

## SECTION 5

# ADVICE ON THE LEGAL BASIS FOR MILITARY ACTION, NOVEMBER 2002 TO MARCH 2003

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## Introduction and key findings

### 1. This section describes:

- how advice was sought from Lord Goldsmith, the Attorney General, regarding the interpretation of UN Security Council resolution 1441 (2002) and the manner in which that advice was provided;
- the events and other influences that affected the timing of the advice;
- the written advice provided by Lord Goldsmith in January 2003;
- Lord Goldsmith's discussions with Sir Jeremy Greenstock, UK Permanent Representative to the UN in New York, in January 2003, his exchanges with Mr Jack Straw, the Foreign Secretary, in early February, and his meeting with US lawyers in February 2003;
- Lord Goldsmith's written advice of 7 March 2003;
- the legal basis on which the UK ultimately decided to participate in military action against Iraq; and
- the presentation of the Government's legal position to Cabinet and to Parliament on 17 March 2003.

### 2. Finally, this section sets out the Inquiry's conclusions regarding these events and the legal basis on which the UK decided to participate in military action against Iraq.

#### Key findings

- On 9 December, formal "instructions" to provide advice were sent to Lord Goldsmith. They were sent by the FCO on behalf of the FCO and the MOD as well as No.10. The instructions made clear that Lord Goldsmith should not provide an immediate response.
- Until 27 February, No.10 could not have been sure that Lord Goldsmith would advise that there was a basis on which military action against Iraq could be taken in the absence of a further decision of the Security Council.
- Lord Goldsmith's formal advice of 7 March set out alternative interpretations of the legal effect of resolution 1441. While Lord Goldsmith remained "of the opinion that the safest legal course would be to secure a second resolution", he concluded (paragraph 28) that "a reasonable case can be made that resolution 1441 was capable of reviving the authorisation in resolution 678 without a further resolution".
- Lord Goldsmith wrote that a reasonable case did not mean that if the matter ever came to court, he would be confident that the court would agree with this view. He judged a court might well conclude that OPs 4 and 12 required a further Security Council decision in order to revive the authorisation in resolution 678.
- At a meeting on 11 March, there was concern that the advice did not offer a clear indication that military action would be lawful. Lord Goldsmith was asked, after the meeting, by Admiral Boyce on behalf of the Armed Forces, and by the Treasury Solicitor, Ms Juliet Wheldon, in respect of the Civil Service, to give a clear-cut answer on whether military action would be lawful rather than unlawful.

- Lord Goldsmith concluded on 13 March that, on balance, the “better view” was that the conditions for the operation of the revival argument were met in this case, meaning that there was a lawful basis for the use of force without a further resolution beyond resolution 1441.
- Mr Brummell wrote to Mr Rycroft on 14 March:

“It is an essential part of the legal basis for military action without a further resolution of the Security Council that there is strong evidence that Iraq has failed to comply with and co-operate fully in the implementation of resolution 1441 and has thus failed to take the final opportunity offered by the Security Council in that resolution. The Attorney General understands that it is unequivocally the Prime Minister’s view that Iraq has committed further material breaches as specified in [operative] paragraph 4 of resolution 1441, but as this is a judgment for the Prime Minister, the Attorney would be grateful for confirmation that this is the case.”
- Mr Rycroft replied to Mr Brummell on 15 March:

“This is to confirm that it is indeed the Prime Minister’s unequivocal view that Iraq is in further material breach of its obligations, as in OP4 [operative paragraph 4] of UNSCR 1441, because of ‘false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure to comply with, and co-operate fully in the interpretation of, this resolution’.”
- Senior Ministers should have considered the question posed in Mr Brummell’s letter of 14 March, either in the Defence and Overseas Policy Committee or a “War Cabinet”, on the basis of formal advice. Such a Committee should then have reported its conclusions to Cabinet before its Members were asked to endorse the Government’s policy.
- Cabinet was provided with the text of Lord Goldsmith’s Written Answer to Baroness Ramsey setting out the legal basis for military action.
- That document represented a statement of the Government’s legal position – it did not explain the legal basis of the conclusion that Iraq had failed to take “the final opportunity” to comply with its disarmament obligations offered by resolution 1441.
- Cabinet was not provided with written advice which set out, as the advice of 7 March had done, the conflicting arguments regarding the legal effect of resolution 1441 and whether, in particular, it authorised military action without a further resolution of the Security Council.
- The advice should have been provided to Ministers and senior officials whose responsibilities were directly engaged and should have been made available to Cabinet.

