

1 (2.00 pm)

2 MR IAIN MACLEOD

3 THE CHAIRMAN: Good afternoon.

4 Welcome to our witness this afternoon. We are
5 returning to a consideration of the legal basis for
6 military action and Iain MacLeod, our witness, you were
7 legal counsellor to the UK's mission to the
8 United Nations in New York between 2001 and 2004.

9 As such, you provided legal advice to
10 Sir Jeremy Greenstock, during the period of the
11 negotiation of the United Nations Security Council
12 Resolution 1441 and the failed attempt to agree a second
13 resolution, about which we have already heard
14 considerable evidence. We are grateful to our witness
15 for your witness statement, which we have today
16 published on our website.

17 We have also today published a number of documents
18 relevant to the legal sessions this afternoon. We would
19 like to make it clear that the Inquiry was fully aware
20 of these documents and their contents at the time that
21 it heard evidence from Lord Goldsmith and the other
22 legal witnesses and was able to take them into account
23 in those sessions. They were declassified on Friday.
24 Sir Gus O'Donnell's letter of 25 June which, with my
25 reply of 28 June, has also been placed on our website,

1 explains the considerations behind this decision.

2 Later this afternoon we will hear from Cathy Adams,
3 who was the legal counsellor to the law officers between
4 2002 and 2005. She provided advice and assistance to
5 the then Attorney General Lord Goldsmith on
6 international law issues, including the development of
7 his legal advice of 7 and 17 March 2003.

8 Now, we recognise that witnesses give evidence based
9 on their recollection of events and we, of course, check
10 what we hear against the papers.

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

15 With that set of preliminaries out of the way,
16 I will ask Sir Martin Gilbert to open the questions.

17 Martin?

18 SIR MARTIN GILBERT: Could you describe to us your role as
19 legal counsellor to the UK Mission in New York and what
20 were your main responsibilities and to whom you were
21 reporting?

22 IAIN MACLEOD: I was -- I set it out in the statement, but
23 I was a member of Sir Jeremy Greenstock's team in
24 New York and headed up the legal section which
25 consisted, in my time, of me and a First Secretary and

1 a support colleague.

2 The main functions of the section, as I have set out
3 in the note, were to handle dossiers at the UN on the
4 UN's agenda and they tended to be dossiers that had
5 a legal content, perhaps a high legal content. The Law
6 of the Sea, for example, the international tribunals,
7 the Sixth Committee, which is the main legal committee
8 of the UN and so on, and various committees associated
9 with these bodies.

10 In addition to that, I attended the Security Council
11 as requested or required by Sir Jeremy to support him
12 and the rest of the mission in issues that were coming
13 up at the Security Council. So there was a legal
14 adviser role, but essentially it was a policy role with
15 a legal component and occasionally legal advice.

16 THE CHAIRMAN: Could you raise the volume a little?

17 IAIN MACLEOD: Sure.

18 THE CHAIRMAN: Thank you very much.

19 SIR MARTIN GILBERT: Did you remain a member of the FCO's
20 legal advisers --

21 IAIN MACLEOD: No. On posting, we were not, formally
22 speaking, or in management terms, members of FCO's legal
23 advisers. We were posted to the mission as members of
24 Jeremy Greenstock's team. I reported to the Deputy
25 Permanent Representative and, through him, to

1 Jeremy Greenstock. There was no reporting line to
2 London whatsoever to Michael Wood of the legal adviser's
3 team.

4 SIR MARTIN GILBERT: By what route did you receive your
5 instructions?

6 IAIN MACLEOD: Instructions on any issue would come to me as
7 they came to any other member of the UK Mission, from
8 London through the legal policy department. So it would
9 depend very much on what the issue was, but taking, for
10 example, issues connected with the Law of the Sea, the
11 instructions would come from the Maritime Department, or
12 whatever its name was at the time in the FCO, with an
13 input from the lawyers, but formally speaking it came
14 from the Policy Unit. Then, for example, on issues
15 on the Sixth Committee agenda, again it depended who the
16 lead Policy Unit in the FCO was, but the link -- as for
17 any other part of the mission, the link was with the
18 policy function in FCO.

19 SIR MARTIN GILBERT: What was the relationship between your
20 role in New York and that of the legal counsellor to the
21 UN Department in London?

22 IAIN MACLEOD: No formal connection at all. He was part, or
23 she was part, of the FCO legal adviser's team and then
24 advising the UN department in London as part of the FCO
25 legal team in London. I was part of Sir Jeremy's team

1 and, as I say, essentially out in New York working in
2 New York as part of that team.

3 SIR MARTIN GILBERT: Was there any contact at all between
4 you and the FCO?

5 IAIN MACLEOD: Occasionally, there would be. It would
6 depend on a particular issue, but in formal terms it
7 depended really on the issues, there was no regular set
8 of fixed system of reporting or interchange between the
9 two of us.

10 The legal advice on an issue -- the same issues as
11 would be handled by the UN Policy Department -- the
12 legal advice on that issue would be given in London and
13 fed into the formulation of the instructions in London.
14 They would then come out to New York to whoever was
15 handling it. If it was me or my team who were handling
16 it, the instructions would come to us either by fax or
17 letter or telegram, but there was no sort of separate
18 set of legal instructions or separate set of policy
19 instructions.

20 SIR MARTIN GILBERT: Would you know if there was contact
21 between the Foreign Office legal adviser and the
22 Permanent Representative?

23 IAIN MACLEOD: Between, say, Michael Wood and
24 Jeremy Greenstock, yes, I think I probably would have
25 known if there was that kind of contact because,

1 although, formally speaking, we were in New York, we
2 were in that separate team, we were still part of
3 Michael's team. I know Michael very well. We knew each
4 other very well, and also, if Jeremy had been talking to
5 Michael on something, I would normally probably have
6 heard about it, if it was a legal issue that Jeremy was
7 troubled by.

8 But I think there was quite a clear -- there was
9 quite a clear -- we were sort of insulated and separate
10 from London, we were a separate unit, we were in
11 New York. We were headed up by Jeremy, he was the man
12 in charge and we reported to him. We worked on his
13 instructions and there was no other sort of formal link
14 into the London system.

15 SIR MARTIN GILBERT: Would you be copied on legal papers?

16 IAIN MACLEOD: Occasionally, but not necessarily as a matter
17 of routine. This is no doubt something you will want to
18 come on to but, I mean, there was -- in the negotiation
19 of the second resolution, there was a very helpful
20 letter that came from legal advisers in London, setting
21 out the parameters in which the negotiations of the
22 second resolution might take place. But there was
23 nothing really comparable that came directly to me from
24 legal advisers in London supplementing or perhaps
25 expanding on or giving more detail on the background to

1 the instructions that had come.

2 But that was -- that didn't really happen with the
3 first resolution. We were copied into some minutes and
4 exchanges, and there was the occasional thing but, as
5 a general pattern, the instructions came through the
6 formal mechanism of telegrams and formal letters.

7 SIR MARTIN GILBERT: Can you tell us a little about the
8 process of providing advice to the head of the mission?

9 IAIN MACLEOD: To Jeremy? Again, it depends a bit on the
10 issue, but on the Iraq dossier we were, I think, part of
11 a pretty close team. He was obviously in charge. The
12 Deputy Permanent Representative was also involved a lot
13 at the time, not always, but a lot of the time. The
14 head of Chancery and the political counsellor also, the
15 First Secretary desk officer was also very much part of
16 that team and I was part of the team too.

17 During the negotiations, it was typically, the team in
18 negotiations would have been probably me,
19 Jeremy Greenstock, Adam Bye, we would have been the
20 three who would have probably followed most of the
21 negotiations all the way through, although, on some
22 occasions, I wouldn't have been there, I would have been
23 doing something else.

24 But I think we kept each other very fully informed.
25 If things were coming in from London that we knew of or

1 other developments that were happening, we would, as
2 a matter of routine, copy each other the documentation,
3 if that was possible. I'm sure there was plenty coming
4 in to Sir Jeremy which he couldn't share with me or
5 Adam, but I think, on the whole, we worked very closely,
6 and there was certainly no process of me providing
7 long -- if I could have provided them anyway -- long
8 learned minutes on pieces of legal advice. We would
9 discuss things, occasionally we would comment by email,
10 or just draft comments. It was a fairly informal
11 process.

12 SIR MARTIN GILBERT: How did you decide on the advice to
13 give? What were your sort of criteria of decision?

14 IAIN MACLEOD: How did I decide what advice to give?

15 SIR MARTIN GILBERT: Right.

16 IAIN MACLEOD: I think Jeremy knew the issue very, very
17 well. He understood that the legal parameters in which
18 1441 was being negotiated were very well-established, at
19 least as far as he was concerned, as far as we were
20 concerned, because he had been
21 responsible for negotiating Resolution 1205 and he had
22 probably been involved in the earlier ones too. So the
23 framework we were operating in was very clear and pretty
24 well-understood by all of us, and I don't recall really
25 any occasion when we had to sit down and have

1 a head-to-head about any legal issue. The drafting was
2 going ahead. Provided, it seemed to me, the drafting
3 was going in the right direction, achieving the sort of
4 thing that we wanted it to achieve, there was nothing
5 very much to sort of say or do or particularly out of
6 the ordinary.

7 SIR MARTIN GILBERT: Were you present during the
8 negotiations on 1441 level?

9 IAIN MACLEOD: I think I was present at most of them, not
10 absolutely everything, but I certainly attended most of
11 the Security Council informal and formal debates, the
12 meetings of the P5 in the run-up to the production of
13 the resolution itself, one -- at least one of the
14 foreign minister P5 lunches and one-to-ones with the
15 Americans and so on. Yes, fairly closely involved in
16 most of it.

17 SIR MARTIN GILBERT: From whom did you receive your policy
18 instruction?

19 IAIN MACLEOD: Well, Jeremy -- in the sense that we all
20 received it from London, and Jeremy would have had the
21 instructions that the team was working towards and we
22 knew what these were. We had seen them coming in in the
23 telegrams, we were aware of what they were and we simply
24 followed along and worked together on that.

25 SIR MARTIN GILBERT: What did you understand the UK's

1 objectives to have been as the negotiations began?

