He had seen
22 Sir Jeremy Greenstock a few days previously and he was
23 about to complete his final examination of all the --
24 the history of the negotiation, Resolution 1441, and
25 also to consult the US lawyers, who had been involved in

1 the negotiation of 1441. So he did, at that stage,
2 indicate that he still had concerns or reservations as
3 to whether Resolution 1441, without a further
4 resolution, would provide sufficient authorisation to
5 use force in the event of Iraq's material breach.

6 SIR LAWRENCE FREEDMAN: So when the Prime Minister was going
7 to see President Bush, he went with the knowledge that
8 his Attorney General, at that stage, without yet
9 completing his review, still had a pessimistic view
10 about whether 1441 would be operative without a second
11 resolution?

12 MR DAVID BRUMMELL: Well, the way he put it was that he
13 remained unpersuaded --

14 SIR LAWRENCE FREEDMAN: "Unpersuaded" --

15 MR DAVID BRUMMELL: -- at that stage.

16 SIR LAWRENCE FREEDMAN: -- and that is the phrase he used?

17 MR DAVID BRUMMELL: Yes.

18 SIR LAWRENCE FREEDMAN: Just to get the story up-to-date,
19 after that, he was talking with a number of people. He
20 went to see Jeremy Greenstock. He talked to the
21 Americans. Were there other people he was talking to to
22 help him formulate his views at this stage?

23 MR DAVID BRUMMELL: I would say he went through a very
24 extensive process of analysis, consideration, enquiry
25 and discussion with a huge number of people. The

1 Foreign Office lawyers -- of course, the material that
2 the Foreign Office lawyers provided to us about the
3 principles of international law, the negotiating history
4 of 1441, the Foreign Secretary, the Prime Minister and
5 others, he took into account articles by academic
6 commentators and he did consult a large number of people
7 in the course of that process.

8 SIR LAWRENCE FREEDMAN: Presumably, he -- I mean, this is
9 a very difficult issue and events are moving in the
10 background with some speed. So there was now a degree
11 of urgency, presumably in his deliberations? Did he
12 sense that he had to make up his mind, as it were, quite
13 quickly?

14 MR DAVID BRUMMELL: Yes, it was becoming more urgent, but
15 I should say he had been deliberating about the proper
16 construction of Resolution 1441 since its adoption on
17 8 November 2002. So the -- this was a matter that
18 obviously was a matter of huge importance and he was
19 continuing to deliberate on it and reflect on it in the
20 light of all the material from all these different
21 sources. So it was not as if he had to embark on an
22 urgent consideration at that time. He had done a lot of
23 research, analysis and thinking.

24 So his views, as I would see it, were gradually
25 crystallising throughout that period, from November

1 through to February 2003.

2 SIR LAWRENCE FREEDMAN: Then just one last question from me:
3 from January, when he is still taking a rather
4 pessimistic view and needs to be persuaded, to 7 March,
5 when he takes, shall we say, a more optimistic view,
6 though it becomes somewhat more optimistic afterwards,
7 what would you say was the major influence that led to
8 this shift?

9 MR DAVID BRUMMELL: Yes. I think there were three
10 particular sources, which I will come to, but I think
11 the primary factor in his -- in his concluded view was
12 that, on a proper interpretation of 1441, there was no
13 need for a second resolution, and that was partly by
14 reference to the interpretation of the language, the
15 text of Resolution 1441, but also, very importantly, the
16 interpretation of that text in the light of the
17 negotiating history.

18 He was very impressed by the arguments and the very
19 cogent exposition that Sir Jeremy Greenstock provided to
20 him, not just at one meeting, but in terms of further
21 material which Sir Jeremy provided to him, and by the
22 letter which Mr Straw, the Foreign Secretary, wrote to
23 him on 6 February 2003, and also, undoubtedly, the views
24 of the US lawyers, who had been involved very much as
25 co-sponsors with the UK of Resolution 1441.

1 SIR LAWRENCE FREEDMAN: The 6 February letter is the one we
2 were just talking about before this with
3 Sir Michael Wood?

