

1 (4.00 pm)

2 CATHY ADAMS

3 THE CHAIRMAN: Good afternoon.

4 CATHY ADAMS: Good afternoon.

5 THE CHAIRMAN: I am afraid we are a little behind on time.

6 CATHY ADAMS: That's quite all right.

7 THE CHAIRMAN: Our witness, who we welcome, is Cathy Adams,
8 legal counsellor to the then Attorney General
9 lord Goldsmith, between 2002 and 2005.

10 Now, I say this on every occasion: we recognise that
11 witnesses are giving evidence based on their
12 recollection of events and we, of course, check what we
13 hear against the papers to which we have access.

14 I remind each witness on each occasion that they
15 will later be asked to sign a transcript of the evidence
16 to the effect that the evidence given is truthful, fair
17 and accurate.

18 With that preliminary out of the way, I'll turn
19 straight to Sir Martin Gilbert. Martin?

20 SIR MARTIN GILBERT: You were on secondment from the FCO
21 legal advisers' branch to the Attorney General's office,
22 then known as the Legal Secretariat to the Law Officers.
23 Was this a longstanding arrangement between the two
24 offices?

25 CATHY ADAMS: As far as I'm aware -- obviously, my history

1 in the Foreign Office only goes back to 1994 -- but
2 I believe -- I think Michael Wood gave evidence that
3 there had been a Foreign Office legal adviser in the
4 Attorney General's office for 20 or 30 years. Certainly
5 the whole time that I have been in the office, there has
6 been a legal counsellor from the Foreign Office seconded
7 to the Attorney General's office, yes.

8 SIR MARTIN GILBERT: What was your job title and grade at
9 that time?

10 CATHY ADAMS: My grade was, in Foreign Office terms, senior
11 management structure, SMS; in non-Foreign Office terms,
12 I think it is called senior civil service.

13 In the Foreign Office that grade in the legal
14 advisers' carries the term "legal counsellor". At the
15 time when I worked in the Attorney General's office,
16 apart from the Legal Secretary and the Deputy Legal
17 Secretary, the other officials didn't have formal
18 titles.

19 Since my departure, they have renamed the office the
20 Attorney General's Office and everybody now has titles
21 which are more sort of in line with Civil Service usage
22 and I believe the person that currently occupies the
23 post which I occupied then is now called something --
24 I think it is director international law. I would need
25 to check that, but I did not have that title at the

1 time.

2 SIR MARTIN GILBERT: In that role what support and advice
3 was available to you?

4 CATHY ADAMS: Of an administrative nature there was some
5 support, although I have to say, for much of the early
6 part of my time there, I did not have a secretary who
7 was DV cleared, which meant I had to do everything myself
8 basically. But basically I was there as -- you know, in
9 the capacity of giving legal advice and assistance to
10 the Attorney General. So there was nobody advising me
11 in that sense.

12 SIR MARTIN GILBERT: What contact and support did you have
13 from Sir Michael Wood at the FCO?

14 CATHY ADAMS: At the time that I was working in the Attorney
15 General's office I was on secondment, as you have said.
16 So I was not a member of the Foreign Office at that
17 point. I was seconded out. I was formally employed by
18 the Treasury Solicitor's Department, because the lawyers
19 in the Attorney General's Office come under the broader
20 umbrella of the Treasury Solicitors.

21 Obviously, I had regular contact with Michael Wood
22 and the lawyers dealing with issues that I was being
23 asked to deal with at the Attorney General's Office.

24 SIR MARTIN GILBERT: To whom do you report?

25 CATHY ADAMS: My line manager was David Brummell, the Legal

1 Secretary.

2 THE CHAIRMAN: It would help with the transcription, slower
3 than faster.

4 CATHY ADAMS: Sure.

5 THE CHAIRMAN: Martin?

6 SIR MARTIN GILBERT: Before you went on secondment, what was
7 your own experience of international law issues?

8 CATHY ADAMS: Aside from academic study, post-graduate study
9 in international law, I had been in the Foreign Office
10 since 1994, working as a legal adviser. Prior to that,
11 I had spent two years working as a legal adviser in the
12 department -- what was then the Department of the
13 Environment and I was working in the legal team that
14 dealt with international and European environmental law.

15 SIR MARTIN GILBERT: Within the LSLO what were your specific
16 areas of responsibility?

17 CATHY ADAMS: There were basically three broad areas of
18 work. One was public international law, so any issues
19 of international law which were to be referred to the
20 Attorney General, would come to me for processing, if
21 you like. I also -- the other two main areas were
22 European Union law and human rights law.

23 I would say on the international law issues, I was
24 the primary person dealing with issues in the Attorney
25 General's office with -- in conjunction, as necessary,

1 with the Legal Secretary, so effectively I was the sort
2 of front line person on international law issues.

3 On EU and human rights issues, there were other
4 lawyers in the Attorney General's office who also did --
5 worked in those areas as well.

6 SIR MARTIN GILBERT: What percentage of your time was spent
7 dealing with Iraq during this period?

8 CATHY ADAMS: It is difficult to say over the piece. During
9 the period from when I started in the office in -- at
10 the end of July, up to sort of March -- difficult to
11 recall. I think a substantial part of my time, I would
12 say, but there were other issues going on as well. You
13 know, life goes on, even if there is a crisis, other
14 issues, the government continues to function obviously.

15 Certainly -- I wouldn't like to hazard a guess as to
16 how many requests for advice the Attorney General would
17 get on average in every week, but my experience was that
18 everybody was extremely busy most of the time and
19 certainly the Attorney General regularly had volumes of
20 red boxes to consider.

21 As for me, I think there were other issues. As
22 I say, there were some difficult issues around that time
23 on human rights law, European Convention on Human Rights
24 issues, which took quite a lot of time, and there were
25 also EU issues going on. So, to be honest, I find it

1 very difficult to give, you know, a percentage estimate.

2 I mean, obviously towards -- at certain points,
3 I would have been spending the majority of my time --
4 most of my time on these issues, but there certainly
5 were other issues going on as well.

6 SIR MARTIN GILBERT: The issues which we were dealing with
7 on the Iraq issues were of tremendous complexity and
8 seriousness. Did you feel that you had such advice and
9 support to address them properly?

10 CATHY ADAMS: Ultimately, I wasn't the one who was
11 addressing them. I think that's the key point. I mean,
12 the function of the person in that job was to assist the
13 Attorney General and the way that works, as you know, is
14 that government departments make submissions. I mean,
15 the lead lawyers in whichever government department is
16 responsible need to make a detailed submission to the
17 Attorney setting out all the arguments and the pros and
18 cons.

19 The lawyers in the Attorney General's Office are
20 expected to assist the Attorney in coming to a view on
21 whatever has been submitted by the relevant department,
22 by analysing the legal issues, preparing a submission,
23 often preparing draft advice.

24 But certainly -- I mean, I had -- you know,
25 David Brummell, at various times, and most -- throughout

1 most of the period was following the issues very closely
2 indeed and certainly dealt with a number of things
3 himself.

4 I had, I would say, a very good relationship with
5 FCO lawyers and we were in a lot -- very close contact
6 for most of the time.

7 SIR MARTIN GILBERT: Were you the only public international
8 lawyer within --

9 CATHY ADAMS: Yes.

10 SIR MARTIN GILBERT: Did you feel exposed in that position?

11 CATHY ADAMS: Not really. I mean, it was a very challenging
12 job. I would say it is probably the most fascinating
13 job, the best job I think I have done working in the
14 Civil Service, because -- I mean, I would receive -- as
15 a sort of outreach, as it were, from FCO legal Advisers
16 to the other lawyers who are not working in London,
17 those on posting and the person who is at the
18 Attorney General's Office, there is a legal advisers'
19 weekly meeting in London and there is a sort of brief
20 minute of that meeting, which sort of gets sent out to
21 everybody, which sort of summarises the main issues that
22 FCO legal advisers happen to be dealing with at any
23 particular moment.

24 I remember thinking on more than one occasion it was
25 quite striking that almost everything that was mentioned

1 in that minute as being the key issues of the moment for
2 the Foreign Office legal advisers, it was something
3 which, in one way or another, was on my desk. So it is
4 a fascinating job because it does give you exposure to
5 the most, you know, interesting legal issues really that
6 the Foreign Office is dealing with.