## UNSCR 1441

3. On 8 November the United Nations Security Council unanimously adopted resolution 1441 (2002).

4. Section 3.5 includes:

- a description of the negotiation of the resolution;

- details of the legal advice offered by FCO Legal Advisers and by Lord Goldsmith during the course of those negotiations; and
- the provisions of the resolution and the statements made by Members of the Security Council on adoption.

## Discussion, debate and advice, November to December 2002

### Lord Goldsmith's conversations with Mr Powell and Mr Straw, November 2002

**5.** After resolution 1441 was adopted, Lord Goldsmith warned both No.10 and Mr Straw that he was “not optimistic” about the legal position for military action in response to an Iraqi breach without a second Security Council resolution. He offered to provide immediate advice.

**6.** Mr Jonathan Powell, Mr Blair's Chief of Staff, assured Lord Goldsmith that his views were known in No.10. The issue would be for consideration in the longer term in the event of a report to the Security Council of a serious breach. He suggested a meeting “some time before Christmas”.

**7.** Lord Goldsmith telephoned Mr Powell on Monday, 11 November and conveyed his congratulations to No.10 for having secured such a tough resolution.<sup>1</sup> Lord Goldsmith “mentioned the possibility of Iraq finding itself in breach of resolution 1441 at some future stage but with no second Security Council resolution”; a “matter to which he had said he would give further consideration” following his meeting with Mr Blair on 22 October.

**8.** Lord Goldsmith also mentioned the “Chinese whispers” that had “come to his attention ... which suggested that he took an optimistic view of the legal position that would obtain if such a situation arose”. The “true position was that he was not at all optimistic”.

**9.** Lord Goldsmith suggested that “against this background, it was desirable for him to provide advice on this issue now”.

**10.** Mr Powell noted what Lord Goldsmith said, “but was at pains” to assure him that “No.10 were under no illusion as to the Attorney's views” on that point. Mr Powell thought that as “it was most unlikely that Iraq would not in the first instance accept resolution 1441, this was an issue for consideration in the longer term, in the event that at some stage in the future we are faced with a breach by Iraq of resolution 1441 and the matter is referred to the Security Council at that time”.

**11.** Mr Powell proposed a meeting some time before Christmas to discuss the issue.

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<sup>1</sup> [Minute Brummell, 11 November 2002, 'Iraq: Note of telephone conversation between the Attorney General and Jonathan Powell – Monday, 11 November 2002'.](#)

**12.** Lord Goldsmith told Mr Powell that, in the meantime, he would obtain and consider the statements made by members of the Security Council when resolution 1441 was adopted.

**13.** Asked whether he recollected Lord Goldsmith wishing to provide written advice and being discouraged from doing so, Mr Powell told the Inquiry:

“No, he gave written advice – I don’t know if you would call it written advice, he expressed his opinions ...”

...

“On a number of occasions before 1441 and after 1441, he set out his views in writing on it, yes.”<sup>2</sup>

**14.** Lord Goldsmith told Mr Straw that the key question would be whether Iraq’s non-compliance amounted to a material breach and who was to make that determination.

**15.** Lord Goldsmith’s initial view was that, notwithstanding the deliberate ambiguity in the language of resolution 1441, the question of whether or not there was a serious breach was for the Security Council alone to answer.

**16.** Lord Goldsmith suggested that it would be desirable for him to provide advice on the position if, at some point in the future, Iraq “found itself” in material breach of resolution 1441 but the Security Council had not adopted a further resolution.

**17.** Mr Straw agreed that formal “instructions” should be prepared asking for Lord Goldsmith’s advice.

**18.** Mr Straw telephoned Lord Goldsmith on 12 November, suggesting that resolution 1441 “made life easier” for the Government.<sup>3</sup>

**19.** Lord Goldsmith agreed that it was an excellent achievement but added that he would “need to study the resolution, together with the report of the debate and the statements made”.