4 MR DAVID BRUMMELL: Yes, indeed.

5 SIR LAWRENCE FREEDMAN: I think that's very helpful and
6 I think I will stop there.

7 THE CHAIRMAN: Thank you, Lawrence. Roderic?

8 SIR RODERIC LYNE: I would like now just to take the story
9 through ten days from the 7th to 17 March.

10 By 7 March, as you say, the Attorney's views had
11 crystallised into his advice to the Prime Minister,
12 which has been on the public record, I think, for the
13 last five years nearly, and in that, in his summary in
14 paragraph 27, he said:

15 "I remain of the opinion that the safest legal
16 course would be to secure the adoption of a further
17 resolution to authorise the use of force."

18 He went on to say in paragraph 28 that:

19 "I accept that a reasonable case can be made that
20 Resolution 1441 is capable in principle of reviving the
21 authorisation in 678 without a further resolution."

22 But then he said in paragraph 30:

23 "But a reasonable case does not mean that if the
24 matter ever came before a court, I would be confident
25 that the court would agree with this view."

1 So that's his position on 7 March, formally
2 expressed to the Prime Minister. Now, on 13 March, in
3 a note of a conversation which has been declassified by
4 the government today, you recorded that you had
5 a conversation with the Attorney General. I think you
6 have the note --

7 MR DAVID BRUMMELL: Yes, I do.

8 SIR RODERIC LYNE: -- in front of you. In this note, would
9 you say that the Attorney General effectively was
10 informing you of a change to the position that he had
11 expressed six days previously?

12 MR DAVID BRUMMELL: No, I would not regard that as a change
13 of view. What I would regard that as is a response to
14 the request, which he received from the Chief of the
15 Defence Staff and also the Cabinet Secretary, for
16 a clear statement as to whether, in the light of that
17 detailed analysis, he was satisfied that it would be
18 lawful to use force without a second resolution. Yes or
19 no.

20 So I regard it as a supplementary piece of advice
21 which I think is not contradictory to or inconsistent
22 with his detailed advice of 7 March, that indicated to
23 me that, having reflected on the position further, he
24 was now satisfied that the better view was that you did
25 not need a second resolution.

1 SIR RODERIC LYNE: As you recorded in paragraph 2 of your
2 note, indeed he told you that after further reflection
3 he had come to the clear view that, on balance, the
4 better view was that the conditions of the operation of
5 the revival argument were met in this case.

6 Had he said in his advice of 7 March that that was
7 the better view?

8 MR DAVID BRUMMELL: No. At that stage, he had expressed the
9 view that a reasonable case could be made for saying
10 that. Since then, two events had occurred.

11 First of all, the 7 March 2003 meeting of the
12 Security Council, where not a single member of the
13 Security Council suggested that Iraq was in compliance
14 with its obligations under 1441, and there was also the
15 fact that he had received by then the confirmation from
16 the Prime Minister that there was compelling evidence of
17 Iraq's material breach through its failure to comply
18 with its obligations under Resolution 1441.

19 SIR RODERIC LYNE: Did he mention the Security Council
20 meeting to you, of 7 March, as a reason -- I can't on my
21 quick read of this minute find reference to it here.

22 MR DAVID BRUMMELL: I can't honestly recall if he did. The
23 note is a contemporaneous note. I sought to capture as
24 many of the key points --

25 SIR RODERIC LYNE: So that was not a point you captured.

1 So as you say, in his earlier advice, of 7 March, he
2 had said that the revival argument:

3 "A reasonable case could be made for the revival
4 argument."

5 But he had said before that his opinion was that the
6 safest legal course would be to secure the adoption of
7 the further resolution.

8 You say that it is not a change of view to move from
9 that statement to saying, six days later, that the
10 better view is the revival argument?

11 MR DAVID BRUMMELL: Yes. Clearly, the safest legal course
12 would have been to have a second resolution, either
13 authorising use of force explicitly or determining that
14 Iraq was in further material breach. There would then
15 have been no legal argument at all, but in the absence
16 of that second resolution, what the Attorney was saying
17 was that he thought, on further reflection, the better
18 view was that the revival argument, which was available,
19 not only in principle, but it did apply in this case for
20 the various reasons that are recorded in the note.