7 But, as I say, I think David Brummell made it very
8 clear in his statement -- and it is absolutely true --
9 that the role of the person of those lawyers, including
10 me at the time, in the Attorney General's office is
11 not -- it is of no interest what we think about the
12 issue. What everybody wants to know is what the
13 Attorney General or the Solicitor General, as the case
14 may be, thinks of the issue.

15 THE CHAIRMAN: Slow down.

16 CATHY ADAMS: Sorry.

17 SIR MARTIN GILBERT: That's very helpful. Can I turn now to
18 the question of the timing of the advice on the legal
19 basis on military action? Lord Goldsmith told us in his
20 evidence:

21 "With hindsight, it would have been desirable if he
22 had been asked to be more involved in the detail of the
23 drafting of 1441."

24 In your view, and given your current role as legal
25 counsel to the United Nations, the United

1 Kingdom Mission of the United Nations, do you think
2 there were issues within 1441 on which you should
3 properly be consulted as the negotiations were
4 proceeding and would it have been practically possible?

5 CATHY ADAMS: I think that is a very important issue and, in
6 fact, for me, this is the key lesson learned from the
7 whole episode, the timing of the legal advice. Because
8 I do think -- and I say this with the benefit of
9 hindsight -- I do think that, if advice had been
10 given -- definitive advice had been given, and it may
11 have -- perhaps it might have had to be conditional
12 advice, but nevertheless definitive advice from the
13 Attorney had been given prior to the adoption of
14 Resolution 1441, events would have unfolded rather
15 differently.

16 I mean, perhaps I could just say what happened, my
17 recollection of what happened in terms of the process of
18 seeking legal advice at that time?

19 We started, as I recall, receiving material from the
20 Foreign Office concerning the emerging texts that were
21 being discussed at that stage between the UK and the US
22 in about mid-September, and that practice of sending
23 over material continued more or less throughout the
24 course of the negotiations, you know, continuously
25 further drafts of the resolution, sometimes they had

1 commentary on them from the Legal Counsellor, my
2 opposite number effectively, in the Foreign Office, who
3 was principally dealing with the matter on a day-to-day
4 basis, you know, reflecting the comments that he had on
5 the text and so on.

6 Obviously we received telegrams from UKMIS New York
7 and from the Foreign Office itself, although it
8 transpired during the course of the negotiation --
9 I think it was the Legal Counsellor in the Foreign Office
10 who picked this up first of all -- there were two
11 distributions for telegrams. There was the general Iraq
12 distribution which included the Attorney General's
13 office, but then there was a separate -- at some
14 point -- I'm not sure when -- a separate more limited --
15 I think it was confidential and personal -- distribution
16 was set up, which only included a number of -- a small
17 number of recipients and we were not on that
18 distribution list, and the consequence of that was a lot
19 of the very critical points in the negotiation were
20 issues that were discussed between the Foreign Secretary
21 and US Secretary Powell and obviously the French
22 Foreign Minister and so on. Those records of rather key
23 moments were not coming to us at the time.

24 So I make that point simply to illustrate that,
25 although we were receiving some material, we weren't

1 receiving the full picture as the negotiations were
2 progressing.

3 In addition to this sort of general flow of
4 information, the Foreign Office legal advisers did make
5 two formal submissions, as it were, to the
6 Attorney General during the course of the negotiations.
7 The first was around the end of September, when
8 Michael Wood wrote with his analysis of a very early
text.

9 I think it was on the text that was -- that at that
10 stage had more or less been agreed between the US and
11 the UK as a sort of basis for their negotiation with the
12 rest of the P5 at that stage.

13 There was a discussion with the Attorney General.
14 Michael Wood came and the Legal Counsellor came over for
15 a meeting and there was a discussion and, broadly
16 speaking, the Attorney General indicated that he, in
17 broad terms, agreed with the analysis that was being
18 presented at that time and there was, therefore, no need
19 for him to offer written advice.

20 Subsequently, there was a letter two or three weeks
21 later with a further analysis of a further version of
22 the text.

23 At that stage, Michael Wood's view was clearly that
24 this -- a resolution in this form did not in itself
25 authorise the use of force.

1 I don't recall any -- I don't recall any -- there
2 certainly wasn't a meeting, or at least I'm pretty sure
3 there wasn't a meeting as there had been with the
4 earlier letter. There doesn't seem to be any record of
5 whether the Attorney's views on that letter were
6 transmitted to Michael Wood. I think it is very likely
7 that I told him, but I think it was that letter -- it
8 was certainly around the same time -- that prompted the
9 Attorney General to have conversations with both the
10 Foreign Secretary and the Prime Minister, expressing his
11 view on the same text, I think, at that time.

12 After that, there were no formal -- there was no
13 request for the Attorney General obviously, as you know,
14 to advise until the letter came on 9 December.

15 I think that it would have been better -- it would
16 have been better if he had been asked to take a view
17 on -- on the sort of final version of the text. I mean,
18 I know from subsequent discussions, you know, after the
19 event with Michael Wood -- and I think it is apparent,
20 in any event, from the papers, and from his evidence,
21 that he didn't think anything -- the changes that had
22 taken place in the resolution between 18 October and
23 8 November made any difference to his analysis of what
24 the effect of the resolution was, but obviously,
25 ultimately, having considered all the papers and the

1 submissions from the Foreign Office and so on, the
2 Attorney came to a different view.

3 I think I would draw a contrast between the process
4 that took place on 1441 and what subsequently took place
5 on the so-called second resolution and also, although
6 I don't think I can go into detail, because it is
7 covering issues that are not immediately germane, but
8 there were other cases during my time in the
9 Attorney General's office where advice was sought on
10 draft Security Council resolutions and, on all those
11 occasions, those other occasions, advice was -- the
12 Attorney General was presented with a draft and it was
13 clear, "This is our objective for this resolution. Is
14 this text sufficient to achieve this objective and, if it
15 isn't, what do we need as a sort of legal red line?"

16 On those occasions -- and you can see it very
17 clearly from the advice on the so-called second
18 resolution, the Attorney was able to say "I think X or
19 Y" and, therefore, that informed the process of the
20 negotiation in New York and it has struck me very
21 forcibly with the benefit of hindsight that that would
22 have been -- well, desirable, to say the least, in
23 relation to 1441 because the net effect was, on
24 8 December, the government didn't really know what it
25 was voting for effectively. I mean, the Foreign

1 Secretary and Sir Jeremy Greenstock had a very clear
2 view of what they thought the resolution meant.

3 Michael Wood had a very clear view which was a rather
4 different view, but the one person whose view actually
5 mattered hadn't even been asked at that stage. Then he
6 wasn't asked for a month and, when he was asked, he was
7 told his advice wasn't needed immediately.

8 So I think the process certainly could have been
9 better, is my assessment.

10 SIR MARTIN GILBERT: Indeed, you have told us that the
11 mechanisms were there and had been used.

12 CATHY ADAMS: The other occasions that I'm referring to are
13 sort of the subsequent occasions. Obviously, this
14 was -- you know, this was my first three or four months
15 working in the post, so I did not have any prior
16 experience in the Attorney's office directly to draw on.

17 But certainly the -- there wasn't any pressure from
18 anybody to seek the Attorney's views as far as I recall,
19 on the final text. I know that the Foreign Office legal
20 advisers were keen, certainly around early November, for
21 early advice, but I don't think even they were pressing
22 for advice on -- you know, before the resolution was
23 adopted.

24 Can I just add a couple of things just in terms of
25 the consequences? I mean, not just the question of the

1 government knowing what it was voting for, but it seemed
2 to me there are sort of three things. Obviously, it
3 would influence the policy in terms of subsequent
4 developments. It should influence the negotiation.
5 But, also, it would have influenced the statements that
6 were made about the resolution after its adoption.
7 I mean, you will see from the advice that the Attorney
8 gave on 7 March that he picks up this difference between
9 what the Foreign Secretary had said about the nature of
10 further material breaches, compared to the US
11 analysis and he, I think, comes to the conclusion that
12 actually what the Foreign Secretary was saying was
13 actually not helping his overall thesis, that the
14 resolution authorised force without a further decision.

15 The other thing it might have influenced, if there
16 had been a definitive view, is the explanation of vote
17 which was made. Normally, when you have a resolution
18 negotiated, if you don't achieve everything that you
19 want to achieve in the negotiation and you end up with
20 a rather -- sometimes less than clear text, you know, it
21 is a classic way to reinforce one's interpretation by
22 stating clearly that you think it means a certain thing.