**20.** In relation to “the possibility of Iraq finding itself in breach of resolution 1441 at some future stage” but without a second resolution, Lord Goldsmith reported that he had told Mr Powell that he was “pessimistic as to whether there would be a sound legal basis ... for the use of force”. Mr Powell had suggested a meeting before Christmas to discuss the issues. Lord Goldsmith “indicated” to Mr Straw that “he would propose to give a more definitive view ... at that stage”.

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<sup>2</sup> Public hearing, 18 January 2010, pages 103-104.

<sup>3</sup> [Minute Brummell, 12 November 2002, ‘Iraq: Note of telephone conversation between the Foreign Secretary and the Attorney General’.](#)

**21.** Mr Straw shared Mr Powell's view that it was unlikely that Iraq would refuse to accept resolution 1441. He suggested two particular issues warranted further consideration:

- First, both France and Russia had insisted that, in the event of an Iraqi breach, the matter should be referred back to the Security Council for further consideration before a decision on military action. The "UK's current understanding was that it was unlikely that, if it came to a vote, there would be any veto by France ... If there were to be any veto ... this was likely to be only by Russia."
- Secondly, Mr Straw would be "interested" in Lord Goldsmith's views on "the effect of a resolution being adopted by the House of Commons ... following the contemplated debate on Iraq". Mr Straw identified two options: a resolution endorsing 1441 and one including "an acknowledgement that there would inevitably be military action if peaceful resolution of the issue were not possible". His preference was for the former.

**22.** Lord Goldsmith's initial view was that, leaving aside the political advantages, a resolution of the House of Commons:

"... would not have any bearing on the position in international law as regards the lawfulness of using force against Iraq. It might be that a case could be constructed seeking to justify such action, if a number of other Parliaments in ... countries who are members of the Security Council were also to adopt such a resolution. But he thought that ... would be a rather subtle and speculative argument."

**23.** Mr Straw thought that military action was some way further down the track but, "if Iraq were to be found in breach" of resolution 1441, it would be "essential ... we act pretty swiftly to take military action". One of the reasons "was that there might well be a need for less military force if action was swift".

**24.** Lord Goldsmith "commented that, from the point of view of legality, the key question would be whether Iraq's non-compliance with resolution 1441 amounted to a material breach and who was to make this determination".

**25.** Mr Straw "pointed out that it was clear to him that the US – despite its bellicose rhetoric – would not wish to go to war for nothing".

**26.** Mr Straw "mentioned that, reading resolution 1441 again as a layman, it was pretty clear that the Security Council were basically telling Iraq – '*Comply or else*'." In response to Lord Goldsmith's observation that "the question was who was to decide the 'or else'", Mr Straw pointed out that resolution 1441 could have:

"... said in terms that it was for the Security Council to decide whether there was a material breach and what action would then ensue. However ... [it] did not ... France and Russia had accepted the US/UK argument that this should be left open and

that, while it was preferable, it was not essential for the Security Council to adopt a second resolution.”

**27.** Lord Goldsmith told Mr Straw it “seemed implicit” in resolution 1441 that, in the event of non-compliance, “it would be for the Security Council to decide whether Iraq” was in “material breach”.

**28.** Mr Straw suggested that “the reality was that members of the Security Council had had to agree and ‘coalesce’ around a particular form of words ... to the effect that, if there were to be a breach, it would be for the Security Council to meet to discuss and consider what should be done”. That “allowed for ‘a range of possibilities’, including:

- “the possibility that there would have to be a second resolution; and
- “the possibility that there might be a general consensus or desire [amongst the five Permanent Members of the Security Council] for military action, but a preference (in particular by Russia) that there should be no second resolution ...”

**29.** Mr Straw again suggested that:

“... it was necessary to look at the negotiating background. For example ... [President] Jacques Chirac had originally insisted on there being a ‘lock’ against the use of force unless this had been authorised by the Security Council by a second resolution. But this ... did not appear in the resolution ... [W]hat France and Russia were virtually saying was that they understood that there might well be a breach, but while they would in fact support the need for military action, they would not be able to support a resolution in terms authorising the use of force.”