2 IAIN MACLEOD: I would say there were probably two main
3 objectives. One was to achieve the disarmament of Iraq
4 by essentially inspections and peaceful means, if we
5 could at all, and that's why
6 part of the focus of 1441 is on a strong inspection
7 regime, but I think it was very much a part of the
8 framework, also, that there should be one final
9 opportunity for Iraq to disarm and that that should be
10 this resolution, and that there would not be a further
11 Security Council decision at a later stage.

12 I think that became clear fairly early on in the
13 negotiations. Right at the start, --
14 before the main text, if you like, emerged from -- from,
15 I suppose, Washington -- I think that's how it all
16 started -- I think there was some discussion among
17 ourselves with the Americans, and with London, what kind
18 of shape the resolution might take.

19 In the papers, in the very early stage, there is
20 a resolution which involves a two-stage process.
21 I think that disappeared fairly quickly from the agenda
22 and we were working on a single text, which was going to
23 set up the material breach argument, set up the
24 inspection regime but make clear that there would be no
25 further resolution required. I think these were the

1 main objectives as I saw them.

2 SIR MARTIN GILBERT: What legal input or advice did you get
3 from others in the FCO legal department?

4 IAIN MACLEOD: There was the occasional minute that we saw
5 at some stages, but there was nothing, I would say,
6 specific or beyond what was coming in in the
7 instructions from London, and I think the assumption
8 all along was that, if a text went back to London and
9 London commented on it or sent us ideas about it, in the
10 form of -- by telegram or however else we got them from
11 UND or whatever, the legal advice had been taken into
12 account in that process.

13 SIR MARTIN GILBERT: Did you report progress to them or seek
14 input and advice from --

15 IAIN MACLEOD: From legal advisers?

16 SIR MARTIN GILBERT: Right.

17 IAIN MACLEOD: No, I didn't. Again, reporting went back to
18 London by telegram, as a rule.

19 SIR MARTIN GILBERT: Did you seek or receive any legal
20 advice or input from the Attorney General's office?

21 IAIN MACLEOD: No.

22 SIR MARTIN GILBERT: My final question relates to the
23 earlier resolutions which you mentioned, of course, in
24 your statement. In fact, you describe in your statement
25 the involvement of the Attorney General's office in 1998

1 in the drafting of 1154 and 1205, including the
2 formulation of the operative paragraphs and the terms of
3 the explanation of vote.

4 This seems in contrast with Lord Goldsmith's very
5 limited role in the drafting of 1441 and a limited role
6 which he himself regretted when he gave evidence to us.
7 Would you agree that he had less involvement in 1441
8 than his predecessors had in 1154 and 1205?

9 IAIN MACLEOD: Yes, I think is the short answer, but it is
10 obviously hard for me to tell, because I have had the
11 fortune or misfortune of being involved in both the
12 Attorney's office, at one stage, and then at the
13 New York end of this process at another stage.

14 I think -- and so I'm not really clear what exactly
15 happened in London during the negotiation of 1441.
16 I know that there were doubts beginning to emerge
17 about -- that is clear now, that there were doubts
18 beginning to emerge about what the legal effect of it
19 would be. I understand from papers that I have seen,
20 although I don't think that was evident to us at the
21 time in New York, that questions were asked of the
22 Attorney on a couple of occasions, but there seemed to
23 be no definitive view from the Attorney's office during
24 the 1441 process.

25 I think, personally, that was probably a big mistake

1 and I think there is a big contrast, both with the
2 second resolution but, as you have identified -- I think
3 it comes out much more clearly with the process in 1998,
4 which I saw from the Attorney General's office side.
5 As I have set out in the note, I think it was
6 handled, if I may say so, extremely well by the FCO
7 legal advisers involved, who were Elizabeth Wilmshurst
8 and Michael Wood, and Frank Berman as head legal
9 adviser, but the key player in it really was probably
10 Elizabeth, but I think it was handled extremely well
11 because first of all, they came to the Law
12 Officers in the late part of 1997 as the clouds were
13 beginning to gather on Iraq for the following year, if
14 I can put it that way, and the question at that stage to
15 the Attorney and the Law Officers, who were new
16 obviously to -- they had just really taken office and
17 the previous experience of a rival doctrine and so on
18 was under the predecessors. So the FCO, I think, did
19 exactly the right thing. They came to the Law Officers
20 in the late part of 1997 and said "Things are looking --
21 going to be looking quite difficult in Iraq. We may
22 come under pressure to move towards the use
23 of military force and we need to be sure about the legal
24 basis for that, and we would like to explain to you the
25 basis on which your predecessors have authorised the use

1 of force".

2 So the letter and the briefing that happened in late
3 1997 was really a sort of scene-setter. They took the
4 Attorney and me, because it was new to me -- they took
5 the two of us through the background in New York and
6 what the significance of the different processes in
7 New York was, what the significance of the different
8 terminology -- material breach and so on -- was, and
9 then showed us the UN legal counsel's view and the view
10 of the predecessors, and the question at that stage was:
11 "Do you, oh Attorney, agree that the revival doctrine is
12 a framework that we could use, if we have to, in the
13 future?"

14 There was some discussion about it but, on the basis
15 of the advice from the FCO, the Attorney, having tested
16 them and asked about it, and considered it all --
17 concluded that this was a framework that could be used
18 for the future in line with what his predecessors had
19 done.

20 Then, as one could have perhaps foreseen, early in
21 1998 the first crisis began to build with Iraq and the
22 question was: would the UK and the US -- would the UK be
23 able to participate in military action? Was there going
24 to be a legal basis for that?

25 My recollection -- it is a fairly hasty skim of the

1 files, but the picture that emerges is very much of the
2 Attorney's office being told what was happening, being
3 offered ideas about what the future shape of the
4 resolution might be, being asked for advice on whether
5 one formulation was the stronger basis than another and
6 giving views on that.

7 The text was then negotiated and FCO came back with
8 the resolution and the picture from New York and said
9 "Look, this is what was achieved. What do you think?"
10 and the conclusion -- the Attorney went through that
11 with them all, tested the evidence against the criteria
12 that had been established, and the conclusion in
13 relation to 1154 in March was that it didn't meet the
14 tests.

15 The same process was gone through again later in the
16 year in November, and it worked exactly the same way; we
17 knew what was coming, there were drafts going round,
18 different operative paragraphs. I think there were even
19 drafts of the explanations of vote, and they were gone
20 through both before and after the adoption of the text,
21 and I think there was guidance from the Attorney.

22 Obviously, he couldn't sign anything off without
23 having the final text, but I would have
24 thought they found it helpful,
25 because he did offer ideas about what his reaction would

1 be to various formulations which FCO were then able to
2 take and send to New York, I imagine, or at least feed
3 into the instructions.

4 Then, when 1205 was adopted, -- the
5 groundwork had all been done and the conclusion from the
6 Attorney was that, yes, on that occasion they did meet
7 the test for the revival doctrine --

8 SIR MARTIN GILBERT: Would that involvement of the Attorney
9 in 2003 have been helpful to you, in your opinion?

10 IAIN MACLEOD: Yes, I think it would have been. In one
11 sense -- in one sense -- the US -- UKMIS, we all had one
12 view of the resolution, we thought it would authorise
13 the use of force and, in the end, that's what the
14 Attorney agreed with. So in one sense, what happened in
15 London is sort of by the way, but it is very clear that
16 there was a lot of difficulty and a lot of -- difficulty
17 that could have been avoided if -- if the Attorney's
18 view had been obtained at that earlier stage.

19 Because the thing that -- if the
20 doubts in London that began to emerge and really became
21 apparent to us during November -- that's when it really
22 hit home, to me at least -- whether we should have
23 spotted it is, of course, another issue in which
24 hindsight is a wonderful thing. But if these doubts
25 were really emerging as clearly

1 and as starkly in London during the negotiation, it is
2 puzzling to me that people decided just to continue,
3 allowing UKMIS to negotiate a text which was, to use the
4 phrase, "unfit for purpose" because, as I said, I think
5 it is pretty clear from Jeremy's evidence, and it is my
6 recollection, that a key -- not the only, but a key
7 criterion for the resolution was that there would be --
8 there wouldn't have to be a further -- decision
9 of the Security Council to authorise the use of force.

10 So I think it was odd not to clarify the legal
11 position during that period, and I think the other
12 reason why it is odd is that we had been negotiating in
13 New York side by side with the US. It was
14 a co-sponsored text and there was -- it was almost -- we
15 were almost one delegation, you know, Jeremy Greenstock
16 might introduce some of the paragraphs and the American
17 Permanent Representative would sort of close the debate, as it
were.

18 It was a very close working relationship.

19 I think, to have reached the end of that and then
20 have to turn round and tell the Americans that
21 "Actually, what you and we thought we were negotiating,
22 we haven't achieved that at all", it is a very strange
23 place to end up.

24 I think that there should have been, in my view,
25 clarity obtained at that stage, even if it simply

1 meant -- even if the conclusion had been "You need
2 another resolution", at least we then would have known
3 just how important the second stage was going to be for
4 us and that might have fed all sorts of other
5 considerations. I mean, how long it should take, how we
6 should approach it and so on.

7 I think the second resolution stage is closer to
8 1998 in terms of the -- as far as I can tell, in terms
9 of the involvement of the Law Officers, in terms of
10 obtaining clarity as to what the parameters and guidance
11 for the negotiation should be and, as I say, there were
12 several drafts, as you no doubt know, but the legal
13 parameters and the legal framework that was sent to us,
14 both on instructions but then in the subsequent
15 letter -- in the letter that I mentioned earlier, the
16 clarity and guidance we had there meant that, you know,
17 when we were trying to move from one draft to another,
18 you could see what -- what we were trying -- you could
19 see what the principles, the framework within which we
20 were trying to operate was, and that made for a great
21 deal of clarity, even although, in the end, of
22 course, that all came to nothing.

23 SIR MARTIN GILBERT: That's very helpful. Thank you very
24 much.

25 THE CHAIRMAN: Thank you. In aid of transcription, I would

1 be grateful for a little slowing down. I'll turn to
2 Sir Roderic Lyne for the next bit.

3 SIR RODERIC LYNE: You said that at one stage of the
4 drafting there was a draft that envisaged a two-stage
5 process, but that this fell away. But didn't 1441
6 actually end up as a two-stage process with operative
7 paragraphs 4, 11 and 12 linked together and ending up
8 with a decision that the Security Council should convene
9 again:

10 "... on receipt of a report in accordance with 4 and
11 11 to consider the need for full compliance", et cetera.