23 I mean, as has been said previously in evidence, our
24 statement was, I think, arguably not inconsistent with
25 the view that the Attorney had reached, but it could

1 have been clearer and I think some of the things that
2 were said -- obviously there has been a lot of confusion
3 about what automaticity did or didn't mean and these
4 kinds of issues, but if there had been a very definitive
5 legal view, then perhaps that would have fed into
6 a clearer explanation of vote.

7 SIR MARTIN GILBERT: Lord Goldsmith told us there were
8 a number of occasions when, without being asked, he had
9 offered his view of the legal position or expressed his
10 concerns, and David Brummell implied in his evidence
11 that there were occasions when Lord Goldsmith had
12 actually been discouraged from providing advice. Did
13 you have any impression of this discouragement?

14 CATHY ADAMS: My -- I think there were occasions when the
15 Attorney felt that he needed to be asked for a view
16 before he could give one, certainly. I'm not, as far as
17 I can be, aware of any sort of direct, you know,
18 suggestions that he shouldn't advise, although I think
19 there are some statements in some of the documents that
20 have been declassified, suggesting that events will
21 develop -- I mean, the trouble with it -- it is
22 certainly true that you couldn't take definitive view on
23 8 November about whether force would be authorised on
24 17 March or whatever date it was that the action
25 commenced, because obviously a number of things had to

1 happen or not happen between the adoption of the
2 resolution and it was all dependent on Iraqi compliance
3 and reporting of material breaches, et cetera, but
4 I think you could have given a view that said, if --
5 sort of conditional advice, or advice which said: is
6 this resolution capable or not of authorising the use of
7 force without a further decision and, if it is capable,
8 what are the sort of conditions that need to be met?

9 SIR MARTIN GILBERT: One thing on which we rather need your
10 guidance -- we are trying to clarify the point at which
11 Lord Goldsmith was formally instructed to advise. He
12 told us he had received his instructions in a letter
13 from Sir Michael Wood on 9 December, which states in
14 paragraph 3:

15 "No advice is required now."

16 He also told us that Jonathan Powell later asked him
17 to produce an advice in draft for the Prime Minister.
18 At what point did you understand that he had been
19 formally instructed to advise?

20 CATHY ADAMS: I expected the draft -- the request for advice
21 to come from the Foreign Office, because that would be
22 the normal expectation. It is a matter of international
23 law and it was for the Foreign Office legal adviser to
24 request instructions or request advice from the
25 Attorney General. Obviously, as I think I said earlier,

1 for the Attorney to be able to advise fully, you do need
2 a detailed legal submission. I mean, the Attorney may
3 on occasion be asked in a meeting with another minister,
4 you know, for a view, but certainly on an issue of this
5 complexity and of this magnitude, a formal detailed
6 submission would be expected, would be the norm,
7 Analysing the arguments, submitting all the relevant
8 papers and so on.

9 So I was expecting that to come from the
10 Foreign Office. I was a bit surprised at the time that
11 it took some time for the request to arrive because my
12 impression had been, in early November, certainly, that
13 the Foreign Office legal advisers themselves were keen
14 to have the Attorney's advice sooner rather than later.

15 My understanding at the time was that there had been
16 some discussion of the terms of the request within the
17 Foreign Office and also with the UK Mission.

18 As far as the -- so -- to answer your question --
19 that's a long-winded way of answering your question, but
20 the short answer is that my understanding is that the
21 request for advice came on 9 December.

22 SIR MARTIN GILBERT: That really leads me to my last
23 question, which is, from your experience, was it normal
24 for the Attorney to be asked to provide -- for advice in
25 draft for discussion, as opposed to specific advice?

1 CATHY ADAMS: I'm not sure that I would say that he was
2 requested to provide advice in draft, as it were.
3 I mean, because the suggestion that he might provide
4 advice in draft came obviously in a subsequent
5 conversation. I wasn't at that meeting. So the only --
6 I know no more about it really than you from having read
7 the record.

8 I think my understanding -- you know, my
9 understanding, so far as I can recall from the time, was
10 that it was a sort of way of -- you know, explaining the
11 issues and exploring the issues if there were issues to
12 be explored. I think if -- my own sense -- if the
13 Attorney General had been absolutely clear what the
14 right answer was, so to speak, on receipt and having
15 digested Michael Wood's letter, then that suggestion
16 would not have been made, because, obviously, if it was
17 absolutely -- if the answer was obvious to him, then he
18 would just say "Here is my advice", but clearly there
19 were some difficult issues that had to be considered and
20 clearly he felt that he had -- you know -- was in the
21 process of seemingly reaching a provisional view going
22 in one direction. But I think he wanted to sort of test
23 that view, and I think my understanding is that the
24 purpose of producing the draft which was handed to the
25 Prime Minister on 14 January was the sort of "This is

1 where I am" but, you know, sort of wanting to test those
2 arguments, really, or test the point of view.

3 SIR MARTIN GILBERT: Thank you very much.

4 THE CHAIRMAN: Lawrence, over to you.

5 SIR LAWRENCE FREEDMAN: Thank you very much. We now want to
6 look at this process, having not got a definitive view
7 from the Attorney General during the course of 1441,
8 this long process leading to 7 March. Now, you
9 obviously played an important role in helping the
10 Attorney General reach his view. Could you just give us
11 some indication of how you went about your task?

12 CATHY ADAMS: Certainly. I mean, I went about it, I think,
13 in the way pretty much that all lawyers in the
14 Attorney General's office went about their task.

15 You receive a detailed request, a submission, from
16 a government department which is long and complicated
17 and has -- analyses various arguments. Obviously, in
18 the case of the 9 December letter, it didn't express any
19 particular view. I'm pretty sure that the Attorney --
20 certainly earlier on in the process, obviously, he had
21 had this letter on 18 October from Michael Wood, which
22 was clear and I think there had been a discussion in
23 early November. So I think the Attorney had been clear
24 at an earlier stage of the view that Michael Wood
25 favoured, but obviously this letter presented two

1 arguments without expressing a view as to which one was
2 the better one.

3 On receipt of that letter, I prepared a submission
4 for the Attorney. It was an analysis of the arguments,
5 as I saw them. I didn't at that stage -- I mean, it is
6 very common, when submitting requests for advice to the
7 Attorney -- it is very common to prepare draft advice.
8 So you know, the Attorney General's office lawyers are
9 expected to form their own view, as it were, and offer
10 that up to the Attorney for consideration, in a similar
11 way that, in another department, an official would offer
12 a draft letter or something. Obviously this was
13 a question of legal advice, however.

14 I decided that -- not to prepare draft advice at
15 that stage, because I thought the Attorney would want to
16 consider the arguments carefully. It wasn't obvious to
17 me at that time what his view would be on the basis of
18 this analysis that had come in.

19 I did, however, decide that I should give my own
20 view because that was my role really in assisting him
21 and I expressed the view that I thought -- essentially,
22 agreeing with Michael Wood -- that the better view was
23 that a further decision was required. But I did think
24 that the arguments in favour of the alternative view
25 were probably as strong as the arguments which had been

1 relied on in 1998, when the government had used force in
2 relation to Operation Desert Fox.

3 SIR LAWRENCE FREEDMAN: Just to pause you there, essentially
4 you are saying that, given that -- presumably you heard
5 the discussion we had just been having with
6 Iain MacLeod -- though they were following 1205 as
7 a sort of template for a resolution and you felt that
8 they had achieved that, that you were not so sure that
9 1205 was necessarily as strong a legal precedent as it
10 might be. Is that what you are saying?

11 CATHY ADAMS: I think essentially -- I mean, I was not
12 involved at all at the time with the 1205 case. So all
13 I had to go on was the papers which were on the
14 Attorney's office file.

15 I think I'm right in saying that there was no formal
16 written advice from the Attorney General on that
17 occasion but there was advice from the Foreign Office
18 legal advisers and although the -- the views were
19 expressed there, I think, in terms of there being
20 a respectable argument or something of that nature, but
21 looking back at it, it seemed to me that notwithstanding
22 that that view had been endorsed by the Attorney General
23 at the time, and I think Elizabeth Wilmshurst herself
24 said in evidence before you that sort of looking back on
25 it, it struck me that it was -- I think she said

1 a rather strained legal argument.