**30.** Lord Goldsmith responded that:

“... the position remained that only the Security Council could decide on whether there had been a material breach (and whether the breach was such as to undermine the conditions underpinning the cease-fire) and/or whether all necessary means were authorised. The question of whether there was a serious breach or not was for the Security Council alone. It was not possible to say that the unreasonable exercise of the veto by a particular member of the Security Council would be ineffectual ...”

**31.** Mr Straw “said that there would be a danger in going for a second resolution” because, “if it were not obtained, then we would be in a worse position”. He “wondered if there was any alternative option” between a general discussion in the Security Council and the adoption of a resolution determining a material breach.

**32.** Lord Goldsmith said that it “could be possible for a valid determination to be made by means of a Presidential Statement”.

**33.** Mr Straw and Lord Goldsmith agreed that the “different options should be explored”:

“Mr Straw ... would arrange for all the details of the negotiating history ... to be sent to the Attorney General, so that the Attorney could consider further the legal position in the event that Iraq were (as expected) sooner or later to fail to comply with resolution 1441 and there were to be no second resolution.”

**34.** On timing, Mr Straw “thought the crunch point” would come soon after 8 December, the deadline for Iraq to make its declaration on its weapons of mass destruction (WMD) programmes. There was a “high likelihood/probability that Iraq would produce only a ‘partial declaration’, with the likelihood that soon after ... a report of Iraq’s inadequate/incomplete/inaccurate declaration would be made to the Security Council (pursuant to OP [operative paragraph] 4)”.

**35.** Asked about the conversations with Mr Powell and Mr Straw on 11 and 12 November 2002, Lord Goldsmith told the Inquiry:

“There is ... I see this quite a lot in government ... also the problem that sometimes the qualifications to what you have said don’t seem to be heard as clearly as you intended them to be. I have heard the expression about the ‘yes, but’ and the ‘but’ is forgotten, in another context ... [S]ometimes, therefore, you have to shout the ‘but’ rather harder than you would normally, to make sure it is not forgotten.”<sup>4</sup>

**36.** Asked whether the Chinese whispers came from No.10, Lord Goldsmith replied:

“Wherever the ‘Chinese whispers’ had been coming from, what mattered was their view, and each time I did say, ‘I want this to be understood’, the response I always got was, ‘Yes, that is understood’, and sometimes afterwards you wondered if that’s the way everyone was acting.”<sup>5</sup>

**37.** Lord Goldsmith told the Inquiry that the conversation with Mr Straw on 12 November was the point when it was agreed that he would receive a formal request for advice:

“I think there was an important moment after [resolution] 1441 when I had a conversation with Mr Straw and I hadn’t at that stage received what I would call instructions.”<sup>6</sup>

**38.** Lord Goldsmith told the Inquiry that barristers work by receiving “instructions”; that is, a request to advise, including the detail of the question and the supporting materials, often with the instructing solicitor’s views expressed. He said:

“... until I had had that, particularly the Foreign Office Legal Adviser’s point of view, and been able to analyse that, I wasn’t really in a position to give a definitive point of view ... So I think there then came this moment when it was agreed that I would

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<sup>4</sup> Public hearing, 27 January 2010, pages 54-55.

<sup>5</sup> Public hearing, 27 January 2010, page 55.

<sup>6</sup> Public hearing, 27 January 2010, page 56.

receive this request for advice and that finally came at some stage in December. Until that had arrived, I couldn't actually start to form a definitive view anyway.”<sup>7</sup>

**39.** The letter of instructions for Lord Goldsmith was not sent until 9 December and did not include the point of view of Mr Michael Wood, the Foreign and Commonwealth Office (FCO) Legal Adviser.

### **Cabinet, 14 November 2002**

**40.** Mr Straw told Cabinet on 14 November that, while the Security Council would need to be reconvened to discuss any breach in the event of Iraqi non-compliance, the key aspect of resolution 1441 was that military action could be taken without a further resolution.