12 It was still a two-stage process, wasn't it?

13 IAIN MACLEOD: Absolutely. Sorry, I should have been clear
14 about that. The papers that I was referring to were
15 from September and the two-stage there were two
16 resolutions, first resolution and the second resolution,
17 but, absolutely, the two-stage element was crucial to
18 the whole framework of 1441.

19 SIR RODERIC LYNE: It leaves open what is meant by "consider
20 the situation", as to whether there is a further
21 decision or resolution or not and that was the essential
22 ambiguity at the end of the resolution.

23 Now, you have said, I think, three times now that
24 a key objective of the mission in negotiating the
25 resolution was that there should not be a requirement

1 for a further resolution. Sir Michael Wood told us in
2 evidence that he had made it clear, on a number of
3 occasions during and after the negotiation of 1441, that
4 in his view it did not authorise the use of force
5 without a further decision of the Security Council, and
6 you have just been talking about this sort of rather
7 puzzling circumstance that arose in which one view was
8 held in New York and another in London.

9 Were you completely unaware that the senior legal
10 adviser to the Foreign Office was repeatedly and very
11 clearly taking that view and advising the Foreign
12 Secretary and others that this was the position?

13 IAIN MACLEOD: I mean, there are minutes -- on
14 the file which I have seen subsequently, which in
15 hindsight you could see there were -- the London legal
16 view was diverging from the policy as we thought of it.
17 But I wasn't really aware, to be honest, that there was
18 such a divergence of view.

19 I mean, it became clear to me when we received from
20 legal advisers the draft of what was going to be sent to
21 the Attorney's office as the basis for the Attorney to
22 advise, and that was towards the end of November. It
23 was around about that sort of period. So it is -- it is
24 certainly after the negotiations. So that's what I --
25 that's what sticks in my memory as the moment when

1 I really realised that something was not quite right
2 here. I hadn't really spotted it before then, and
3 perhaps I should have, but I hadn't really.

4 SIR RODERIC LYNE: One could equally argue that it is
5 strange, it is puzzling, that it wasn't spotted at the
6 other end of the transmission channel.

7 Presumably, Sir Michael Wood and others in the legal
8 advisers' branch and those receiving his advice in the
9 UN Department and so on were reading the telegrams from
10 Sir Jeremy Greenstock to which you will have contributed
11 and which you will have approved insofar as they touched
12 on legal matters. Is it not curious to you that none of
13 them noticed that you were on a different line to their
14 line?

15 IAIN MACLEOD: I think New York and London, in policy, were
16 probably on the same line. The difficulty I think comes
17 that the legal advice was beginning to diverge from
18 where the policy was, and I do think there is a big
19 problem there, in hindsight, for sure. That ought to
20 have been sorted out. Now, the way to sort it out was
21 to go to --

22 SIR RODERIC LYNE: The legal advice was diverging from where
23 the policy was at the London end or the New York end?

24 IAIN MACLEOD: My impression is that New York and London
25 thought they were doing the same thing.

1 SIR RODERIC LYNE: Yes.

2 IAIN MACLEOD: The question was whether, in legal terms, the text
that was being produced was

4 going to achieve what the policy -- what the policy was.

5 Now, I think in New York we thought it did achieve
6 that. I mean, I think Jeremy and I both thought that.
7 That remains my view and, in the end, that was the view
8 the Attorney also took. But London, it is clear
9 certainly now, that that wasn't the view in legal
10 advisers.

11 The way to fix that was actually relatively
12 straightforward, which is to get a view from the
13 Attorney. But I think it should have happened. Now,
14 why it didn't, it is very difficult for me to say from
15 where I was, but I think it is a big gap in the process.

16 SIR RODERIC LYNE: So was the UN Department in London and
17 the chain of command above it aligned with your
18 objective that 1441 should not require a further
19 resolution?

20 IAIN MACLEOD: I think I'd probably put it the other way
21 round, that we were aligned with their objective, in
22 that sense.

23 SIR RODERIC LYNE: All right, but that objective was held in
24 common?

25 IAIN MACLEOD: I would say so, yes.

1 SIR RODERIC LYNE: So the divergence you spoke about just
2 now between the legal and the political advice was
3 essentially between the political department in the
4 Foreign Office and the legal advisers in the
5 Foreign Office in London, because you and
6 Sir Jeremy Greenstock were dovetailing? But you are
7 essentially saying they were not?

8 IAIN MACLEOD: That's what it looks like.

9 SIR RODERIC LYNE: You say, rightly, it would have been
10 helpful to have had an opinion from the Attorney General
11 earlier. Among the documents declassified today,
12 I think you will have seen -- I don't know if you saw it
13 before -- Lord Goldsmith's advice to the Prime Minister
14 and the Foreign Secretary and the Defence Secretary of
15 30 July 2002 and, if you look at paragraph 9 of that,
16 for example, he says there that:

17 "Use of force revived under ..."

18 If you follow the revival argument, which he
19 accepts, but with qualifications. Use of force revived
20 under Security Council Resolution 687:

21 "... would need to be limited to ensuring Iraqi
22 compliance with the ceasefire conditions."

23 Then he goes on to talk about the essential basis of
24 the Security Council forming a view that there had been
25 a sufficiently serious violation of the ceasefire

1 conditions.

2 Resolution 1441 was looking at a different situation
3 to 678 and 687 and it was looking at a situation in
4 which -- which eventually led to the invasion of Iraq.

5 Was 1441 sufficient authorisation, if it goes back
6 to 687, if you hold the view that 687 is limited to
7 ensuring Iraqi compliance with the ceasefire conditions?

8 IAIN MACLEOD: I think it does depend a bit on which of the
9 ceasefire conditions, because it is set out in 1441 the
10 different requirements that were laid on Iraq. So
11 I think that the way 1441 is constructed, it is trying
12 to deal with the problem that Iraq was in 1991 but
13 remained and continued to be through into 2002.

14 But the question of the extent of the use of force
15 following from 1441 is, of course, I accept, a big
16 issue.

17 SIR RODERIC LYNE: This very specific advice which also
18 harks back to the point you were just making just now
19 about 1997 and 1998, given by the Attorney General to
20 the Foreign Secretary and the Prime Minister about
21 UN Resolutions, was that not communicated to you and
22 Sir Jeremy Greenstock in New York at the time?

23 IAIN MACLEOD: I think -- I can't say whether this
24 particular piece of advice was, because it is secret and
25 strictly personal, so it may not have been, but

1 certainly, at that stage, in July 2002, the issue, if
2 I recall, was not so much whether we would have one
3 resolution or two but whether we would have one
4 resolution at all.

5 I certainly recall discussions then where the
6 question was: assuming that the Americans decide or want
7 to do -- take military action against Iraq, what would be
8 the legal basis for UK participation in that, assuming we
9 wanted or felt we had to do it, what would the basis be?
10 It was very difficult to find any basis. I think that's
11 common ground across all the lawyers who were involved.
12 Self-defence was not going to be to be an option.
13 Humanitarian intervention was relevant to the
14 No Fly Zones, but not on that sort of scale. So you
15 went back to the question of getting --

16 SIR RODERIC LYNE: So you are left with the revival
17 argument --

18 IAIN MACLEOD: Yes.

19 SIR RODERIC LYNE: -- and what this minute from the Attorney
20 General is doing is he is indicating reservations about
21 the revival argument but, as you entered the
22 negotiations shortly afterwards on 1441, you, in
23 New York, were not aware of the Attorney General's
24 reservations on the revival argument. Is that right?

25 IAIN MACLEOD: I don't really see -- reservations? He

1 accepted the concept.

2 SIR RODERIC LYNE: He accepted the concept and then he goes

3 on to say:

4 "It needs to be limited to ensuring Iraqi compliance

5 with the ceasefire conditions."

6 Then he talks about the essential basis of the

7 Security Council forming the view that there had been

8 a sufficiently serious violation of the ceasefire

9 conditions.

10 IAIN MACLEOD: Sure.

11 SIR RODERIC LYNE: So he is qualifying his acceptance of the

12 contents in that paragraph.

13 IAIN MACLEOD: Yes.

14 SIR RODERIC LYNE: Were you aware of that qualification?

15 IAIN MACLEOD: Not specifically that qualification, but

16 I would say that that is simply a statement, perhaps

17 focused slightly in one direction, but a restatement of

18 the revival argument, and I think it comes out in

19 Jeremy's evidence, but if we were following a sort of

20 pattern, it would have been back to 1205, what were the

21 criteria that were used in 1205? Are these sufficiently

22 set out in 1441, and how do the two things compare? Are

23 we in that framework, is that the territory we are

24 operating in? So I don't think we came to this document

25 and said, "This is the framework in which we will now

1 negotiate", but I would see this as very much in that
2 framework and simply caveating, drawing attention to the
3 limitations and conditions that you would have to have
4 in developing something based on the revival argument.

5 SIR RODERIC LYNE: Let's move forward from that to the view
6 that the Attorney General took after 1441. Now, you
7 have referred to correspondence in November. In the
8 same documents that have now been declassified, we have
9 documents recording the Attorney General phoning up the
10 offices of the Foreign Secretary and the Prime Minister
11 to make it clear that it is his firm view that 1441 does
12 not authorise force without a further Security Council
13 Resolution, which is, of course -- it is very different
14 from the position you described as being one of the key
15 objectives of Sir Jeremy Greenstock.

16 Did it become aware to you soon after the adoption
17 of 1441 -- I mean, these are minutes dated 18 October;
18 he had these phone conversations -- that this was the
19 line the Attorney General was taking, that 1441 had not
20 achieved what you thought it had achieved?

21 IAIN MACLEOD: It is hard to say exactly what one knew at
22 the time, because everything merges into -- things merge
23 into each other. But I wasn't aware of the extent of
24 that doubt at that time. I knew that there was later on
25 in January -- that's the time I associated the

1 discussions with the Attorney. That's the period
2 I associate in my mind with discussions with the
3 Attorney, it was in January, the early part of the year,
4 when we knew that -- I imagine we heard it from London,
5 but we knew that the Attorney was still thinking about
6 his final view on this.

7 We understood that he had doubts and reservations
8 and I think the Foreign Secretary was keen that the
9 UKMIS picture, the negotiating picture, should be fed in
10 clearly during the negotiations -- during the
11 discussions with the Attorney, so that he was fully
12 informed of --

13 SIR RODERIC LYNE: Sorry, when I said 18 October, it wasn't
14 after the conclusion of 1441. This is when the
15 negotiations are in train, he is pointing out, that the
16 text he is looking at, at the time, is not going to
17 achieve that effect. So it is very relevant to your
18 negotiations.