2 I think that I was saying that 1441 -- it is a very
3 different resolution, obviously, it is a much longer
4 resolution, it is a much more complicated resolution.
5 I think there are certain elements, though, of 1441
6 which -- particularly the element which makes the
7 revival argument itself much clearer, you know, the
8 express references to Resolution 678, the express
9 references to material breach, the express references to
10 serious consequences, none of which feature in
11 Resolution 1205, I felt that, on that basis, there was
12 at least a respectable argument, or however it was
13 phrased in 1998, to say that 1441 was sufficient, but if
14 you -- you know, what I was saying to the Attorney
15 essentially was, if you were to ask me which view would
16 I choose, I went with Michael Wood's, and I think mainly
17 because of the difficulties, for me, with the words "for
18 assessment".

19 SIR LAWRENCE FREEDMAN: So you were essentially on the
20 "consider/decision" basis that "consider" implied
21 "decision", if you had to assess?

22 CATHY ADAMS: Yes.

23 SIR LAWRENCE FREEDMAN: Though you accept what we have just
24 heard, which was that, in some key respects, in terms of
25 the clarity of the revival argument and the strong

1 references to material breach that, in a sense, both
2 views were correct in their own way.

3 CATHY ADAMS: Yes. I think essentially I'm somewhere in the
4 middle -- I am afraid that's what you get when you have
5 lots of lawyers -- between the Michael Wood view and the
6 Attorney General's ultimate view of the matter.

7 SIR LAWRENCE FREEDMAN: Going back to the revival argument,
8 did you look at the legal academic work on this issue at
9 all?

10 CATHY ADAMS: Yes, I mean, during -- very shortly after
11 I started in post, the Attorney commissioned quite a lot
12 of work by way of background in sort of anticipation
13 that these issues would be coming up and, with the
14 assistance of the legal researcher in the
15 Foreign Office, I put together quite a large collection
16 of materials. Some of it was political background --
17 I mean, basically we looked for everything that existed
18 at that time on -- by way of academic or other legal
19 commentary on the revival argument, and there wasn't
20 actually very much. I don't think the argument had been
21 really much addressed at that time in sort of academic
22 fields. There were some articles, but not very many.

23 SIR LAWRENCE FREEDMAN: When you said you commissioned work,
24 was this going to particular academics --

25 CATHY ADAMS: No, sorry, I requested the assistance of the

1 Foreign Office legal advisers and the assistance --

2 SIR LAWRENCE FREEDMAN: To find out --

3 CATHY ADAMS: -- of A legal researcher who was working in

4 the Foreign Office legal advisers at that time to do the

5 research and put the papers together, because they have

6 access to a much more extensive legal library and so on

7 than we had in the Attorney General's office.

8 SIR LAWRENCE FREEDMAN: Did you get a view from the academic

9 work as to where they were going?

10 CATHY ADAMS: I think to the extent that there was much

11 commentary, and really I think we were -- from

12 recollection, I think we were talking really only about

13 two or three articles that anybody was able to find.

14 The preponderance of view, I think, academically, was

15 they did not support the revival argument, I think it is

16 fair to say --

17 THE CHAIRMAN: Could I just interject with a question on

18 this? Is the revival argument specific to the Iraq case

19 following 678 and 687?

20 CATHY ADAMS: Yes.

21 THE CHAIRMAN: It is not a more general concept?

22 CATHY ADAMS: No, it is very specifically dependent on 678

23 and 687.

24 SIR LAWRENCE FREEDMAN: Again, accepting that this is a very

25 specific case, is it quite normal to have a divergence

1 between views in the academic legal literature and what
2 the practitioners might be saying?

3 CATHY ADAMS: Well, I don't know about normal. I don't
4 think it is -- I don't think it is unique, certainly.
5 There was a huge amount of controversy about the use of
6 force in Kosovo, for example, which, as you know, is
7 a very different legal basis, a different legal
8 argument, but it was by no means obvious, I think, to
9 academic lawyers that that action was lawful.

10 SIR LAWRENCE FREEDMAN: I mean, in other areas of policy,
11 the views of academics are not necessarily taken that
12 seriously. Is it the case that in the legal area they
13 are taken more seriously?

14 CATHY ADAMS: I'm not sure it is very easy to comment on
15 that. I think what the Attorney was -- indicated to me
16 at the time, that he wanted to be fully informed of the
17 sort of -- the legal contexts, the legal background to
18 the issues. He wanted to sort of know all the
19 arguments.

20 I mean, in my experience of working for
21 Lord Goldsmith, that was very much his approach on
22 pretty much everything; he had a sort of, I would say,
23 an insatiable appetite for wanting all the facts, all
24 the evidence, would read all the cases. I mean, he was
25 incredibly thorough in his approach to the consideration

1 of legal issues, and this was just one example of that.

2 SIR LAWRENCE FREEDMAN: I mean, our impression is that he
3 didn't find the revival argument itself that
4 problematic. It was the other aspects of 1441 that he
5 did. Is that fair?

6 CATHY ADAMS: I think that's absolutely right. I mean,
7 I think it was recognised that it had been
8 controversial, the revival argument, even within
9 government that, you know, the previous law officers had
10 endorsed it, as it were, but, you know, on a somewhat
11 nuanced stall -- "nuanced" is perhaps not the right
12 word, but the advice was not in terms of "This is
13 a clearly lawful" -- and I don't think it could have
14 been because, if you look back to the debates in the
15 Security Council, if nothing else, on -- around the time
16 of 1205, though clearly in a very similar way to 1441 --
17 a divergence of view between some states who say
18 expressly this resolution does not authorise the use of
19 force, the UK and the US who say more or less the
20 opposite, and then a number of states somewhere in the
21 middle who make statements sort of implying the
22 centrality of the role of the Security Council.

23 So there was clearly a divergence of view. The
24 purpose of putting all this material together was to
25 enable the Attorney General to study the full range of

1 material and take it all in and reach his view on the
2 basis of the best evidence that was available to him.

3 SIR LAWRENCE FREEDMAN: You have indicated that you and, it
4 is fair to say, Lord Goldsmith at this time, are taking
5 the view that for assessment in OP4 of 1441 does point
6 you towards another resolution. There is a discussion
7 with Sir Jeremy Greenstock, who clearly, with the rest
8 of the mission, as we have heard, in New York, took
9 a different view.

10 Can you just discuss how those discussions went
11 between Lord Goldsmith and Sir Jeremy?

12 CATHY ADAMS: Sure. Could I just sort of pause on to
13 something you just said in the sense that I was taking
14 a view? You express it as if there is some kind of
15 equivalence between my view and Lord Goldsmith's view.
16 I just want to make -- you know, in a way, nobody was
17 really that interested in my view. I was expressing it
18 with a view to assisting because I felt under an
19 obligation to make clear to him what I thought as a
20 matter of --

21 SIR LAWRENCE FREEDMAN: But it is not insignificant that the
22 two of you had the same view at this time.

23 CATHY ADAMS: No, certainly, but his view was certainly the
24 one that mattered at the end of the day.

25 Yes, in the context of the discussions with

1 Jeremy Greenstock, I think this had been suggested from
2 recollection that they should meet at that meeting with
3 Jonathan Powell at the end of December, if I remember
4 rightly, and so a meeting was set up in January.

5 Prior to the meeting, I think we sent him, you know,
6 in confidence, as it were, a copy of the draft which had
7 been given to the Prime Minister on 14 March.¹ So
8 because the purpose of the meeting was, as I say, to --
9 the purpose of the draft, in fact, was to say "This is
10 where I am but is there any sort of major
11 counter-argument? Is there something major that I have
12 omitted in reaching this view?" and the Attorney wished
13 to hear those counter-arguments.

14 They met on 23 January. My recollection is that
15 he -- rather strongly, I would say -- set out his
16 opinions on the analysis that was in the 14 March draft
17 and he was quite clear, I would say, that his,
18 Jeremy Greenstock's, view, was that the analysis was not
19 right in the light of the negotiating history.

20 SIR LAWRENCE FREEDMAN: 14 January?

21 CATHY ADAMS: Yes -- well, this was the meeting on
22 23 January discussing the draft of 14 January.

23 SIR LAWRENCE FREEDMAN: Sorry, you said March before.

24 CATHY ADAMS: Oh, sorry, sorry.

25 I mean, he made various points of -- on the text, on

¹ The witness subsequently confirmed that the correct date of the advice to which she was referring was 14 January.