**41.** That statement reflected the position Mr Straw had taken in his discussion with Lord Goldsmith on 12 November, but it did not fully reflect the advice Mr Straw had been given by the Mr Wood on 6 November or the concerns Lord Goldsmith had expressed on 12 November.

**42.** The advice given by Mr Wood is described in Section 3.5.

**43.** In the discussion of Iraq and the adoption of resolution 1441 in Cabinet on 14 November, Mr Straw stated that a “key aspect of the resolution was that there was no requirement for a second resolution before action was taken against Iraq in the event of its non-compliance, although reconvening the Security Council to discuss any breach was clearly stated”.<sup>8</sup>

**44.** Lord Goldsmith was not present at that Cabinet meeting.

### **“Material breach” and the need for advice**

**45.** Concerns about the differences between the UK and the US on what would constitute a material breach, the US stance of “zero tolerance” and the debate in the US on “triggers” for military action were already emerging.

**46.** Mr Blair and Mr Straw, and their most senior officials, were clearly aware that difficult and controversial questions had yet to be resolved in relation to:

- what would constitute a further material breach and how and by whom that would be determined;
- the issue of whether a further resolution would be needed to authorise force; and
- the implications of a veto.

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<sup>7</sup> Public hearing, 27 January 2010, pages 55-56.

<sup>8</sup> Cabinet Conclusions, 14 November 2002.

**47. Mr Geoff Hoon, the Defence Secretary, did not regard the position that “we would know a material breach when we see it” as a suitable basis for planning. Mr Hoon’s view was that agreement with the US on what constituted a trigger for military action was needed quickly.**

**48. The papers produced before Mr Straw’s meeting held in his Private Office on 20 November recognised that Lord Goldsmith’s advice would be needed to clarify those issues; and that it would be useful to seek Lord Goldsmith’s advice sooner rather than later.**

**49. There is, however, no evidence of a discussion about the right timing for seeking Lord Goldsmith’s views.**

**50. A debate on what might constitute a material breach and what actions by Iraq might trigger a military response had begun in the US before the adoption of resolution 1441.**

### **The concept of “material breach”**

The concept of “material breach” is central to the revival argument.

Material breach is a term derived from Article 60 of the Vienna Convention on the Law of Treaties, 1969. In that context a material breach is said to consist in a repudiation of the treaty or a violation of a provision essential to the accomplishment of the object or purpose of the treaty.

A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

A material breach of a multilateral treaty by one of the parties entitles the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part, or to terminate it either in relations between themselves and the defaulting State or entirely.

Resolution 707 (1991) was the first resolution in relation to Iraq to use the formulation, condemning:

“Iraq’s serious violation of a number of its obligations under section C of resolution 687 (1991) and of its undertakings to cooperate with the Special Commission and the International Atomic Energy Agency, which constitutes a material breach of the relevant provisions of that resolution 687 which established a cease-fire and provided the conditions essential to the restoration of peace and security in the region.”

**51. On 7 November, reporting conversations with senior officials in the US Administration, Mr Tony Brenton, Deputy Head of Mission at the British Embassy Washington, said that the hawks in Washington saw the resolution as a defeat and warned that they would be “looking for the least breach of its terms as a justification for resuming the countdown to war”.<sup>9</sup>**

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<sup>9</sup>Minute Brenton to Gooderham, 7 November 2002, ‘Iraq’.

**52.** Sir David Manning, Mr Blair’s Foreign Policy Adviser and Head of the Cabinet Office Overseas and Defence Secretariat (OD Sec), subsequently spoke to Dr Condoleezza Rice, President Bush’s National Security Advisor, on 15 November.<sup>10</sup> Sir David stated that the UK and the US should not be drawn on “hypothetical scenarios” about what would constitute a material breach. Reflecting Mr Blair’s words to President Bush at Camp David on 7 September that, “If Saddam Hussein was obviously in breach we would know”, Sir David added that “the Security Council would know a material breach when it saw it”. He reported that the US Administration would continue to insist on “zero tolerance” to keep up the pressure on Saddam Hussein.