19 IAIN MACLEOD: I wasn't aware of that, no.

20 SIR RODERIC LYNE: You should have been, shouldn't you?

21 IAIN MACLEOD: Yes, I think we should have been.

22 SIR RODERIC LYNE: Would it have made a difference to the
23 way that you and Sir Jeremy Greenstock negotiated, if
24 you knew that it was the position at the time and,
25 subsequently, still the position of the Attorney General

1 on 14 January 2003, as we see from another document
2 here, that Resolution 1441 -- I'm quoting from his
3 14 January document given to the Prime Minister:

4 "... does not revive the authorisation to use of
5 force contained in Resolution 678 in the absence of
6 a further decision of the Security Council."

7 If you had known that was the Attorney General's
8 position, how would you and Sir Jeremy have conducted
9 the negotiation in New York?

10 IAIN MACLEOD: I think the question is: what instructions
11 would we have had from London to try to deal with that
12 problem? These were the instructions from London.

13 SIR RODERIC LYNE: If your instructions had contained that
14 position of the Attorney General?

15 IAIN MACLEOD: I honestly -- I find that quite difficult to
16 answer.

17 SIR RODERIC LYNE: But it would have been --

18 IAIN MACLEOD: For sure, it would have had an impact. There
19 would have had to be some quite serious analysis with
20 London, but also with Washington, of where we were
21 going.

22 I mentioned earlier the fact that we were
23 co-sponsors. We were in this absolutely side by side
24 with the Americans. If that kind of doubt had begun to
25 emerge about where we were going, that ought to have fed

1 into every conversation the Foreign Secretary was having
2 with Secretary of State Powell, indeed the conversations
3 that were taking place above that and below it, and at
4 the USUN -- and us with USUN. It was a huge -- that
5 would have been a huge impact on the whole way the
6 negotiations were going without any doubt at all.

7 SIR RODERIC LYNE: A huge impact on the negotiations. So
8 there was a serious failure in the system, if it did not
9 communicate a point of such importance to the
10 negotiators in New York?

11 IAIN MACLEOD: I think so.

12 SIR RODERIC LYNE: Something went wrong.

13 My final question at this stage is that, also, in
14 earlier evidence, Elizabeth Wilmshurst told us that all
15 of the FCO legal advisers working on this issue had been
16 "entirely of one view."

17 You clearly were not of that view but, as you have
18 said, you weren't technically within the FCO's legal
19 advisers' branch at this time. Were you aware of any
20 others who were not of the same view as
21 Elizabeth Wilmshurst and Sir Michael Wood?

22 IAIN MACLEOD: I know two or three. Whether they were all
23 in FCO, strictly speaking, at that time, is another
24 question. So I think the statement may well be
25 accurate, as it stands, but some of them were certainly

1 people who had worked on this issue in the past and who
2 were very able and very experienced lawyers and
3 diplomats, who had looked at it. So I think, if the
4 impression is that the only people who thought there was
5 anything in the revival argument at all were
6 Lord Goldsmith and the sort of renegade maverick in
7 New York, I think that's not entirely accurate. I think
8 there were others who look the same view.

9 After all, Sir Christopher Greenwood was someone who
10 also took that view, not a Foreign Office lawyer, but
11 one of the most eminent international lawyers at the
12 time. There were two or three others at least. I have
13 often been struck by how little the revival
14 doctrine and its framework and parameters are known.
15 That's the point I tried to make at one point in my
16 statement, that it is easy to look at it and think this
17 must be complete nonsense. I think, when you come to it
18 first, that is quite possibly your reaction, but I
19 think, when you look into it and you
20 you take it back to both the beginning of the UK system
21 in 1991 and then you follow it through the UN system
22 with UN legal counsel's views and then on into the way
23 it was used, it becomes a far more forceful doctrine, it
24 is something you at least have to reckon with. You
25 simply can't dismiss it out of hand.

1 SIR RODERIC LYNE: No, and as you rightly say,
2 Lord Goldsmith was not dismissing the revival doctrine
3 as a doctrine, the question I think we will come back to
4 later on is the applicability of a doctrine based on the
5 revival of 678 and 687 to the circumstances that we
6 faced in 2003, but I will pause at that point.

7 THE CHAIRMAN: Let's turn to Sir Lawrence Freedman.

8 SIR LAWRENCE FREEDMAN: My questions follow on quite neatly
9 from that. You have discussed with us in your statement
10 your role in the Attorney General's office at the time
11 the Security Council's Resolutions 1154 and 1205 were
12 adopted in 1998 and how they led to Operation Desert Fox
13 which didn't involve a full invasion of Iraq but
14 certainly involved significant force.

15 It might be just helpful if you could explain how
16 these two resolutions worked together to produce the
17 outcome that they did and give legal grounds for the use
18 of force?

19 IAIN MACLEOD: 1205?

20 SIR LAWRENCE FREEDMAN: I think -- it seems to me it is the
21 relationship of 1154 and 1205. I mean briefly
22 obviously, but just the key points.

23 IAIN MACLEOD: I think that 1154 didn't seem to me -- and
24 that was obviously the Attorney's view also -- didn't
25 seem to me to meet the criteria for the revival

1 doctrine. It doesn't make any specific finding of
2 breach by Iraq. It warns of serious consequences if
3 there were such a finding, but it doesn't actually make
4 that finding.

5 1205, on the other hand, made a finding of breach,
6 violation. It demanded full cooperation and that was
7 felt by the law officers on the basis of the advice from
8 the Foreign Office to be sufficient to meet the criteria
9 in -- established for the revival doctrine.

10 SIR LAWRENCE FREEDMAN: Did it depend on the fact that 1154
11 had mentioned serious consequences, should there be
12 a breach?

13 IAIN MACLEOD: Possibly, although I would have to go back
14 into it and try to work through that, but I -- I hadn't
15 seen such a direct link, although perhaps there is.

16 SIR LAWRENCE FREEDMAN: I mention this because you have
17 already indicated, and Sir Jeremy indicated in his
18 evidence to us, the importance of the precedent set by
19 1205 for the negotiation of 1441. You say in your
20 statement that the parameters set by 1205:

21 "The framework in which 1441 was negotiated and
22 progressed in negotiating what became UNSCR 1441 was
23 assessed against that text and context."

24 You suggest and support the view that 1441 was
25 stronger than 1205?

1 IAIN MACLEOD: Yes.

2 SIR LAWRENCE FREEDMAN: Could you explain why you thought
3 this had been achieved?

4 IAIN MACLEOD: I think, if you look at 1441, beginning with
5 its fourth or fifth preamble, it states there that
6 Resolution 678 authorised the use of all necessary
7 means, but then mentions the ceasefire in 687, which was
8 conditional -- and that's made clear as well, that the
9 ceasefire would be based on acceptance by Iraq of the
10 provisions of that resolution.

11 There is then a narration of the ways in which Iraq
12 had failed to comply with the conditions of the
13 ceasefire and the -- and a finding of material breach in
14 the early part of the resolution.

15 Now, it was known in New York -- I mean, I think
16 based probably on the views of the Office of the Legal
17 Counsel -- that what the structure of the revival
18 argument was, it was based on a conditional ceasefire,
19 if the ceasefire was then not observed, the earlier
20 authorisation was taken to have revived.

21 The basis on which that would have happened was
22 a finding by the Security Council that Iraq was indeed
23 in material breach of its obligations. So the construct
24 of 1441 took you, it seems to me, pretty logically
25 through these different steps in a way perhaps which is

1 clearer even than 1205, although 1205 did make the
2 finding of -- a "flagrant violation" I think was the
3 word, which again was, in other words, the ceasefire
4 conditions had not been met by Iraq and that the
5 authorisation had revived. That was the comparison
6 between the two, but I think 1441 is clearer in setting
7 out the different conditions of the revival argument.

8 SIR LAWRENCE FREEDMAN: So it is the clarity with which it
9 does it and the establishment of material breach as of
10 that time.

11 IAIN MACLEOD: Yes, and I think, given that -- it is the
12 clarity, it is the fact that it sort of hammered home
13 all the elements of material breach argument that is
14 quite striking about 1441. It is easy to take
15 it for granted, but the reason "flagrant violation" was
16 in 1205 was not because people hadn't thought of
17 "material breach", it was because people resisted
18 including "material breach" in that draft. I'm pretty
19 sure I'm right in that, but I want to check with the
20 negotiating record.

21 But I don't think that the UK and the US did not
22 obtain the specific words "material breach" in 1205, but
23 they certainly did in 1441 in several places, and 1205
24 was also, as I think Jeremy has pointed out, is very
25 much something that his Russian opposite number knew

1 very well. That was an experience he hadn't forgotten
2 in 2002, and nor had others. People were very clear as
3 to what "material breach" meant, what we thought it
4 meant and what we explained that it still did mean.

5 SIR LAWRENCE FREEDMAN: He says now the precedent of 1205,
6 that it was immediately followed by --

7 IAIN MACLEOD: 1205 was the precedent, yes.

8 SIR LAWRENCE FREEDMAN: So people assumed they knew what
9 they were signing up to?

10 IAIN MACLEOD: Yes, I do think that.

11 SIR LAWRENCE FREEDMAN: Now, the argument of
12 Sir Michael Wood and Elizabeth Wilmshurst, was that 1441
13 was possibly weaker than 1205 and the reason I think was
14 Michael Wood's term that there was a firebreak and it is
15 back -- back to this question of the final opportunity,
16 but then the consideration.

17 IAIN MACLEOD: Yes.

18 SIR LAWRENCE FREEDMAN: Again, you said something about this
19 in your statement, but this is at the heart of the
20 dispute, so it would just be interesting to hear your
21 view of why "considered" doesn't mean "decision".

22 IAIN MACLEOD: I think -- following on, we got -- when I was
23 going through 1441 earlier, you had Iraq been found to
24 be and remain in material breach. That's OP1. It is
25 given a final opportunity and this also is in the

1 context where the Security Council has come together
2 unanimously -- everybody agreed to this -- has come
3 together unanimously to underline the seriousness of the
4 situation. It is a final opportunity to comply with
5 disarmament obligations and there is going to be an
6 inspection regime set up.