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1 the textual analysis. I think he placed quite a lot of
2 emphasis on paragraph 1 of the resolution. I think
3 there was an argument that you could -- you didn't have
4 to worry about paragraph 4 in a way, because paragraph 1
5 provided that Iraq was in material breach and that
6 notwithstanding the firebreak in paragraph 2, that
7 material breach was a continuing one and, therefore, if
8 there was a report of non-cooperation you didn't really
9 need to worry about paragraph 4.

10 So there were these kinds of very detailed sort of
11 textual arguments and he spoke at some length, I recall,
12 about the circumstances of the adoption of
13 Resolution 1205 and the events which followed the
14 adoption of that resolution and he was drawing
15 parallels -- I think he saw the value of the precedent
16 as being, not just the revival argument as such,
17 although obviously that was a big part of it, but the
18 fact that you had had a resolution, Iraq had decided to
19 cooperate to some extent. There had been a period of
20 weeks when there had been perhaps desultory cooperation
21 but then, at a certain moment, Iraq had ceased
22 cooperating, or there was a report of a failure to
23 cooperate, and the UK and the US had decided at the time
24 to take military action without going back to the
25 Security Council.

1 So he saw this sort of sequence of events in 1998 as
2 significant, not just the sort of fact of the revival
3 argument itself.

4 SIR LAWRENCE FREEDMAN: Now, Lord Goldsmith said of his
5 meeting with Sir Jeremy, that he:

6 "... made some good points and made some headway
7 with me, but he hadn't got me there yet."

8 Now, the note that Lord Goldsmith sent to the
9 Prime Minister on 30 January 2003, after that meeting,
10 which has now been declassified, seems unequivocally to
11 say that, notwithstanding that discussion, he remained
12 of the view that a second resolution was necessary.

13 Does that reflect, in a sense, the limited impact at
14 that time that Sir Jeremy Greenstock's arguments had had
15 on Lord Goldsmith?

16 CATHY ADAMS: Certainly my impression at the end of January
17 was that Lord Goldsmith's sort of provisional view had
18 not significantly altered. After the meeting with
19 Sir Jeremy, obviously I made a record and I made some
20 commentary, I think also, on the arguments and how --
21 whether in my view it made a difference, you know,
22 I think my conclusion was that there were some -- there
23 were some points but there was no sort of killer
24 argument.

25 I don't recall -- I mean, I put that up. I don't

1 recall actually having any substantive discussion with
2 Lord Goldsmith following that minute, but it did become
3 clear, obviously at the time when he subsequently sent
4 his minute of 30 January to the Prime Minister, that his
5 view had not significantly changed certainly.

6 SIR LAWRENCE FREEDMAN: Lord Goldsmith also told us that
7 what Sir Jeremy had said had been added to by what
8 Jack Straw said, presumably in this letter of
9 6 February, which we have also published. Again, what
10 was the impression of the impact Mr Straw's argument had
11 on Lord Goldsmith?

12 CATHY ADAMS: That letter came around the time or a little
13 before, but certainly around the time that there was
14 also a visit to Washington. I don't recollect any --
15 again, there were various drafts of the advice produced
16 over this period and there were -- I remember periodic
17 discussions with Lord Goldsmith, when he would -- and
18 I should perhaps have said -- we sort of slightly
19 skipped on, but the draft of 14 January was written in
20 terms of the physical writing by me, but sort of at his
21 direction.

22 When -- I had received a request for sort of -- via
23 a third party -- that sounds rather strange -- via the
24 Deputy Legal Secretary. I had been on leave over
25 Christmas and had not had a discussion on the substance

1 for a while. I came back. There was a request from the
2 Attorney and it said something to the effect -- at least
3 this is what I understood it to say:

4 "Could you produce a draft of the advice but without
5 a conclusion?"

6 At the time -- it may be that the message had got
7 a bit garbled in the telling, but I wasn't sure at the
8 time exactly what that meant, so what I produced was
9 basically just a summary "on the one hand ... on the
10 other hand", something along the lines of Michael Wood's
11 letter.

12 The Attorney was away at the beginning of January.
13 He came back. He saw the draft, we met, we had
14 a discussion and he indicated to me how he wanted the
15 sort of rather neutral piece of paper that I had come up
16 with to be rephrased. So I then edited it and produced
17 what became the 14 January draft.

18 Subsequently, further revisions were made to that
19 draft over the course of the next, I suppose, month or
20 six weeks. From that point, all the revisions that were
21 made -- again, up to the final draft -- were made by me
22 but they were sort of following discussions with the
23 Attorney General. So we would have a discussion and he
24 would say "Actually, there is this point and this point
25 that has come up. I would like to incorporate that".

1 At a certain point he said he wanted to address in the
2 advice the issues of the consequences of unlawful action
3 and I was asked to produce a sort of extract of text.

4 So revisions were being made to the draft, you know,
5 following discussions with him.

6 As far as the Foreign Secretary's contribution was
7 concerned, I don't remember a specific discussion with
8 him on that letter alone which led to the amendments to
9 the draft. It was sort of wrapped up, if you like, in
10 the visit to Washington, I suppose.

11 SIR LAWRENCE FREEDMAN: So the visit to Washington he said
12 was critical. Did you go with him to Washington?

13 CATHY ADAMS: I did, yes.

14 SIR LAWRENCE FREEDMAN: So the American argument that they
15 were determined not to concede the need for a second
16 Security Council Resolution he said made a big impact on
17 him, sufficient for him to change his view or perhaps
18 take him all the way he had started going with
19 Sir Jeremy Greenstock.

20 Can you explain what it particularly was about the
21 American argument that made the impact?

22 CATHY ADAMS: I think there may have been one or two things
23 that were particularly sort of telling for the Attorney.
24 I mean, the -- it wasn't -- the points that were made in
25 Washington by the US administration, the representatives

1 that we met, were not just on the negotiating history;
2 there were also some textual points which I think
3 Lord Goldsmith found -- I suppose it is the point
4 I mentioned earlier about the nature of the further
5 material breaches and so on.

6 SIR LAWRENCE FREEDMAN: Just on that point, is that the
7 argument that Iraq already was in material breach and it
8 was up to Iraq to prove that it wasn't, rather than the
9 inspectors to prove that it was?

10 CATHY ADAMS: Not so much that; it was more the point that
11 ministers were on the record as saying that any further
12 breaches, any further instances of non-cooperation,
13 would have to be substantial and serious. I think the
14 Foreign Secretary was very clear about that in his
15 statement to the House of Commons in the debate at the
16 end of November.

17 The difficulty with saying that is that, if you say
18 that it is only serious breaches that -- or serious
19 instances of non-cooperation that constitute a further
20 material breach, that implies that somebody has to make
21 a qualitative assessment of whether or not any
22 particular breach is or is not a further material breach
23 in legal terms and, if you say that there needs to be
24 a qualitative assessment of whether any particular
25 conduct by Iraq is sufficiently serious to constitute

1 a further material breach, then you say, "Well, who
2 makes the assessment?" and if you start from the UK
3 position, on the revival argument, the fairly obvious
4 answer to that question is the Security Council.

5 On the other hand, if you say that what -- properly
6 interpreted, what 1441 means is that any non -- so as
7 soon as Dr Blix and Dr El-Baradei come forward and say
8 "They haven't done this and they are failing to
9 cooperate in that respect", and there were a number of
10 reports of that in the period from January to March --
11 if you say that, properly interpreted, the resolution is
12 that any instance of non-cooperation is a further
13 material breach, you don't need -- the question of
14 assessment sort of falls away, if you like.

15 SIR LAWRENCE FREEDMAN: That's very helpful. Sorry,
16 I interrupted you. But that's very helpful. Carry on.
17 You were talking about the American view.

18 CATHY ADAMS: Yes. So there were textual arguments of that
19 nature. I think one principal issue, though, that had
20 troubled Lord Goldsmith to some extent in his
21 reflections on it was this issue of the fact that the UK
22 and the US, as we understood it, had a rather different
23 concept of the revival argument: namely, that the
24 longstanding position of the Law Officers had been that
25 a decision of the Security Council was necessary to

1 revive the authorisation in Resolution 678, whereas the
2 US view had been that individual member states were able
3 to make effectively that decision.