21 SIR RODERIC LYNE: But we were still seeking a second
22 resolution on 13 March.

23 MR DAVID BRUMMELL: Yes, that was -- I understand that.

24 That would have been by far the best course, if we had
25 had a second resolution, both politically and from the

1 legal point of view.

2 SIR RODERIC LYNE: Obviously, these are matters that we will
3 go through with the Attorney General.

4 You mentioned the Security Council meeting, you
5 mentioned the view of the Prime Minister. Can you give
6 us a bit more detail on the process between
7 7 and 13 March, whereby the Attorney General's view
8 evolved to the position stated in your note? What
9 meetings might he have had in those six days that led
10 him to evolve his view?

11 MR DAVID BRUMMELL: The meeting -- the first meeting that
12 I recall was the meeting which he had with the
13 Prime Minister, the Defence Secretary and Foreign
14 Secretary and Chief of Defence Staff on
15 11 March, and that was when the request emerged for his
16 clear statement as to the legality of the proposed
17 military action. Would it be lawful? Yes or no.

18 In terms of how he then came to that concluded view,
19 that, on balance, the better view was he would not need
20 a second resolution, my understanding from the
21 conversation I had with him on 13 March was that this
22 was based on his overall reflection and consideration of
23 all the material by then, which he had been considering
24 over the previous two to three months.

25 SIR RODERIC LYNE: As you say, he had been considering this

1 material for a very long time, had had his advice in
2 draft for a long time, had produced it on 7 March, but
3 then, in the following six days, the advice took
4 a slightly different direction.

5 The meeting with the Prime Minister and others on
6 11 March was the only meeting that had a major influence
7 on that different direction, or do you recall any other
8 meetings or events other than those you have mentioned
9 so far?

10 MR DAVID BRUMMELL: I don't recall other meetings. As
11 I say, in the discussion I had with him, he mentioned
12 that the key factor that had led him to that concluded
13 view of the legal position was his examination of the
14 negotiating history of Resolution 1441.

15 I'm not aware that, at that stage, there were other
16 discussions which led him to that view.

17 SIR RODERIC LYNE: That puzzles me a little, because he had
18 examined the negotiating history well before 7 March,
19 going back into January, as you have said. I'm trying
20 to establish what changed between 7 and 13 March.

21 MR DAVID BRUMMELL: I think what he was asked to do at the
22 meeting on 11 March was really to reflect further and to
23 say, "Well, look, we understand you said there is
24 a reasonable case for going to war on the basis of
25 Resolution 1441 and the evidence of material breach that

1 there is, but what are you saying? Are you saying that
2 it would be lawful for the UK to use force? Yes or no."

3 So that was the question that he had to consider and
4 there was no new intervening factor, as I see it,
5 whether from the point of view of fresh legal argument
6 or any sort of other pressure that might have been
7 thought to apply.

8 SIR RODERIC LYNE: Who invited him to reflect further on his
9 advice of 7 March?

10 MR DAVID BRUMMELL: The -- the trigger for that, if you
11 like, came from the request by the Chief of the Defence
12 Staff, who I think, understandably, wanted to know would
13 it be lawful for him to commit the UK's armed forces to
14 military conflict.

15 SIR RODERIC LYNE: We have heard that evidence, but was it
16 the Chief of the Defence Staff who asked the
17 Attorney General to reflect further at the meeting
18 chaired by the Prime Minister?

19 MR DAVID BRUMMELL: I can only repeat that the question that
20 was put to the Attorney General was to provide a clear
21 statement as to the legality of the proposed military
22 action. It was then for him to decide how to respond,
23 and it emerged in the course of the discussion I had
24 with him on 13 March, and also there was a discussion
25 with Juliet Wheldon, the Treasury Solicitor, who

1 confirmed that the Cabinet Secretary also would need
2 that kind of clear statement as to the legality of the
3 action because of the assistance the Civil Service might
4 be called upon to provide to the military effort.