7 It is made clear in OP4 that false statements or any
8 failure by Iraq at any time to comply and cooperate
9 fully with the implementation of the resolution was
10 a further material breach which was going to be reported
11 to the Council. The report to the Council comes in
12 paragraph 11. So the executive chairman of UNMOVIC and
13 the Director General of the IAEA are to report any
14 interference by Iraq with the inspection. Any other
15 failure by Iraq to comply with its disarmament
16 obligations are to be reported to the Council. The
17 Council is to convene immediately and is to consider the
18 situation.

19 Now -- and Iraq is then warned in that context that
20 it will face serious consequences.

21 Now, the structure therefore is that Iraq is placed
22 in material breach by OPs 1 and potentially 4. It is up
23 to Iraq essentially to get itself out of material
24 breach. Iraq has got to demonstrate its compliance.
25 Where there is a report that Iraq is not complying,

1 that's to come to the Council, it is to be considered by
2 the Council and the position is that if, as a matter of
3 fact, Iraq is not complying, then the warning of serious
4 consequences follows.

5 Of course, what happened is that there were several
6 considerations by -- of Iraq in the Council in the
7 months up to March on the basis of reports from Blix and
8 others and, as is made very clear in the evidence and in
9 the -- I think it is a matter of historical record --
10 nobody thought that Iraq was complying and Dr Blix is
11 very clear, certainly in January, perhaps he nuances his
12 statement a little perhaps later, but he is certainly at
13 no point saying that Iraq is now fully complying with
14 all the conditions that it was supposed to comply with.

15 It is in that sort of situation that the question --
16 well, has the revival doctrine -- can one rely on the
17 revival doctrine in that situation? I think the
18 conclusion that the Attorney came to, with which I would
19 agree, is that it could.

20 SIR LAWRENCE FREEDMAN: You can consider something without
21 a conclusion -- a decision flowing from that
22 consideration?

23 IAIN MACLEOD: Yes, I think you can, especially if you have
24 a negotiation where people try to get you to put in the
25 word "decide" or something similar, and you say "No, we

1 won't put that in because we are not going to give you
2 the chance to have a decision. You can have
3 a discussion, if you like, but we are not giving you
4 a decision".

5 SIR LAWRENCE FREEDMAN: I'll come to that in a minute.

6 Just to be clear on the structure of the argument,
7 it is essentially that Iraq is in material breach and it
8 has to get itself out of it?

9 IAIN MACLEOD: Yes, I'm paraphrasing slightly, but I think
10 that's also the Attorney's statement --

11 SIR LAWRENCE FREEDMAN: Yes, and then there could also be
12 a further material breach.

13 IAIN MACLEOD: There could be, yes, and there could also
14 have been a further resolution.

15 SIR LAWRENCE FREEDMAN: So the problem for Iraq in this
16 resolution is the onus is upon Iraq to demonstrate that
17 it is not in material breach any more, rather than on
18 others to show that it is, because it has established --

19 IAIN MACLEOD: I think that's certainly one way of looking
20 at it, yes.

21 SIR LAWRENCE FREEDMAN: Thanks for that. If we can then go
22 on to the point you have just mentioned, which is what
23 had happened in the actual negotiations. This was
24 clearly very important to Lord Goldsmith when he reached
25 his final view. So what was your understanding of the

1 American position during the negotiations on this point?

2 IAIN MACLEOD: That they had come to the Security Council to
3 ask the UN essentially to deal with Iraq through the UN
4 and that was going to be done through a tough inspection
5 regime which was offering Iraq one last chance and the
6 resolution was going to set up the situation where it --
7 in which, if that chance was not taken, military force
8 would follow.

9 I think it was pretty clear from the Americans that
10 they were not intending to come back to the Security
11 Council for a further resolution in order to authorise
12 the use of force. Because, as I think -- somebody said
13 that wouldn't have been the final opportunity, it would
14 have been the penultimate opportunity.

15 SIR LAWRENCE FREEDMAN: The argument has been made to us
16 that the -- what the Americans thought may be all very
17 interesting but they were starting from a different
18 place to the UK. Did you feel that? Did you -- we
19 thought the Americans had taken the view prior to 1441
20 that they didn't need a new resolution at all. The
21 revival argument didn't need any more reviving, as it
22 were.

23 IAIN MACLEOD: That's true, I think the Americans could, on
24 their analysis, have said, "Look, there is a material
25 breach. It is very clear Iraq is misbehaving and we

1 will just take action", but they didn't do that and they
2 were then operating within the framework of 1441 and, to
3 the extent that that was the territory we were both in,
4 I think our views and their view were very close to the
5 meaning of 1441.

6 SIR LAWRENCE FREEDMAN: So you didn't feel that you were
7 operating within a different set of assumptions about
8 the role of international law on this particular issue?

9 IAIN MACLEOD: If you look behind it, as it were, yes, there
10 were different assumptions, different understandings,
11 but in terms of the application and interpretation of
12 this resolution, no, we were working on the same
13 framework.

14 SIR LAWRENCE FREEDMAN: What about France? Again, we have
15 the statements by Jeremy Greenstock and Jack Straw, the
16 French lost and they knew they had lost, was that your
17 feeling at the time?

18 IAIN MACLEOD: I think the French knew pretty clearly what
19 was going on. I think they were -- after all, they had,
20 I think, used -- relied on the revival doctrine
21 themselves at an earlier stage of the history of Iraq in
22 the Security Council, and all of the discussions we had
23 with them were premised around - only made sense -- in
24 the context of a revival argument.

25 SIR LAWRENCE FREEDMAN: I don't think -- it seems to me an

1 awful lot of people in this debate accept the revival
2 argument can be applied, although clearly there are some
3 academic lawyers who wouldn't accept that, but it is
4 still the question of whether the revival is complete
5 with 1441 or whether there is another step that's needed
6 and the French could take that view.

7 IAIN MACLEOD: They could. I don't know what -- I don't
8 honestly know what their final view is. I wouldn't
9 expect them to say that they accepted the UK or US view
10 now. I just don't think they would do that.

11 But I think, when I got the list of issues¹, first of
12 all, I did try thinking about this question, and I did
13 ask myself, if I had been a French diplomat going back
14 to Paris with this text, how confident would I have been
15 explaining it to my superiors and trying to persuade
16 them that it was all going to be okay, given the
17 background of the revival argument in New York, its use
18 in previous situations, the Office of Legal Counsel's
19 analysis, and then also the history of the negotiations
20 where they had specifically tried to get -- to nail down
21 this point and ask for the word "decision" or something
22 similar to be included, and were told, "No, you can't
23 have that. We will come back for a discussion but we
24 are not committing to a resolution", I came to the
25 conclusion that I wouldn't have felt terribly

¹ The witness subsequently clarified that he was referring to the list of issues sent to him by the Inquiry as those it would wish to cover in the hearing.

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1 comfortable going back to explain that as a success.

2 But, you know, I don't know.

3 SIR LAWRENCE FREEDMAN: You may well be right, but it is not
4 evidence, and one of the points that Lord Goldsmith made
5 was that he had asked the Americans for actual evidence
6 that the French had conceded this and was disappointed
7 that they were unable to provide it.

8 The question in my mind, I suppose, when I heard
9 that, was: would you get an awful lot of evidence of
10 that sort during the course of the negotiation? Is this
11 the sort of thing that would only be found by comparing
12 texts?

13 IAIN MACLEOD: I think it is difficult to see how you would
14 get that sort of definitive evidence. I mean, part of
15 the difficulty with 1441, indeed part of the difficulty
16 with the revival argument at all, is that it is almost,
17 because of where it is happening, it is not susceptible
18 of judicial determination, so questions as to what
19 evidence could you bring forward become interesting but
20 academic.

21 To me, I think -- I'm not in any way downplaying the
22 difficulties of the UK/US position and what we were
23 trying to maintain, but --

24 I do feel that there was an integrity to our position.

25 I think we made clear what we were about. Partly based

1 on 1205 and earlier precedents, but in the negotiations
2 itself we made clear what we were about. I think we
3 made -- I think 1441 is -- to those who know or knew the
4 background, 1205 and earlier versions and earlier
5 discussions in New York, 1441 is packed with evidence
6 for the revival argument and I think, given the
7 explanations being made at the time in the course of the
8 negotiations and subsequently, what we said to our
9 opposite number, at every level, the ministerial level
10 and below, I think our position was clear. I think in
11 that sense there is an integrity to the British and
12 American position on 1441, it stands up in that sense.

13 SIR LAWRENCE FREEDMAN: Sir Jeremy told us -- very much
14 agreeing with what you have just said -- that he thought
15 the position was legal, but he questioned the
16 legitimacy. You may want to comment on that. He also
17 said that diplomacy succeeded in finding ways to
18 reconcile in a text two positions that possibly were in
19 some ways irreconcilable and, in a sense, diplomacy got
20 too clever. Would you agree with that?

21 IAIN MACLEOD: Yes, I think so. The legality, the
22 legitimacy, is an interesting philosophical argument.
23 I think what would have happened if the inspectors had
24 found WMD at any time in that first few months,
25 I suspect that we would be doing different things this

1 afternoon, certainly if they had found anything like
2 what was expected, that we had expected to find.

3 Again, it is not evidence, but you -- skimming
4 through the telegrams and reports, it is interesting how
5 we quite frequently see people saying "We are not really
6 in favour of military action at the moment but, if the
7 inspectors find WMD, then everything changes". So what
8 would have happened then? Well, who knows?

9 SIR LAWRENCE FREEDMAN: That goes in a sense to the problem
10 of material breach, which is that Iraq was in material
11 breach in terms of compliance with the resolutions but
12 people had in their minds possibly something quite
13 different in terms of a trigger for war.

14 IAIN MACLEOD: Possibly, yes.

15 SIR LAWRENCE FREEDMAN: Thank you very much.

16 THE CHAIRMAN: Let's take a break for ten minutes and return
17 at 3.10 pm.

18 (3.00 pm)

19 (Short break)

20 (3.10 pm)

21 THE CHAIRMAN: Let's resume and I'll ask Baroness Prashar to
22 ask the questions.

23 BARONESS USHA PRASHAR: Thank you very much. I want to
24 ascertain your views on the interpretation of the
25 Security Council Resolutions. Sir Michael Wood in his

1 witness statement to the Inquiry said that he did not
2 think much weight should be given to the recollections
3 of informal discussions between Council members.