4 I think there was a question about whether that
5 therefore influenced, you know -- which, if you came
6 from a different starting point, did that make
7 a difference to how you interpreted Resolution 1441?

8 I think what the visit to Washington clarified for
the
9 Attorney was that, for the US, even though they started
10 from a different point, if Resolution 1441, properly
11 interpreted, meant that the Security Council had said
12 "We will take a further decision", that would have
13 fettered their scope for action just as much as it would
14 have fettered UK action without such a decision, and my
15 impression was that he found that -- it sort of lifted
16 that concern that he had had about the different
17 interpretations.

18 SIR LAWRENCE FREEDMAN: Just to conclude with this process,
19 you came back from Washington and, on 12 February,
20 I think, you again would have drafted the note, which is
21 going to be declassified, which for the first time sets
22 out the view in paragraph 13 that a reasonable case can
23 be made that Resolution 1441 revives the authorisation
24 to use force in resolution 678. Now, as you have
25 described to us the drafting process, and I guess this

1 is something that we can see carrying through
2 to March 7th, what you are describing is a document
3 that -- to which bits are added, subtracted, amended
4 and, perhaps -- does this explain why the document seems
5 so sort of finely balanced and almost equivocal all the
6 way through to its conclusions almost each time, because
7 of this -- a process of drafting that starts tending to
8 one conclusion and, by the time you get to 7 March, is
9 tending to another?

10 CATHY ADAMS: I mean, the process of drafting may well have
11 influenced the way it eventually turned out. I'm not
12 sure that the process of drafting necessarily made it
13 more -- made the final legal judgment different in the
14 end. Certainly from my perspective. I mean I think,
15 ultimately, the final legal judgment is what it was.

16 SIR LAWRENCE FREEDMAN: Is it, when you read that document
17 in paragraphs 1 to 12, you think "This is very finely
18 balanced" and then it -- it rejects many of the
19 arguments, it seems to reject many of the arguments
20 supporting the route which it eventually concludes with?

21 CATHY ADAMS: Yes, I think it just reflects that it was a
22 difficult -- there were arguments on both sides, and
23 I should say that the -- perhaps just to clarify -- that
24 the final -- that -- it is not the final draft, it is
25 the final advice, the 7 March advice -- that was done by

1 the Attorney General himself. I did not have any role
2 in the provision -- you know, the production, apart from
3 sort of administrative assistance to the Attorney.

4 He had -- his starting point was, I think, actually
5 a draft subsequent to 12 February, but some draft that
6 I had produced, you know -- as I say, all these drafts
7 were my attempt to reflect what I thought his views were
8 at that time. But ultimately, until he signs it off, it
9 is not his advice. So none of these drafts -- they were
10 all sort of very provisional. The 7 March advice, he
11 worked on himself on that day and did all the drafting
12 himself. So that really reflects his view.

13 So I don't know -- one can probably criticise the
14 drafting, but that's -- those criticisms are all at me.
15 SIR LAWRENCE FREEDMAN: It wasn't a criticism. It was just
16 trying to -- it is just striking, as you read it, that
17 the conclusion doesn't -- it can come as a bit of
18 a surprise at the end of the reasoning.

19 THE CHAIRMAN: Time is now pressing on us rather hard, so we
20 are going to have to go at a bit of a lick, I am afraid.

21 Usha, it is your turn.

22 BARONESS USHA PRASHAR: Mine are very brief questions really
23 on the interpretation of Security Council Resolutions
24 and interpretation of 1441 in particular. What is your
25 view of the weight to be given to informal discussion

1 when interpreting Security Council Resolutions, because
2 we have heard different views?

3 CATHY ADAMS: Yes. I mean, I think -- as I think you raised
4 with Iain MacLeod earlier and was obviously set out in
5 advice of Michael Wood and others -- there isn't a huge
6 amount of authoritative guidance on the interpretation
7 of Security Council Resolutions, and, you know, such
8 guidance as exists from the opinions of the
9 International Court of Justice suggests that the
10 discussions leading to the adoption of a resolution, you
11 know, are one of the relevant factors to be taken into
12 account.

13 The problem, of course, not just with 1441, frankly,
14 but with most Security Council resolutions is that the
15 vast majority of the negotiation takes place in sort of
16 very -- you know, not even actually in Security Council
17 consultations as such, formally, but maybe in meetings
18 of experts and so on.

19 And, you know, that, I think, may be -- some people
20 would criticise that as a sort of criticism of the
21 Security Council process, but nevertheless that is the
22 case.

23 I think it was recognised all the way through -- and
24 I think Lord Goldsmith himself recognises in his
25 advice -- that there are difficulties in those

1 circumstances of relying very heavily on one side's
2 records. I suppose, when it comes down to it, it would
3 be necessary to produce evidence in some way by means,
4 I don't know, of statements or some form of evidence if
5 one was wishing to maintain a view which was -- came
6 from the discussions in the Council.

7 But I think my understanding is that his view of the
8 overall legal position, you know, took that factor into
9 account and it was based primarily on what the text
10 actually said and the fact that it said "consider" and
11 not "decide" and all the other points that you have
12 heard about in great detail from other people.

13 BARONESS USHA PRASHAR: Sir Michael also told us in his
14 evidence that in his view the preparatory work confirmed
15 the view that a second resolution was necessary, and
16 Lord Goldsmith expressed surprise at that view. What is
17 your interpretation of preparatory work?

18 CATHY ADAMS: I have to say that at the time and looking
19 back from the papers that I have had the benefit of
20 seeing to refresh my memory, my feeling was that it was
21 rather balanced and it didn't -- you know, it wasn't
22 actually very clear, and I think there is also some
23 evidence in the paper that -- you know, Lord Goldsmith
24 was looking for in a way the sort of killer fact, the
25 absolutely conclusive point that you could say here it

1 was that everyone agreed that it didn't mean that, and
2 I think everyone agrees that that -- you know, there
3 isn't really a killer fact on the papers, so to speak.

4 I haven't -- in preparing for the Inquiry, I haven't
5 actually seen, like, the full negotiating history.
6 Again, I have seen the Attorney General's office files
7 which contain -- or, certainly, the files I have seen
8 contain some of the record but not the whole thing. So
9 I can't really give you a sort of view as it is in my
10 mind now, but certainly at the time I thought it was
11 very balanced and it wasn't very clear one way or the
12 other.

13 BARONESS USHA PRASHAR: Perhaps you can give me a view on
14 the interpretation of the explanation of the vote and
15 the joint statement that was made by France, Russia and
16 China?

17 CATHY ADAMS: Again I think it was nuanced. My overall
18 impression of the statements of vote was they went --
19 they were mixed, you know. You know, it didn't clarify
20 the ambiguities in the text conclusively in one
21 direction or another.

22 The general flavour, if you like, I think, of the
23 French statement and also of the joint statement is of
24 that, of leaning towards a decision, but on the other
25 hand, given that the French in particular had, you know,

1 advocated so strongly in favour of a decision, I did
2 find it surprising, when I looked at the record of the
3 debate and the statements and the joint statement, that
4 they weren't more definitive.

5 As I said earlier, if there is an ambiguity in the
6 resolution, one way just to pin it down is to -- or to
7 help your case is to say very clearly on the record what
8 you, as a member of the Security Council, think it
9 means, and I found it a little surprising at the time
10 that they weren't so clear, which perhaps suggested some
11 degree of -- you know, maybe they were having the same
12 sort of legal debates in the opposite direction, so to
13 speak.

14 But I think overall I felt that the balance -- the
15 balance of the statements on adoption were not so clear.

16 BARONESS USHA PRASHAR: Thank you.

17 THE CHAIRMAN: Roderic?

18 SIR RODERIC LYNE: I will continue to move as briskly as we
19 can in these complicated waters.

20 Lord Goldsmith told us that the precedent in the UK
21 was that a reasonable case was a sufficient lawful basis
22 for taking military action. Was that precedent based on
23 research which you had undertaken for him?

24 CATHY ADAMS: When I arrived in the Attorney General's
25 office, one of my predecessors had put together a file

1 of previous law officers' advice, sort of key documents.
2 I think it was going back about ten years or so on --
3 advice on the use of force, and it contained all the key
4 advice on the revival argument, for example, and on
5 other occasions. So it was clear, it was self-evident
6 from this file, that there had been a number of
7 occasions when law officers had advised that -- had
8 endorsed, as it were, military action on the basis of
9 a reasonable case.