5 SIR RODERIC LYNE: Did the requirement for a clear
6 statement, yes or no, require him to say that this was
7 now the better view?

8 MR DAVID BRUMMELL: Certainly not. He was asked to respond
9 to the request for clarity and he did that by reflecting
10 on the position, and he came to his own independent
11 professional view that, having reflected on the matter
12 further, he was satisfied that he could give that
13 unequivocal assurance, which the Chief of the Defence
14 Staff had sought.

15 SIR RODERIC LYNE: Were you surprised when he told you on
16 13 March that his view had developed in this way?

17 MR DAVID BRUMMELL: No, I wasn't surprised, but I couldn't
18 have predicted, say, on 12 March, how he would respond,
19 because he was considering that request with the utmost
20 serious consideration. It was obviously a weighty
21 responsibility for him, and he had to decide in his own
22 mind whether, in the light of all the different
23 arguments that he had heard and considered very
24 carefully, it would be proper for him to give that
25 unequivocal assurance, that the use of force would be

1 lawful.

2 SIR RODERIC LYNE: Would you have said that he was under

3 pressure?

4 MR DAVID BRUMMELL: No, I wouldn't have said that.

5 SIR RODERIC LYNE: No.

6 MR DAVID BRUMMELL: It was very much at that time, as

7 I recall it, business as usual. Iraq was, of course,

8 the top major issue for us. The Attorney was still

9 engaging with other issues, which he had to, as

10 Attorney, and in an utterly professional way.

11 SIR RODERIC LYNE: If I can just turn a little bit to what

12 happened after this conversation that you had with the

13 Attorney General, and I think we have a copy of the

14 Attorney's appointments diary for that day -- what time

15 of day did the Attorney General give you this view?

16 MR DAVID BRUMMELL: As I recall it, it was a meeting fairly

17 early in the morning, it could have been eight o'clock.

18 SIR RODERIC LYNE: Hm-mm. Now, following on from his

19 decision to take that view, can you remind us what other

20 meetings he had in the course of the day and tell us

21 what the purpose of those meetings was? Do you have the

22 diary entry in front of you? If not, I can read it out.

23 MR DAVID BRUMMELL: Sorry, yes, if you would.

24 SIR RODERIC LYNE: It says -- I am right this has been

25 declassified, Chairman?

1 THE CHAIRMAN: Yes.

2 SIR RODERIC LYNE: It says:

3 "9.00 am meeting with Jonathan Crow, meeting in

4 central lobby, House of Commons. 1300, meeting with CA

5 and DB at House of Commons."

6 Could you interpret "CA" and "DB" for us?

7 MR DAVID BRUMMELL: Yes, "DB" is me, David Brummell, and

8 "CA" is the Foreign Office secondee who was giving

9 support and advice to the Attorney throughout.

10 SIR RODERIC LYNE: Right, but you had already met him

11 earlier in the day to record his views?

12 MR DAVID BRUMMELL: Yes.

13 SIR RODERIC LYNE: Let's just take these meetings in

14 sequence. Jonathan Crow. Can you interpret that one?

15 MR DAVID BRUMMELL: I don't recall that at all.

16 THE CHAIRMAN: He is a senior silk, isn't he?

17 MR DAVID BRUMMELL: Oh, yes, he was one of the two first

18 Treasury counsel at the time. I do recall very clearly

19 it was an early morning meeting and, following that,

20 I accompanied the Attorney to his room in the House of

21 Commons. I have to say I don't recall myself the

22 meeting with Jonathan Crow. It may have been on

23 something else. I just can't recall.

24 SIR RODERIC LYNE: The lunchtime meeting with you and

25 Cathy Adams?

1 MR DAVID BRUMMELL: That was to take stock of the position
2 and to consider how we were going to proceed to the next
3 stage, which was the preparation of the clear statement
4 as to his concluded view of the legal position, and also
5 as to the need to prepare for any possible legal
6 challenge that might be mounted.

7 He had mentioned the possibility of legal challenges
8 in his detailed advice of 7 March to the Prime Minister,
9 and although some of those were perhaps remote
10 possibilities, we thought it right to prepare for that
11 and to seek to develop the arguments further, so that we
12 would be in a good position -- we would be well equipped
13 to meet any legal challenge.