4 What is your view of the weight to be given to
5 informal discussions when interpreting Security Council
6 resolutions?

7 IAIN MACLEOD: I think that the key thing in interpreting
8 Security Council Resolutions is what the text says, and
9 that's where I would certainly start in interpreting
10 1441 or any other resolution. But I do think that
11 you are also entitled to look at -- to quote from
12 the Namibia opinion which is mentioned several times in
13 the discussions, the terms of the resolution, the
14 discussions leading up to it, the Charter provisions
15 invoked and, in general, all circumstances that might
16 assist in determining the legal consequences.

17 So I think you look at whatever will help you, but
18 I think you are taking a bit of a risk in relying solely
19 on what is said informally around the edges.

20 BARONESS USHA PRASHAR: He also told us in evidence that, in
21 his view, the preparatory work confirmed the view that
22 a second resolution was necessary and said that he could
23 cite some of the things said by British negotiators
24 which were inconsistent with what was said on record,
25 and Lord Goldsmith expressed surprise at this view.

1 Do you know what Sir Michael was referring to and
2 what is your interpretation of preparatory work?

3 IAIN MACLEOD: I don't know exactly what he is referring to,
4 but the preparatory work would normally be the documents
5 that are publicly available that show how the text
6 evolved and developed in the course of its negotiation.
7 That's what I would understand it to mean. It is more
8 commonly referred to in the context of treaties, but,
9 again, in this context, my starting point is the text of
10 the resolution, and then you get into the question of
11 why particular phrases were used in -- and in response
12 to what. That's where the question of consideration and
13 decision becomes relevant, but the main thing is the
14 text of the resolution.

15 BARONESS USHA PRASHAR: But what did you take from the
16 interpretation of the explanations of vote and the joint
17 statement that was made by the French and Russian and
18 Chinese?

19 IAIN MACLEOD: There was heavy emphasis on automaticity.
20 I took that to mean -- I personally took that to mean
21 what I think the Attorney also took it to mean in his
22 opinion, that the resolution did not authorise the use
23 of force immediately. There had to be a further stage
24 before that could happen and that stage was the
25 inspection process followed by discussion. That,

1 I think, was the main thing that was being said in the
2 explanations of vote.

3 Like Sir Jeremy, I think it is significant that
4 nobody -- perhaps one delegation; Mexico, I think --
5 said that this simply didn't authorise the use of force
6 at all. I wouldn't lean too heavily on that, but
7 I think it is probably significant in the context of the
8 overall discussions.

9 BARONESS USHA PRASHAR: Do you think that both sides had the
10 same interpretation of it? Was there ambiguity around
11 it?

12 IAIN MACLEOD: Yes, there is ambiguity around it without any
13 doubt. But I do come back to what I think I mentioned
14 earlier on as, I feel, the essential integrity of the
15 position the UK and the US took on the resolution. It
16 was set in a particular framework, it was drafted in
17 a particular way, that invoked that framework and
18 I think there was clarity around the negotiating process
19 as to what was going to be happening. Some of that in
20 public statements by both the US and the UK.

21 So I think that, overall, the argument, the line
22 taken by the UK and US stands up as an interpretation.

23 BARONESS USHA PRASHAR: Okay.

24 THE CHAIRMAN: Roderic?

25 SIR RODERIC LYNE: In your witness statement in paragraph 29

1 you say that:

2 "The question of whether, as a matter of law, there
3 had to be a second resolution before the use of force
4 could be authorised was not, I think, at the forefront
5 of minds in UKMIS during this period."

6 But you told us, when we were talking earlier, that
7 you were very clear that an objective of 1441 was to
8 avoid a second resolution. So avoiding a second
9 resolution had been in the forefront of your minds
10 during the negotiation of 1441. I'm trying to work out
11 how these two statements fit together.

12 IAIN MACLEOD: Simply that what I was meaning was that, in
13 the early part of 2003, the main task for UKMIS was to
14 try to deliver a second resolution -- that's what we
15 were focusing on -- and the question of what the effect
16 of the old resolution was was there, but it was
17 really -- for us, I think it was in the background.

18 Sir Jeremy was going back to London to talk to the
19 Attorney, the Attorney was clearly developing his view.
20 There were -- we were feeding into that process, but our
21 day job, if you like, was to try to produce a second
22 resolution.

23 SIR RODERIC LYNE: Why, when you had gone to such pains to
24 establish a position in which, in your view, a second
25 resolution was not needed, did the British Government

1 decide to seek a second resolution?

2 IAIN MACLEOD: I think probably the Prime Minister and the
3 Foreign Secretary will have answered that, but I think
4 it was simply, as I understand it, a reflection of the
5 political reality, the difficulty that they faced in
6 trying to persuade, first of all, the Security Council,
7 the international community, but then also domestic
8 opinion here about the wisdom or the propriety of
9 going -- of taking of the military action that was in
10 prospect. I think it was more a political issue than
11 a legal one.

12 SIR RODERIC LYNE: Because under your legal interpretation
13 as you have again explained earlier, reports were being
14 made to the Council by Blix and then the Council was
15 convening to consider them. So the second stage was
16 already in operation in January and February. So from
17 your legal interpretation, there wasn't a need for
18 anything more than that to authorise the use of force?

19 IAIN MACLEOD: No, but I think it would have made a huge
20 difference politically to have had further resolution
21 from the Security Council, declaring formally what the
22 UK and the US and others believed to be the case in
23 reality: namely, that Iraq had failed to take its final
24 opportunity and something should now be done about that.

25 SIR RODERIC LYNE: Yes, but politically -- and I think that

1 has been clearly established from earlier evidence. But
2 still, from the perspective of the robustness of our
3 position in international law, did we not undermine our
4 own position when we started to seek a second
5 resolution? Didn't we indicate by doing so that we
6 weren't confident that we had really clearly established
7 the authorisation that we thought we had established in
8 1441?

9 IAIN MACLEOD: I can see that argument. I think it would
10 have been probably worse if a resolution had been
11 brought forward by others stating that nothing should
12 happen, which we would then be forced into vetoing, if
13 that's what the government decided it ought to do, but
14 I think -- and I'm not disagreeing with the point you
15 are making, but I don't think it of itself took away
16 from the essential soundness of the legal argument.

17 SIR RODERIC LYNE: But you, in your witness statement, do
18 describe the efforts that we made to get a second
19 resolution as "increasingly desperate", which again
20 implies that our position was weakening as a result of
21 going into that exercise.

22 IAIN MACLEOD: Yes. Whether it is for me to comment on
23 that, I don't know. But I recall it being a very tense
24 time in New York, both looking at the situation in
25 New York, whether the UK and the US were going to be

1 able to persuade enough countries to come alongside and
2 stand with them in adopting a resolution in this, but
3 also looking back to London, what we could see was the
4 situation in which the politics were extremely
5 difficult, and the second resolution was clearly part of
6 the politics in London, the attempt to get a second
7 resolution was clearly part of the politics in London,
8 but I think all that's probably beyond my brief, but
9 certainly all very difficult.

10 SIR RODERIC LYNE: You told us earlier that your job in
11 New York was a policy role with a legal component and
12 you have spelt that out more fully again in your witness
13 statement. As I understand it, you were a key adviser
14 to Sir Jeremy Greenstock, not just on the narrow legal
15 aspects but, indeed, on the tactical question of
16 negotiating the resolution through the Security Council.

17 Would that be accurate?

18 IAIN MACLEOD: I think I would be flattered by that
19 description, but I'll accept it.

20 SIR RODERIC LYNE: Right. From your observation of the 1441
21 process, including the Mexican position you have just
22 referred to, the position taken by the French and the
23 Russians, the Chinese, the position known to be that of
24 the Germans who had just joined the Security Council,
25 were you not concerned when you got the instructions to

1 go for a second resolution, that the chances of actually
2 achieving this didn't look very good?

3 IAIN MACLEOD: Yes, I don't think they did look good, no.

4 It was going to be a job of work and we went through
5 different formulations with -- in the helpful context of
6 the legal advice from London. But we looked at several
7 different formulations -- I think that's a matter of
8 public record -- one that simply said "Iraq has failed
9 to take its final opportunity", another one that tried
10 to set up an ultimatum, another one -- perhaps the most
11 ambitious, which I don't know that it was ever publicly
12 ventilated, but we wondered whether it would be possible
13 to arrange almost a peaceful invasion almost of Iraq.
14 There would be -- people would go in and do the
15 searching, and the process would -- you wouldn't need
16 the use of hard military force.

17 All these issues were out there. Then there was
18 a question of trying to agree with Dr Blix a list of
19 criteria which would demonstrate that Iraq had taken its
20 final opportunity. So the UK worked very, very hard to
21 try to avoid, you know, the conflict that eventually
22 came.

23 SIR RODERIC LYNE: But in this situation you were instructed
24 to go for a second resolution that, from your
25 perspective, is not legally necessary and in an

1 environment where you can see that achieving it, given
2 the strong of forces ranged against you, is going to be
3 very difficult.

4 Wouldn't it have been wiser not to try for a second
5 resolution than to attempt one and fail? Did we end up
6 with the worst of all possible worlds as a result?

7 IAIN MACLEOD: Again, I think that's really a much bigger
8 question than the UK Mission in New York could answer. I think
it
9 was all about politics in London and how -- and what the
10 government felt it needed.

11 I don't think we were suggesting that going for
12 a second resolution was a good idea, except perhaps, if
13 it could be achieved, it would have shored up the
14 position. It would have strengthened the arguments in
15 favour of further action by the UK and the US, but it
16 was clearly going to be very difficult and I don't think
17 it was our idea that we should be pursuing it, but the
18 politics meant that it had to be done, I think.

19 SIR RODERIC LYNE: As a key member of the team in New York,
20 when by early March it was clear that we had failed to
21 get nine positive votes for a resolution, what were the
22 conclusions that you drew at that time? What was your
23 feeling about the situation that you then found yourself
24 in, you and your team?

25 IAIN MACLEOD: Personally, I recall it being pretty bleak,

1 because you knew that the situation in London was also
2 very difficult and you were left wondering at the
3 beginning of that week -- probably 16 March -- "What's
4 the end of the week going to look like for the UK and,
5 in particular, the UK Mission in New York? Where are we
6 going to be?" So it was -- it is one of the memories of
7 the whole negotiation that it was hard to look forward
8 and see anything because we just didn't know what was
9 going to happen.