10 SIR RODERIC LYNE: Now, without seeking to encroach into
11 legal professional privilege beyond the Iraq situation,
12 where it has been waived, can you say anything about the
13 previous circumstances in which an Attorney General had
14 been asked to give advice on the legality of military
15 action and whether this was only sought where there
16 wasn't an explicit Security Council Resolution mandating
17 it?

18 CATHY ADAMS: I think it is alluded to in the Attorney's
19 7 March advice, a couple of cases. He refers to
20 the situation in Kosovo. I think it has come out in
other
21 evidence that this was also the case in relation to the
22 use of force following Resolution 1205.

23 I think the point is that -- I mean, you referred --
24 I mean, you were obviously picking up on
25 Lord Goldsmith's comment, referring to it as

1 a precedent. It wasn't a precedent in the sense of
2 something that had to be followed; it was a precedent in
3 the sense that -- of something which had, as a matter of
4 fact, taken place.

5 SIR RODERIC LYNE: So there were previous examples.

6 Now, how would you define the words "reasonable
7 case" and do they actually have meaning in international
8 law?

9 CATHY ADAMS: I mean, it is not a term of art in
10 international law, certainly, and, honestly, it is not
11 really possible to define what --

12 SIR RODERIC LYNE: Does it mean to me as a layman the same
13 as it means to you, "reasonable case"? There isn't some
14 special legal meaning to it?

15 CATHY ADAMS: I would say that a reasonable case is more or
16 less as mentioned in the 7 March advice, that it is one
17 which can be reasonably argued. Obviously, it has to
18 have a reasoned basis to it because otherwise it is not
19 going to be reasonable to a court. There has to be, you
20 know, a reasonable prospect of success for this
21 argument, but it doesn't mean to say it is the better
22 legal opinion. That would be my interpretation.

23 SIR RODERIC LYNE: Okay, one which can be reason ...

24 Well, in the advices that you compiled in your
25 research for the Attorney General, the phrase

1 "respectable legal argument" keeps cropping up. Is
2 there any significance in law between "respectable" and
3 "reasonable"?

4 CATHY ADAMS: These were terms which were sort of used in
5 earlier advice. It also appears in some of the
6 documents that have been declassified from the
7 Foreign Office. I mean, the advice which I think
8 Michael Wood offered the Foreign Secretary in
9 around October on the consequences of unlawful action --
10 it says, you know:

11 "These consequences flow in the event that ..."
12 Something like, you know, using force without
13 a respectable legal argument. So it is not so much
14 there being a term of art in international law; this was
15 simply on the basis of previous occasions where --
16 I mean, the fact of the matter is that often the
17 government has to face these issues and the law is --
18 maybe the law is not clear, or the application of the
19 law to the particular facts is not clear, and therefore
20 that the answer is not clear.

21 So the question is then, do you use force -- do you
22 decide that it is right to use force in the
23 circumstances where the legal argument is, you know,
24 perhaps less strong than you might like it to be or do
25 you say, "Well, no, we have to have an absolutely

1 watertight legal case"?

2 SIR RODERIC LYNE: If I can interpret your words,
3 respectable means something like strong enough or
4 sufficient for the circumstances, the context, you are
5 addressing.

6 Now, the previous cases that you cited were
7 activities falling short of a full-scale invasion and
8 indeed followed, as it turned out, by a period of
9 occupation of Iraq. Should one have had a higher degree
10 of certainty, of respectability, if you like, for those
11 circumstances of full-scale invasion of the country?

12 CATHY ADAMS: I mean, I think I would say that the legal
13 principles are the same. I mean, obviously the
14 magnitude -- and then you get into other issues about
15 necessity and proportionality and so on, but, you know,
16 any use of force is an infringement of the Charter if
17 you don't have, you know, a recognised legal basis for
18 it.

19 So I would say that the basic legal principle is the
20 same.

21 SIR RODERIC LYNE: Okay. Turning to the situation in March,
22 the final advice given by the Lord Goldsmith. He told
23 us that he thought that he had essentially given the
24 green light in February, when he told the Prime Minister
25 of his view that there was a reasonable case, and he, of

1 course, repeats that in his written formal advice, as
2 you say, he wrote himself, on 7 March.

3 Did you understand that part of the 7 March advice
4 as giving the Prime Minister a green light in legal
5 terms for military action?

6 CATHY ADAMS: I think this goes back to your -- you know,
7 your previous question really. Certainly on the basis
8 of these previous examples, where Law Officers had
9 advised in terms that there was a reasonable case, or
10 words to that effect, that force may be used, and that
11 had been taken as a -- and was accepted by the law
12 officers themselves and accepted by the government as
13 being a sufficient basis for taking military action --
14 certainly my understanding was that, when the Attorney,
15 you know, reached the conclusion that there was
16 a reasonably arguable case, that that would be a green
17 light, yes.

18 SIR RODERIC LYNE: So, yes, it was a green light. But the
19 armed services didn't interpret this as a green light
20 and they came back and they said they needed an
21 unequivocal answer. Did that require a different
22 formulation with the same degree of certainty or did it
23 require the Attorney to reconsider the issues?

24 CATHY ADAMS: I did not have any discussion with the
25 Attorney at the time after 7 March, really between the

1 7th and the sort of 13th March, when he had his
2 conversation with David Brummell. I did not have any
3 substantive, you know, discussion with him of the
4 substantive legal argument.

5 My understanding of his position was that he
6 reflected further on the arguments as canvassed in his
7 7 March advice and formed the view that in fact it was
8 the better view and it was not just -- it was more than
9 a reasonable case.

10 SIR RODERIC LYNE: Yes. So he moves from 7 March, saying
11 the safest legal course is to have a further resolution,
12 to the 13 March, when the reasonable case has become the
13 better case, after, as you say, further reflection. But
14 why was that further reflection actually necessary if he
15 thought he had already given the green light at the
16 earlier stage?

17 CATHY ADAMS: Well, I think -- as I say, I think it is
18 because -- in a way you have answered the question
19 yourself. He was presented by -- as I say, I wasn't
20 really involved in these discussions at the time but
21 really I'm saying this on the basis of what I, you know,
22 was informed of after the event. But he -- there were
23 meetings with the Treasury Solicitor, there was a letter
24 from the Ministry of Defence, both of which presented
25 him with, you know, this question: is it lawful, is it

1 not lawful.

2 I think, in a way, coming back to the reasonable
3 case point, that's the big difference here in the case
4 of Iraq from the earlier occasions because on those
5 earlier occasions the law officers in question were not
6 confronted, as far as I'm aware, by the military and
7 Civil Service coming to them and saying, "Okay, you have
8 said there is a respectable argument or a reasonable
9 case, but does that mean it is lawful or not," whereas
10 in this case -- and I imagine probably because of the
11 huge controversy at the time and, you know, the
12 political controversy also about the action, that
13 perhaps it made people more nervous than they might
14 otherwise have been, I don't know. But I think that
15 probably contributed to the fact that military and the
16 Civil Service were both coming to the Attorney and
17 saying a reasonable case isn't good enough. I should
18 say that they probably didn't know that the Attorney had
19 given advice in those terms. Precisely, the Chief of
20 the Defence Staff did because he had been at the meeting
21 on 11 March.

22 SIR RODERIC LYNE: Essentially, on 7 March he had been
23 straddling the fence but, as he himself told us, it was
24 important -- they had made it clear it was important for
25 him to come down clearly on one side of the argument or

1 the other, and that's what he did on the 13th. But you
2 said you weren't really in the loop of his thinking and
3 what caused this evolution in that period of time.

4 I think I won't press you further in that direction.

5 THE CHAIRMAN: Thank you.

6 Just taking the 17 March advice in the round, you
7 have been advising Lord Goldsmith over the previous
8 months; do you think that the advice and the caveats
9 that you have drawn to his attention were fully and
10 accurately reflected in that advice, taken as a whole?

11 CATHY ADAMS: I would just like to take issue with your
12 description of it actually as advice, and I think this
13 has caused a huge amount of confusion, the fact that the
14 Attorney made this statement on 17 March. Certainly, my
15 understanding at the time, and I think the understanding
16 of everybody sitting round the table on 16 March, was
17 not that the Attorney General was giving legal advice to
18 Parliament through that statement but he was setting out
19 a view of the legal position.