**53.** A paper on what might constitute a material breach, which highlighted “a number of difficult questions ... on which we will need to consult the Attorney General”, was prepared by the FCO and sent to Sir David Manning (and to Sir Jeremy Greenstock on 15 November.<sup>11</sup>

**54.** The paper stated that “Most, if not all members of the Council will be inclined” to take the view that a “material breach” should be interpreted in the light of the Vienna Convention. Dr Hans Blix, the Executive Chairman of the UN Monitoring, Verification and Inspection Commission (UNMOVIC), had “made it clear” that he would “be using a similar definition for the purposes of reporting under OP11”. The paper stated that it was not for Dr Blix to determine what constituted a material breach, “but his decision (or not) to report to the Council and the terms in which he reports” would “be influential”.

**55.** The FCO paper stated that the US was “becoming more and more inclined to interpret the 1441 definition downwards” and that: “Although, some weeks ago, NSC [National Security Council] indicated that they would not regard trivial omissions in Iraq’s declaration (or minor problems encountered by the UNMOVIC) as triggers for the use of force, more recently DoD [Department of Defense] have indicated that they want to test Saddam early.” It also drew attention to President Bush’s remarks on 8 November, which it described as “zero tolerance” and his warning against “unproductive debates” about what would constitute an Iraqi violation.

**56.** An examination of past practice on seven separate occasions since 1991 showed that the Council had determined Iraq to be in material breach of its obligations where there seemed “to have been a conviction that an Iraqi act would seriously impede inspectors in the fulfilment of their mandate and therefore undermine an essential condition of the cease-fire”.

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<sup>10</sup> Letter Manning to McDonald, 15 November 2002, ‘Iraq: Conversation with Condi Rice’.

<sup>11</sup> [Letter Sinclair to Manning, 15 November 2002, ‘Iraq: Material Breach’ attaching Paper, ‘Iraq: A Material Breach’.](#)

**57.** Against that background, the FCO listed the following incidents as ones which the UK would consider to be material breaches:

- “Any incident sufficiently serious to demonstrate that Iraq had no real intention of complying”, such as “an Iraqi decision to expel UNMOVIC, or to refuse access to a particular site, parts of a site or important information”, “discovery by UNMOVIC/IAEA [International Atomic Energy Agency] of a concealed weapons programme, or of a cache of WMD material not declared ...”
- “Efforts to constrain UNMOVIC/IAEA’s operations in significant ways contrary to the provisions of SCR 1441 (2002) ... and other relevant resolutions. Systematic efforts to deter, obstruct or intimidate the interview process would need to be particularly carefully watched.”
- “Systematic Iraqi harassment of inspectors ... which jeopardised their ability to fulfil their duties ...”
- Failure to accept resolution 1441.
- “A pattern of relatively minor Iraqi obstructions of UNMOVIC/IAEA.”

**58.** On the last point, the FCO paper added:

“We would not take the view that a short (hours) delay in giving UNMOVIC access to a site would constitute a material breach unless there was clear evidence that the Iraqis used such a delay to smuggle information out of a site or to coach potential witnesses. But repeated incidents of such obstruction, even without evidence of accompanying Iraqi deception, would cumulatively indicate that the Iraqis were not fully co-operating, and thus cast doubt upon whether UNMOVIC would ever be able to implement its mandate properly.”

**59.** The FCO stated that a similar US list would “probably ... be even tougher”. “Given the opportunity” in the resolution for the US to make its own report to the Council, the UK needed “to be clear in our own minds where the dividing lines” were. The paper recommended that the UK would need to work out “where to draw our red lines” with the US; and that “in the interests of maintaining maximum Council support for use of force, we should try to persuade the Americans to focus on the more serious possible violations, or to establish a pattern of minor obstruction”.

**60.** The FCO did not address the issue of whether a Council decision would be needed “to determine that Iraq’s actions justify the serious consequences referred to in OP13 of 1441”. That would be “a matter on which we will need the Attorney’s views”.