10 SIR RODERIC LYNE: Thank you.

11 You said you had instructions to go for a second
12 resolution. Was it clear where they had come from?

13 IAIN MACLEOD: Yes. No, they had come from the normal way
14 a telegram instruction and directions from, I guess, the
15 Secretary of State, but in the normal way. They were
16 supplemented, as I said, by a very helpful letter which
17 came to me from legal advisers setting out what the
18 parameters, the framework, the criteria that we should
19 be applying in trying to draft the resolution, but
20 essentially the two things went together.

21 SIR RODERIC LYNE: At this point, as again you emphasise in
22 your statement to us, unlike during the negotiation of
23 1441, there is a direct communication from the legal
24 advisers in London to you. So the process whereby the
25 second resolution was attempted was different.

1 IAIN MACLEOD: Yes. I think it was. It was clearer and it
2 was better in that sense.

3 SIR RODERIC LYNE: As you have also pointed out in your
4 statement, Sir Jeremy Greenstock met with the Attorney
5 General during this period in January 2003, so the
6 Attorney General was also now plugged into this process.
7 What did you understand to be Lord Goldsmith's concerns
8 about the second resolution?

9 IAIN MACLEOD: I don't recall particular concerns about the
10 second resolution itself. The letter that I mentioned
11 sets out the kind of things we should be looking for in
12 drafting. Is that what you mean?

13 SIR RODERIC LYNE: Was he not concerned that we should get
14 a second resolution? Was he pressing for that?

15 IAIN MACLEOD: I see. I don't recall that Lord Goldsmith's
16 view on that figured large in our thinking. I took it
17 more to be that, for political reasons, both we and the
18 US had decided it would be useful to go for the second
19 resolution. It was more that than that there was
20 something coming from the Attorney's office. Although,
21 obviously, if the Attorney's view was that we needed
22 a second resolution before any force could be used, then
23 the two things had come together and that was what was
24 going to have to happen.

25 I think that's really what I meant by saying that

1 the thing that was at the front of our minds was getting
2 the second resolution on -- of a kind which would
3 satisfy what the Attorney had set out as his criteria.
4 That's what the job was.

5 In the background, there were these other
6 discussions which were trying to make sure that the
7 Attorney was fully briefed as he came to his final view.

8 SIR RODERIC LYNE: Through these rather more direct contacts
9 with the Attorney and also with the legal advisers, you
10 might have been aware of the sort of advice that the
11 Attorney was giving to the Prime Minister in January, in
12 terms of the importance, in his view, at that stage, of
13 getting a second resolution?

14 IAIN MACLEOD: I wasn't really aware of that. No. I saw
15 the documents, they were declassified, I think, today or
16 last week.

17 SIR RODERIC LYNE: But at the time, you weren't aware of
18 that?

19 IAIN MACLEOD: Not as clearly. Whether -- you know, we knew
20 of the general picture through the discussions
21 Jeremy Greenstock was having, quite possibly, and maybe
22 I picked up from that that there was this concern in
23 London, but the kind of text that I have seen in the
24 last couple of days is new to me.

25 SIR RODERIC LYNE: Did you know that he was going to

1 Washington in early February to meet American lawyers to
2 discuss this issue?

3 IAIN MACLEOD: Yes, I mean, I don't know whether I was the
4 person who suggested that, but I certainly felt very
5 strongly that that ought to happen for the reason
6 I mentioned right at the beginning of our session; that,
7 if we were negotiating a resolution side by side with
8 the Americans and we were deciding that we were in
9 danger of coming out with the opposite meaning from the
10 one that they and we thought we had had, we ought at
11 least to go and talk to them and find out why they
12 thought what they thought and at least have a discussion
13 with them before coming to a final view.

14 So I knew that discussion was happening. As I say,
15 I certainly suggested it, at least to Sir Jeremy, and
16 perhaps, as I mentioned, to Cathy Adams in a call, but
17 I'm sure others suggested the same thing.

18 THE CHAIRMAN: Slower.

19 IAIN MACLEOD: Sorry.

20 THE CHAIRMAN: Thank you.

21 SIR RODERIC LYNE: Did you hear about the upshot of those
22 discussions in Washington?

23 IAIN MACLEOD: I don't recall that I did directly. I mean
24 this is one of the things that I may have seen at the
25 time. I have seen documents now which record the

1 discussion. Perhaps they were copied to UKMIS,
2 I honestly can't remember. I certainly knew that the
3 Attorney's thinking was developing and that I think the
4 American -- the discussions with the Americans had moved
5 him closer to the UKMIS understanding of the resolution.

6 SIR RODERIC LYNE: What was your understanding of the
7 position of Sir Michael Wood and the FCO legal advisers
8 at this time in February/early March 2003?

9 IAIN MACLEOD: Well, it had become clear to me, at least
10 from about November, from the document that I mentioned
11 earlier, that their view was different and that they
12 thought that 1441 did not of itself authorise use of
13 force without a further resolution.

14 I do not recall having discussions with them
15 directly about it, but I think I just knew that was what
16 was happening in London. That was part of the picture.
17 The depth of the concern, the extent -- to the extent
18 that it caused the resignation of one of our most
19 distinguished colleagues, I wasn't aware of until it had
20 happened.

21 SIR RODERIC LYNE: You didn't know of Elizabeth Wilmshurst's
22 particularly strong concerns until her resignation
23 actually happened?

24 IAIN MACLEOD: No.

25 SIR RODERIC LYNE: But you were aware that there was still

1 a significant gap -- the gap that we earlier discussed
2 between your position and that of your colleagues in
3 London, Michael Wood and Elizabeth Wilmshurst, was still
4 there?

5 IAIN MACLEOD: Yes, it was a significant gap, but I think
6 I would just say that it was a question of
7 interpretation. It was -- it is a significant gap
8 because, on one view, you used force and, on another
9 view, you didn't, but in purely legal terms it was
10 a question of what the meaning was of a particular text.
11 It wasn't that one group were creating a new doctrine or
12 saying that because Iraq, you know, may have nuclear
13 weapons in 20 years, therefore we need to do something.
14 It wasn't a gap in that sense. The discussion was all
15 happening about the meaning of the text. In that sense
16 it was quite a normal legal discussion. Exactly the
17 kind of thing that you would, on a daily or perhaps --
18 certainly weekly, but on a daily basis send to the
19 Attorney in Whitehall.

20 SIR RODERIC LYNE: If we had achieved a second resolution,
21 there would have been no problem between you anyway
22 because that gap would have been closed by the
23 appearance of a second resolution?

24 IAIN MACLEOD: Yes, whatever view the Attorney took, I guess
25 the second resolution -- assuming we met the criteria he

1 had suggested -- that issue would have fallen away.

2 SIR RODERIC LYNE: Now, what were you advising
3 Sir Jeremy Greenstock about the situation that would
4 arise if we didn't succeed in getting the second
5 resolution and whether or not, at that stage, we would
6 be in a position to argue that military force was still
7 authorised?

8 IAIN MACLEOD: By that stage, clearly the issue was one for
9 the Attorney and, you know, that who was going to answer
10 that question, and in a sense it wasn't -- it wasn't
11 really a question for UKMIS. We put our understanding
12 of the resolution as strongly as we could, but we
13 recognised that, if the Attorney took a different view,
14 that was going to be the Attorney's view, it was going
15 to be the government's legal view.

16 SIR RODERIC LYNE: If I can just track back to the end of
17 2002, you referred to the fact that, after 1441, there
18 was communication between yourselves and the legal
19 advisers about a letter that was ultimately issued to
20 the Attorney General from Sir Michael Wood or to his
21 office.

22 In that letter of 9 December 2002, Sir Michael said:

23 "UKMIS New York are of the view that this argument
24 is consistent with the negotiating history and requires
25 serious consideration."

1 Now, "this argument" was referring to the argument
2 for revival. Was that advice that had directly come
3 from your input to the draft?

4 IAIN MACLEOD: Yes, I think so. I think the draft -- the
5 letter of 9 December is, I think, what -- had its origin
6 as the draft I saw in late November. I think that's the
7 case. We sent the comments from UKMIS, from the mission
8 as a whole, setting out our understanding of what had
9 happened and what the text meant, highlighting a couple
10 of points that we thought were missing in the earlier
11 draft, and I think this was the outcome, which
12 I thought, if I may say, was a perfectly fair, balanced
13 description of the arguments.

14 The only puzzle I would have about it is that people
15 felt they didn't need the Attorney's view. It seemed to
16 me that you did need the Attorney's view, even at that
17 stage, in order to know what the next thing was going to
18 be. In other words, how you deal with the second
19 resolution. There was a curiously relaxed feel to the
20 process at this stage, I think.

21 SIR RODERIC LYNE: We have asked other witnesses about that
22 but, as far as this quotation is concerned, and that
23 letter, it was a fair reflection of your view?

24 IAIN MACLEOD: Yes, I think it was a good letter.

25 SIR RODERIC LYNE: Okay.

1 THE CHAIRMAN: Thank you. Just one last set of questions.

2 Usha?

3 BARONESS USHA PRASHAR: Thank you. Can you just look at
4 your role in preparing the arguments for presentation to
5 Cabinet and Parliament? You have described it in your
6 statement at paragraphs 30 and 31, but I think you were
7 volunteered by the then Foreign Secretary to come over
8 for the weekend and join the team preparing the
9 arguments to present the case as strongly and
10 unambiguously as possible.

11 Now, who else was at that meeting? What was your
12 role and what did you understand to be the objectives of
13 what you were supposed to do?

14 IAIN MACLEOD: There were present at the meeting -- it was
15 on the Sunday, 16 March, as I recall. The
16 Attorney General was there. I think the
17 Solicitor General was also there, David Brummell, who
18 was the legal secretary to the law officers,
19 Cathy Adams, who was the lawyer who handled
20 international issues at the Attorney's office, and then
21 Michael Wood, John Grainger, Professor Greenwood and
22 Patrick Davies from the Foreign Office. That's my
23 recollection of who was there.

24 The purpose of the meeting was to prepare for the
25 statement and the Parliamentary processes the following

1 day. So we -- I think we helped the Attorney prepare
2 a short statement which would be given as a written
3 answer to a PQ. There is a longer, slightly more
4 fleshed-out explanation of the legal position, which
5 I think was also prepared that day.

6 There are a couple of other documents that I think
7 date from that day, questions and answers to press
8 lines, if you like -- perhaps not quite press lines, but
9 questions and answers for ministers and others on the
10 obvious issues that would be raised.