14 SIR RODERIC LYNE: How did you decide to prepare for the
15 possibility of a legal challenge?

16 MR DAVID BRUMMELL: We -- the team of lawyers met with the
17 Attorney over the weekend of 15 and 16 March and we
18 essentially worked on the two documents that
19 Sir Michael Wood mentioned, that the Foreign Office
20 statement -- the Foreign Office paper on the legality of
21 the use of force and the statement which was then
22 published to Parliament as Parliamentary answer on
23 17 March.

24 But as well as that, we were considering the
25 different possible challenges and the best way to

1 prepare for those, but we thought the first stage in
2 doing that was to prepare the arguments -- the further
3 arguments in support of the view that he had come to.

4 SIR RODERIC LYNE: Now, going back to the diary, it records
5 at 4 o'clock in the afternoon a meeting with --
6 "Chris Greenstock" it says, I think that may mean
7 "Greenwood", at the House of Commons.

8 MR DAVID BRUMMELL: I believe that would be
9 Professor Christopher Greenwood, as he then was.

10 SIR RODERIC LYNE: Would that have been part of the
11 preparations for dealing with the legal challenge?

12 MR DAVID BRUMMELL: Very much so. Also to assist, I should
13 say, with the preparation of the statement setting out
14 the Attorney's concluded view.

15 SIR RODERIC LYNE: What view did he provide?

16 MR DAVID BRUMMELL: Professor Greenwood's view was very much
17 along the same lines as the Attorney General's.

18 SIR RODERIC LYNE: He was supportive?

19 MR DAVID BRUMMELL: He supported that view. We instructed
20 him following -- I should say, following the Attorney's
21 arrival at that concluded view, and we contacted
22 Christopher Greenwood to enlist his support in
23 developing those arguments.

24 THE CHAIRMAN: In an advocacy role rather than an advisory
25 role?

1 MR DAVID BRUMMELL: Yes, I would say very much in an
2 advocacy role.

3 SIR RODERIC LYNE: Just to conclude that day, because it is
4 obviously an important day, there are three further
5 meetings recorded -- I wonder if you can take us
6 through -- a meeting with Lord Mayhew at the House of
7 Commons.

8 MR DAVID BRUMMELL: I don't believe I attended that meeting.

9 SIR RODERIC LYNE: That's the former --

10 MR DAVID BRUMMELL: The former Attorney General, yes.

11 SIR RODERIC LYNE: The former Attorney General under the
12 Conservative Government. A meeting with Jack Straw at
13 the House of Commons?

14 MR DAVID BRUMMELL: I did attend that meeting. As I recall
15 it, the Attorney, at that meeting, communicated to
16 Mr Straw his concluded view as to the legal position.

17 SIR RODERIC LYNE: Do you recall Mr Straw's reaction?

18 MR DAVID BRUMMELL: Well, he noted that, of course, and was
19 duly grateful.

20 SIR RODERIC LYNE: Hm-mm. Finally, a meeting with
21 Lord Falconer and Baroness Morgan at the House of
22 Commons. What would that have been about?

23 MR DAVID BRUMMELL: I wasn't at that meeting. I can only
24 infer from this that he was communicating to them also
25 his concluded view as to the legal position.

1 SIR RODERIC LYNE: Can I just ask about how this interacts
2 with the views of the Foreign Office legal adviser? We
3 have just heard from Sir Michael Wood of the position he
4 took, which essentially was that he disagreed with the
5 Attorney General's better view.

6 Were you concerned that Sir Michael Wood, who had
7 been, I think, in close agreement with the
8 Attorney General at earlier stages, was now in
9 a different position?

10 MR DAVID BRUMMELL: No. Of course, one is always concerned
11 if a difference of legal view emerges. Sir Michael Wood
12 is an international lawyer of great distinction and the
13 Attorney had the highest regard for his advice, and for
14 his views, which he very much took into account. At the
15 end of the day, the Attorney had to come to his own
16 view.