61. An undated, unsigned document, headed 'Background on material breach' and received in No.10 around 20 November 2002, raised the need to address three, primarily legal, issues:

- the need to clarify whether OP4 “must be construed” in the light of the Vienna Convention and past practice as that suggested “a much higher bar than the US”;
- the need to seek Lord Goldsmith’s advice “on how OPs 1 and 2 (and 13) and the declaration of material breach they contain – affect the legal situation of Iraq and our authority to use force”; and specifically whether it could be argued that “1441 itself (especially OPs 1, 2 and 13 taken together) contains a conditional authority to use force ... which will be fully uncovered once that Council discussion has taken place”; and
- “What happens if a second resolution is vetoed?”<sup>12</sup>

62. The document appears to have drawn on the analysis in the FCO paper of 15 November.

63. On the second issue, the author wrote:

“If this [the argument that 1441 contains a conditional authority to use force] has merit (and the most we can hope for in the absence of an express Chapter VII authorisation is a reasonable argument) it would be helpful to know that now. We would not have to impale ourselves and Ministers on the difficult point of what happens if the US/UK try and fail to get an express authorisation.

“... we think London seriously needs to consider revising its thinking on 1441.

“... from the point of view of OP4 the question is ‘What does Iraq have to do to put itself beyond the protection of the law? At what point does its conduct amount to material breach?’ Innocent until proved guilty.

“But if you come at it through OPs 1 and 2 the question is ‘When has Iraq blown its last chance? (regardless of whether OP4 is ever breached)’. Compliance with OP4 is strictly irrelevant: Iraq is guilty but released on a suspended sentence/parole. This seems to us to have huge presentational angles – as well as whatever legal deductions can be made. **If we are not careful, we are in danger of losing the key advantage of the resolution and turning a provision which we thought of deleting as unnecessary into the main operational paragraph of the text ...**”

64. Someone in No.10 wrote: “Is this, tho’ a hidden trigger? (We and the US denied that there was one in 1441.)”<sup>13</sup>

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<sup>12</sup> [Paper \[unattributed and undated\], ‘Background on material breach’.](#)

<sup>13</sup> [Manuscript comment on Paper \[unattributed and undated\], ‘Background on material breach’.](#)

**65.** On what would happen in the event of a veto, the author of the document wrote that it was:

“... probably too difficult [to say] at this stage – everything depends on the circs ... But knowing the answer to the legal implications of 1441 ... would either (i) leave us no worse off than we are – if the AG [Attorney General] thinks the argument doesn’t run or (ii) radically improve the situation if the AG thinks we have a case.”

**66.** Mr Matthew Rycroft, Mr Blair’s Private Secretary for Foreign Affairs, commented to Sir David Manning that the document was:

“... helpful. Of course a S[ecurity] C[ouncil] discussion is needed if there is a material breach. But as the PM has said all along that discussion must be in the context of an understanding that action must follow.”<sup>14</sup>

**67.** On 15 November, Mr Peter Watkins, Mr Hoon’s Principal Private Secretary, sent Sir David Manning an update on military discussions with the US setting out the themes which had emerged.<sup>15</sup> Mr Watkins registered a number of concerns including:

“Lack of clarity in US thinking about possible triggers for military action needs to be resolved quickly ...”

**68.** Mr Watkins added:

“To some extent, triggers are now under Saddam’s control and so cannot be slotted into any firm timetable. Moreover, what constitutes a ‘violation’ and/or ‘material breach’ remains undefined: many in the US are reduced to saying ‘we’ll know when we see it’, which is not a suitable base for planning.”

**69.** Mr Hoon believed that the UK response should include working “quickly to reach an agreed US/UK view on triggers ... well before we are confronted with it in practice”.

**70.** A copy of the letter was sent to Mr Straw’s Private Office.

**71.** Mr Straw held a Private Office meeting on 20 November to discuss Iraq policy with Sir Michael Jay, the FCO Permanent Under Secretary (PUS), Sir Jeremy Greenstock, Sir David Manning and Mr Peter Ricketts, FCO Political Director.<sup>16</sup>

**72.** Sir Jeremy told Mr Straw that he “believed we could get a second resolution provided the Americans did not go for material breach too early”. The “facts to convince nine members of the Security Council” would be needed. He thought that the Council “would not ... need much persuading”.