11 I think Patrick Davies -- and here I'm really going
12 by the record, it is not my own recollection -- I think
13 he helped prepare a note of the key developments in the
14 1441 negotiating process and there may have been another
15 couple of documents.

16 But it was essentially a collection of documents to
17 help the Attorney and the ministers with a difficult
18 explanation in Parliament. Technically difficult rather
19 than politically difficult.

20 BARONESS USHA PRASHAR: It was Parliament, the Foreign

21 Select Committee and was it for the Cabinet as well?

22 IAIN MACLEOD: I honestly don't know. I saw somewhere else
23 that -- I think you questioned Michael about this as
24 a way of preparing for the Cabinet. I don't recall that
25 being our focus. I think our focus was more Parliament

1 in the following week and the processes that go around
2 that, because we knew that the key issue for the
3 following week was going to be Parliament, and -- in
4 London at least, and we were helping prepare the
5 documentation for that.

6 BARONESS USHA PRASHAR: I mean Sir Michael did say to us
7 that the team worked in an advocacy mode as opposed to
8 an advisory or decision-making mode. Would you agree
9 with that description?

10 IAIN MACLEOD: Yes, I think so, yes. The decision had
11 already been made, in the sense that we knew what the
12 Attorney's view was. The question was how to help
13 present it in a way that would be easy to present, easy
14 to understand, because his own -- the full advice of
15 7 March is a fairly complex, dense legal document and
16 you needed something else which brought out key points
17 which could be used in Parliament and in other places.

18 BARONESS USHA PRASHAR: In your statement you say that there
19 was nothing odd about this because, although it was the
20 first time this had happened while you had been in
21 New York, it was something you did quite often when you
22 were in Brussels.

23 IAIN MACLEOD: What I meant by that was there was -- I saw it
24 nothing particularly odd in coming back to London to
25 help ministers prepare a briefing for Parliament on

1 difficult issues, and certainly -- although this was the
2 first time it happened and the only time it happened to
3 me from New York. 1441 was certainly a big deal. But
4 from Brussels, it is obviously a lot easier to come
5 backwards and forwards and that used to happen fairly
6 frequently.

7 BARONESS USHA PRASHAR: Do you think this was because there
8 was concern about the strength of the arguments and the
9 difficulty of actually conveying them? Was that
10 a factor why you were asked to help?

11 IAIN MACLEOD: Possibly. I think it was a feeling -- yes,
12 probably. I mean, clearly there wasn't going to be much
13 time, I think, to get everything prepared for the
14 statement on the Monday. There was quite a lot of
15 pressure on everyone. So it had to be done quickly and
16 we had to make sure we had covered all the ground.
17 There wasn't going to be time, perhaps, to send drafts
18 around. Everybody who needed to make an input had to be
19 there, but my guess is that's the thinking.

20 BARONESS USHA PRASHAR: But it does appear from what you
21 said earlier that Lord Goldsmith was not involved in the
22 drafting of the 1441 and you were called over for the
23 weekend to help prepare the statement. Did that seem
24 odd to you?

25 IAIN MACLEOD: Perhaps if there had been a greater

1 involvement of the Attorney at an earlier stage, things would
have been

2 clearer at that stage, although I imagine that pressures
3 being what they were, the situation being what it was,
4 there would probably always be a time when you simply
5 had to get everybody there to prepare the briefing, to
6 get things sorted out. I think that's all that's
7 happening in that situation.

8 BARONESS USHA PRASHAR: Finally, were you comfortable in
9 playing that role?

10 IAIN MACLEOD: Yes, I was perfectly happy to come back and
11 assist, as that's -- I think it was very much what
12 a civil servant would expect to have to do, to help his
13 minister or her minister prepare for Parliament, give
14 the briefing from a particular angle of your expertise
15 at the time, and I was there helping to explain -- if it
16 was necessary -- what had happened in New York and how
17 the New York process worked.

18 BARONESS USHA PRASHAR: Thank you.

19 THE CHAIRMAN: I think we have come pretty much to the end.

20 One or two questions. Just before I do, Roderic?

21 SIR RODERIC LYNE: As I indicated earlier, there is just one
22 question about the strength of the revival argument that
23 I would like to ask, looking at this really at the time
24 that the second resolution negotiation had broken down.

25 Resolution 678 focused on restoring the sovereignty

1 of Kuwait. Resolution 687 imposed conditions on Iraq
2 after the ceasefire including disarmament conditions.
3 12 or 13 years later, the revival argument, originating
4 back to those two resolutions, was looking at a very
5 different context, not only the passage of quite a long
6 period of time, but the situation in which the
7 proposition, as it turned out, was a much weightier
8 decision to invade Iraq, take control of the country,
9 change the regime.

10 Were you confident that this argument, based, as
11 I say, on very different circumstances, same country,
12 different problem -- was sufficiently robust really to
13 justify the weightier -- the much greater weight it had
14 to bear in 2003?

15 IAIN MACLEOD: The weight being the full-scale military
16 invasion?

17 SIR RODERIC LYNE: Invasion. It was not the situation that
18 678 let alone 687 was addressing.

19 IAIN MACLEOD: That's obviously a difficult question. It is
20 not one I think that we have had to address specifically
21 through this, although every time advice is given there
22 is a paragraph at the end saying "the use of force has
23 to be proportionate to the objectives".

24 I suppose the assessment would be that, if this was
25 the only way of achieving these objectives, then the

1 Security Council's authorisation had been to use all
2 necessary means to achieve that, and although you say --
3 and I don't disagree with you -- that 12/13 years on
4 things are different, that is true up to a point, but
5 fundamentally, the problem of Iraq's non-compliance in
6 relation to weapons of mass destruction remained very
7 much there.

8 A document that isn't frequently mentioned -- but really
should probably have

10 greater prominence than it has had, is the Clusters
11 Document where Dr Blix sets out, or the UN set out, the
12 gaps in what Iraq -- they knew Iraq had, and that was
13 the UN's own estimate of it. It is easily the most
14 sobering document produced in this context, but it sets
15 out fairly clearly the extent to which there was still
16 a problem, the same problem.

17 SIR RODERIC LYNE: But it wasn't sufficient to convince
18 other members of the Security Council to vote for
19 a resolution calling for action?

20 IAIN MACLEOD: No.

21 SIR RODERIC LYNE: Okay. Thank you.

22 THE CHAIRMAN: Just two points arising out of your
23 statement, if may. The first one is in paragraph 33.
24 You pose the question whether it is right to place on
25 the Attorney General the onus of explaining the legal

1 advice with the implication that it left him actually,
2 as the arbiter of whether war would be justifiable or
3 not, which was itself a major policy question, although
4 with a legal component to it.

5 Do you want to say a bit more about that, because it
6 is quite an important point for the future? Is it
7 threatening to the professional independence, if you
8 like, of the legal advice, if it is packaged up together
9 in public with what, by implication, is the policy
10 decision of the government?

11 IAIN MACLEOD: It is a difficult question and I wasn't going
12 to go any further than raising it really, but I think it
13 is fundamentally for ministers to explain policy. The
14 legal considerations are an essential element of policy.
15 They may sometimes be the essential element of the
16 policy, but they are almost never the only element of
17 the policy.

18 I think making the Attorney
19 stand up and explain the issue, give the legal advice in
20 public, did give the impression that -- the
21 respectability of the legal case was pretty much the
22 sole issue. I'm not sure it was, but perhaps -- just
23 the reason that Sir Roderic mentioned a few moments
24 ago -- there were other considerations that needed to
25 come in and, if you place the Attorney front and centre,

1 they get lost.

2 I think there is also the question that legal
3 advice, like policy advice, is very rarely
4 straightforward, and ministers have to get up and give
5 what is often a slightly one-sided view on policy
6 issues, as we all know. But to place a lawyer up front
7 and then, with the risk that the legal advice gets
8 unpicked and all the difficulties are hauled out, is,
9 I think, quite risky for the government's legal
10 position.

11 There is also the question that wouldn't have
12 happened in this case, but if there was litigation on an
13 issue, then forcing the Attorney to get up and explain
14 in detail what the legal pros and cons, what the
15 weaknesses and strengths are is giving away a lot of
16 government's case.

17 As a matter of principle, I think it is a risky way
18 to go and I think the old convention about the law
19 officers' advice is wise in that context. That's not to
20 say that, in this instance, it might have been necessary
21 simply because the exceptional nature of the situation.

22 THE CHAIRMAN: Thank you. The other point I wanted to raise
23 was, in fact, in the following paragraph of your
24 statement, paragraph 34. You say:

25 "Whatever conclusions might be reached about how the

1 bureaucracy operated in the Iraq case, the process for
2 instructing UKMIS on legal issues seems in theory sound;
3 any differences should be resolved by those providing
4 the instructions."

5 Could you just say a little bit more about who those
6 providing the instructions are? This goes back to your
7 earlier answers about London legal and London policy.

8 IAIN MACLEOD: I think it is incumbent on those providing
9 the instructions, both lawyers and policy-makers, to
10 ensure that the instructions that are sent take account
11 of all relevant information, and that would include the
12 legal issues.

13 I think it is a bit like submissions to
14 a minister. You couldn't have a submission going up to
15 the Northern Ireland Secretary on a policy issue
16 followed closely by a long submission from the lawyers
17 saying "Whatever is in the policy submission, you also
18 now need to read this and try to balance the two things
19 up". I think it is a matter of getting coherence around
20 the two things together.

21 THE CHAIRMAN: Particularly when the Northern Ireland
22 Secretary concerned might have been formerly an
23 Attorney General.

24 IAIN MACLEOD: That would be especially difficult.

25 THE CHAIRMAN: Indeed. Thank you very much for that and for

1 a very useful session. Are there any final reflections
2 beyond those in your statement?

3 IAIN MACLEOD: I suppose only the wholly exceptional
4 character of the 1441 experience. The
5 revival argument arose in the Iraq context. It is
6 doubtful whether it will arise very easily in any other
7 context and, although there are a lot of lessons to
8 learn from it, I think the situation was exceptional in
9 so many different ways, including the way it was
10 negotiated.

11 THE CHAIRMAN: Well, our thanks to our witness, we will
12 break for ten minutes and resume at 4 o'clock with
13 Cathy Adams.

14 (3.50 pm)

15 (Short break)

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