20 I think Iain MacLeod may have alluded to this in his
21 statement, but again coming back to the difference
22 between the earlier cases, where there had been legal
23 advice from Law Officers saying there is a reasonable
24 case, what had happened on those occasions was not that
25 the Attorney General had gone to Parliament and said,

1 "This is lawful because there is an overwhelming
2 humanitarian catastrophe," or, "Because there is
3 a revival;" it had been the government minister in the
4 Foreign Office or the Ministry of Defence.

5 THE CHAIRMAN: I'm sorry to cut it short but time ...

6 So the Attorney General was not, as it were, giving
7 an advice, a law officer's opinion, in what he said on
8 the 17th, but rather describing what the conclusion that
9 had been reached was and why.

10 CATHY ADAMS: He was essentially asserting the government's
11 view of the legal position, which was based on his
12 advice, but I think the confusion came up because, of
13 course, he was the Attorney General, and also course
14 part of his constitutional role is to advise Parliament.

15 THE CHAIRMAN: With the implication that there is a question
16 mark over whether it is sensible to ask an Attorney to
17 do that.

18 CATHY ADAMS: Exactly. I think that may have been
19 a mistake.

20 THE CHAIRMAN: Right.

21 I just want to go back two days, that previous
22 weekend. Iain MacLeod told us earlier today about the
23 purpose of the weekend, who was there. I've just got
24 one particular question, I think.

25 Sir Christopher Greenwood turns up by invitation. Was

1 the purpose of that weekend principally to prepare for
2 making a public case, whether it be Parliament or more
3 widely or indeed facing potential litigation in the
4 further future, or was it essentially still to some
5 degree in the advisory mode, or the decision-making
6 mode?

7 CATHY ADAMS: No, definitely not. I think from 13 March we
8 were in what I would describe as advocacy mode.

9 THE CHAIRMAN: Thank you. Fine.

10 Usha, over to you.

11 BARONESS USHA PRASHAR: Thank you. I have a few questions
12 on the rights and obligations of occupying powers.

13 Can you recall when the Attorney General's advice
14 was first sought on the duties and responsibilities of
15 occupying powers, and was this request seen to be
16 timely?

17 CATHY ADAMS: It was some time around the end of March.

18 I think there had been a couple of references in
19 discussions earlier but certainly we had not seen any
20 detailed papers on it. I don't know that it struck me
21 at the time as to whether or not this was a timely
22 request. Obviously, the focus in the Attorney General's
23 office up to the middle of March had very much been on
24 the whole issue of the legality of the action. But
25 I became aware that -- and obviously the Foreign Office

1 had been doing a lot of work on this themselves.

2 BARONESS USHA PRASHAR: Did you get the sense that concerns
3 over the extent of legal powers were a constraint on
4 what DFID and other UK actors could do in terms of
5 reconstruction?

6 CATHY ADAMS: Well, obviously the advice that was ultimately
7 given by Lord Goldsmith on this, I think, has been
8 declassified over the weekend.

9 BARONESS USHA PRASHAR: Yes.

10 CATHY ADAMS: The issue was, as you say, the extent to which
11 the -- the law relating to the role of occupying powers
12 under the Geneva Convention -- the fourth
13 Geneva Convention and the Hague regulations -- to the
14 extent to which that limited the ability of the
15 coalition to sort of conduct major restructuring of Iraq
16 following the fall of Saddam Hussein's regime, and, as
17 we see from the advice, which I think was pretty
18 substantially in line with the views of the
19 Foreign Office legal advisers, the view was taken that,
20 while certain changes might be permissible for reasons
21 of public order and perhaps for humanitarian reasons,
22 essentially that a further resolution of the Security
23 Council would be needed to make more wide-ranging
24 reforms.

25 BARONESS USHA PRASHAR: But to what extent did

1 Lord Goldsmith's advise in relation to the application
2 of international humanitarian law to British forces in
3 Iraq, both during the forthcoming conflict and the
4 aftermath.

5 CATHY ADAMS: To what extent did he advise on that? Oh,
6 pretty extensively.

7 BARONESS USHA PRASHAR: It's the humanitarian law?

8 CATHY ADAMS: On targeting issues, you mean?

9 BARONESS USHA PRASHAR: Yes.

10 CATHY ADAMS: -- or on occupation law?

11 BARONESS USHA PRASHAR: The humanitarian law, in terms of
12 how that applied to the forces.

13 CATHY ADAMS: Sorry, I'm not quite sure I understand the
14 question. The law of occupation, are we talking --

15 BARONESS USHA PRASHAR: Yes.

16 CATHY ADAMS: -- which is part of international humanitarian
17 law.

18 BARONESS USHA PRASHAR: That's right.

19 CATHY ADAMS: Well, he gave -- you know, he gave his advice
20 in March, which was sort of setting out the general
21 principle. Obviously, I think, as he said in that
22 advice, specific proposals would need to be considered
23 on their facts, you know, in the light of these general
24 principles. But, as I say, I don't think his -- that
25 advice was given at the end of March. There was

1 subsequently -- I mean, this is actually all set out in
2 Michael Wood's statement that he sent you, which, you
3 know, fits totally with my recollection of events so far
4 as the Attorney's office was concerned.

5 There were -- after that advice at the end of March
6 there were a number of subsequent requests for advice on
7 specific issues, and also, obviously, on
8 Resolution 1483, as it became, and the extent to which
9 that resolution impacted on the scope of the rights of
10 an occupying power under international humanitarian law.

11 BARONESS USHA PRASHAR: Did he have any role in relation to
12 the drafting and the negotiation of 1483?

13 CATHY ADAMS: Not as far as I can recall. I think we did
14 see some of the texts of it, as we had done with 1441,
15 and I think the request for advice may have come shortly
16 before adoption, in fact, but at a point where the text
17 was pretty much finally agreed. So I don't recall any
18 input into the actual ongoing process.

19 BARONESS USHA PRASHAR: Thank you very much.

20 THE CHAIRMAN: I think that brings us pretty much to the
21 end. You have already drawn our attention to a number
22 of lessons and not least to the argument that the early
23 and continuing involvement of the Attorney General with
24 something as sensitive and difficult as a protracted
25 United Nations negotiation goes would be desirable. Are

1 there other particular lessons or reflections that you
2 haven't had a chance to offer this afternoon?

3 CATHY ADAMS: I don't think there is anything else on the
4 process side. There was just sort of one general point
5 that I wanted to register because I'm not sure that --
6 certainly in the wider commentary on these issues it is
7 not, I think, well understood.

8 The difference between the Attorney and the
9 Foreign Office legal advisers, as you know, was on the
10 question of the further decision, but that didn't mean
11 that an express authorisation to use force was required,
12 and it was clear from the request for advice that we had
13 on the second resolution that -- I think, as
14 Iain MacLeod said, it was all about confirming that Iraq
15 had failed to take its final opportunity and so on.

16 The point is that, even if a second resolution had
17 been adopted in March 2003, the legal basis for the use
18 of force would have been exactly the same as it was; in
19 other words, reliance on Resolution 678, and while that
20 would have satisfied Foreign Office legal advisers'
21 concerns, I think, as perhaps has been acknowledged, you
22 know, in the wider sort of academic perhaps world
23 outside government, there still would be a lot of people
24 who, I think, would probably have said that the action
25 was unlawful, and I think a lot of the commentaries --

1 perhaps it is simplistic in that it sort of says, "Well,
2 without a second resolution it was unlawful; with
3 a second resolution it would have been lawful." But
4 that rather begs the question of what the
5 second resolution was going to do.

6 THE CHAIRMAN: Yes. Of course, with the fall of the Saddam
7 regime, one wonders if the revival argument has more
8 than historical relevance for the future.

9 CATHY ADAMS: I think it doesn't have any relevance for the
10 future, personally.

11 THE CHAIRMAN: Thank you very much. That was a most helpful
12 session. We are grateful to you.

13 I will close it now. There will be no hearings
14 tomorrow, as the Inquiry will not be sitting on
15 Thursdays.

16 On Friday morning this week, at 10 o'clock in the
17 morning, there will be a joint session on military
18 capability and resourcing, when our witnesses will be
19 Tom McKane, Trevor Woolley and Bruce Mann.

20 With that, I'll close the session. Thank you.

21 (5.20 pm)

22 (The Inquiry adjourned until 10.00 am on Friday 2 July 2010)

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