17 I should say the difference between Lord Goldsmith
18 and Sir Michael Wood does turn on a relatively narrow
19 matter of interpretation of a UN Security Council
20 Resolution, a narrow point of interpretation, but, of
21 course, of considerable importance in terms of the
22 outcome of that interpretation.

23 Differences of view as to the proper interpretation
24 of a legal document, an international instrument, can
25 happen.

1 SIR RODERIC LYNE: Did you yourself make any effort to try
2 to bring these two different views together, to achieve
3 a resolution between them?

4 MR DAVID BRUMMELL: No, because it was clear to us what
5 Sir Michael Wood's consistent view of the legal position
6 was and it was really for the Attorney to decide whether
7 or not he agreed with those views or took a contrary
8 view.

9 It was very clear from the start, by the way, that
10 there were -- as soon as we saw Resolution 1441 in its
11 adopted form, that there were two possible arguments,
12 two possible, contrary arguments. As it so happens, the
13 Attorney preferred the view that, because of the wording
14 in operative paragraph 12 in particular, which refers to
15 the Security Council considering the situation in the
16 light of the further breaches that Iraq had committed --
17 and no one suggested that Iraq was in anything but
18 material breach -- and there was no reference to the
19 need for a Security Council decision.

20 SIR RODERIC LYNE: He preferred that view on 13 March, but
21 obviously not on 7 March. Were officials at
22 Number 10 Downing Street and the Cabinet Office in your
23 exchanges with them aware of this difference of view
24 between the Attorney and the FCO legal adviser?

25 MR DAVID BRUMMELL: If I could just correct one point.

1 On 7 March, the Attorney had said there was a reasonable
2 case --

3 SIR RODERIC LYNE: Yes, we have repeated that several times.

4 MR DAVID BRUMMELL: I don't know -- if they would have
5 known that.

6 SIR RODERIC LYNE: No. I think my final question -- because
7 we are running very short of time -- should be that, in
8 the last stage of the discussions that you referred to
9 initiated by the Ministry of Defence wanting a clear
10 position, you sent, I believe, a formal request that the
11 Prime Minister should provide confirmation that Iraq had
12 committed further material breaches of Security Council
13 Resolution 1441. Had that confirmation already been
14 provided orally?

15 MR DAVID BRUMMELL: Yes, it had.

16 SIR RODERIC LYNE: It had? Why was it necessary for the
17 Prime Minister to make a determination on material
18 breach by Iraq?

19 MR DAVID BRUMMELL: Well, first of all, this was not
20 a matter for a lawyer to make an assessment on. This
21 was a matter for the government and the Prime Minister,
22 who had access to all the relevant material and advice.
23 The question of the reports which the weapons inspectors
24 had provided and any other material about the issue of
25 Iraq's --

1 SIR RODERIC LYNE: What was the legal significance of the
2 Prime Minister's determination?

3 MR DAVID BRUMMELL: The legal significance of the
4 Prime Minister's determination was that an assessment
5 that Iraq was in material breach was an essential
6 pre-condition to the operation of the revival principle.
7 The Security Council in operative paragraph 4 had
8 pre-determined that any further non-compliance by Iraq
9 with its obligations under Resolution 1441 would
10 constitute a further material breach.

11 So, as far as we were concerned, the Security
12 Council had made the key determination in advance, and
13 so it was essential for us to have hard evidence, as the
14 Attorney put it, compelling evidence, of non-cooperation
15 with the weapons inspectors and non-compliance with the
16 other obligations imposed on Iraq in Resolution 1441.
17 So that was a very important factual pre-condition.

18 Coupled with the further discussion in the Security
19 Council, which was a requirement for the operation of
20 the revival principle, that would then have the revival
21 of the authorisation to use force in Resolution 678.

22 SIR RODERIC LYNE: So my final point, the Security Council
23 Resolution 1441 had indeed said that there needed to be
24 an assessment. The Security Council had not been able
25 itself to come to any form of decision, it had just had

1 a discussion. So the Prime Minister then makes the
2 assessment, as you say.

3 MR DAVID BRUMMELL: Yes. In the light of all the advice and
4 material provided to him, of course.

5 SIR RODERIC LYNE: Yes. So the hard evidence that provides
6 the trigger for legal authorisation through the revival
7 argument is the assessment made by the Prime Minister?

8 MR DAVID BRUMMELL: Well, it is the evidence. The existence
9 of that evidence has to be confirmed by someone in the
10 light of --

11 SIR RODERIC LYNE: I'm not a lawyer, as you understand, and
12 I'm trying to understand this legal chain.

13 Was the Prime Minister's determination or his
14 confirmation that there had been further material
15 breaches by Iraq an essential step in the chain to make
16 sure that our forces had legal authority to go into
17 action?

18 MR DAVID BRUMMELL: Yes, I see. There had to be some
19 confirmation. It wouldn't have necessarily have had to
20 be the Prime Minister.

21 SIR RODERIC LYNE: But it hadn't come from the Security
22 Council, so it came from the Prime Minister in the name
23 of the British Government?

24 MR DAVID BRUMMELL: Yes.

25 SIR RODERIC LYNE: Okay. Thank you very much.

1 THE CHAIRMAN: We are coming to the end of our time,
2 Mr Brummell. I wonder, this is a lessons learned
3 Inquiry, and are there, from your perspective, close to
4 these important events, any lessons learned for the
5 future about the provision of legal advice on such
6 a crucial issue, which was foreseeable for some time, as
7 you have told us, on the lawfulness of the invasion?

8 Sir Michael Wood spoke of the enveloping of
9 policy-making with legal advice over the period. You,
10 yourself, have told us about the Attorney's wish to
11 ensure that his evolving view was being heard by the
12 top -- the policy-making chain. So are there lessons
13 from that?

14 MR DAVID BRUMMELL: Yes, I think there are. I very much
15 favour, as Lord Goldsmith himself does, the close
16 involvement of lawyers in the policy-making process and
17 the kind of close interdepartmental cooperation that
18 occurred, both during the conflict, in terms of the
19 approach to the military conduct -- the conduct of
20 military operations, and in relation to the
21 post-conflict occupation, when there were regular
22 meetings, interdepartmental meetings, which the Attorney
23 General -- in fact, I attended with him. I think it was
24 much easier to get a clearer and co-ordinated view of
25 things.

1 That said, the Attorney had available to him,
2 I believe, all the material and advice that he needed to
3 inform his final view, and so, in terms of the -- that
4 side of the legal process, I would, myself, have been
5 fully content with.

6 THE CHAIRMAN: One post scriptum point on that. You have
7 told us a bit about the -- as has Sir Michael Wood --
8 about the evolution of 1441 during the negotiating
9 stages.

10 Given that it was going to lead foreseeably to the
11 issue of the lawfulness or otherwise of military
12 conflict, would you -- with hindsight or foresight,
13 looking to a future occasion -- think the Attorney
14 should have a close involvement in the drafting process,
15 or is that something safely to be left to Foreign Office
16 legal advisers?

17 MR DAVID BRUMMELL: I would absolutely think the best
18 approach to that is for the Foreign Office lawyers to be
19 involved in the drafting process of any resolution of
20 that sort.

21 It is very important that the government's policy
22 objectives are understood and that those who are
23 negotiating the resolution -- the international
24 instrument, are aware of what the legal issues are, of
25 what the legal bottom line is, of what the legal

1 constraints are. But I believe that would be perfectly
2 properly provided by Foreign Office legal advisers.

3 THE CHAIRMAN: Thank you. Any final comment you would like
4 to offer us?

5 MR DAVID BRUMMELL: No, I have nothing further to add, but
6 thank you very much for inviting me.

7 THE CHAIRMAN: We thank you for your testimony, Mr Brummell,
8 and thank you for your witness statement. Both have
9 been very helpful.

10 We resume again at 2 o'clock this afternoon, when
11 our witness will be Elizabeth Wilmshurst, a deputy legal
12 adviser in the Foreign Office until 2003. Thank you
13 very much.

14 (1.00 pm)

15 (The short adjournment)

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