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<sup>14</sup> [Manuscript comment Rycroft to Manning, 20 November 2002, on Paper \[unattributed and undated\], ‘Background on Material Breach’.](#)

<sup>15</sup> [Letter Watkins to Manning, 19 November 2002, ‘Iraq: Military Planning after UNSCR 1441’.](#)

<sup>16</sup> [Minute McDonald to Gray, 20 November 2002, ‘Iraq: Follow-up to SCR 1441’.](#)

**73.** Sir Jeremy proposed that “When the time came”, the UK should put down a draft resolution and, “if we could show that we had done everything possible, then we would be in the best possible position if – in the end – there were no resolution”.

**74.** Sir David suggested that France should be invited to co-sponsor the resolution. Mr Straw agreed.

**75.** Sir Jeremy advised that “the real strength” of resolution 1441 lay in its first two operative paragraphs: OP1 reaffirming Iraq’s material breach up to the adoption of 1441, and OP2 suspending that material breach to give Iraq a final opportunity. Sir Jeremy stated that OP4 (and 11 and 12) were, therefore, not needed to reach the “serious consequences” in OP13. He was already using that argument in the Security Council and cautioned Mr Straw that focusing too much on OP4 brought a danger of weakening OPs 1 and 2.

**76.** Sir Michael Jay took a different view, advising that the UK could use all the OPs in resolution 1441. Mr Straw agreed that it would be a mistake to focus exclusively on OPs 1 and 2.

**77.** Given the reference to “London” and the content of Sir Jeremy’s advice to Mr Straw in the Private office meeting on 20 November, the unsigned and undated document ‘Background on material breach’ was most probably produced in the UK Mission in New York.

## **House of Commons debate on Iraq, 25 November 2002**

**78.** When the House of Commons debated Iraq on 25 November, it voted to “support” resolution 1441 and agreed that if the Government of Iraq failed “to comply fully” with its provisions, “the Security Council should meet in order to consider the situation and the need for full compliance”.

**79.** Mr Straw assured Parliament that a material breach would need to be serious.

**80.** Mr Straw’s interpretation was consistent with the advice given to him by FCO Legal Advisers, and properly recognised the need for a material breach to be sufficiently serious to undermine the basis for the cease-fire in resolution 687 (1991).

**81.** But Mr Straw explicitly did not address the role of the Security Council in assessing whether any report of non-compliance or obstruction would amount to a material breach.

**82.** Mr Straw’s reference to a judgement having “to be made against the real circumstances that arise” highlighted the problem created by the drafting of that clause in OP4 of resolution 1441.

**83. As Lord Goldsmith’s subsequent advice confirmed, whether a specific failure to comply with the requirements placed upon Iraq by the resolution would amount to a material breach would have to be judged in the particular circumstances of Iraq’s response.**

**84.** On 25 November, the House of Commons debated resolution 1441 (2002) and the Government motion:

“That this House supports UNSCR 1441 as unanimously adopted by the UN Security Council; agrees that the Government of Iraq must comply fully with all provisions of the resolution; and agrees that, if it fails to do so, the Security Council should meet in order to consider the situation and the need for full compliance.”<sup>17</sup>

**85.** Mr Straw’s draft opening statement was sent to No.10 for comment. Mr Powell questioned two points in the text:

- a statement that the UK would prefer a second resolution, which Mr Powell described as “not our position up to now”; and
- that we didn’t “absolutely need one [a second resolution]”, which Mr Powell commented would “force the Attorney General to break cover”.<sup>18</sup>

**86.** Mr Blair commented that he did not “see this as such a problem”.<sup>19</sup>

**87.** In his opening speech, Mr Straw set out the inspection process and the answers to four “key questions” which arose from the resolution:

- What constituted a material breach? Mr Straw referred to operative paragraph 4 of the resolution, but went on to say: “As with any definition of that type, it is never possible to give an exhaustive list of all the conceivable behaviours that it covers. That judgement has to be made against the real circumstances that arise, but I reassure the House that material breach means something significant: some behaviour or pattern of behaviour that is serious. Among such breaches could be action by the Government of Iraq seriously to obstruct or impede the inspectors, to intimidate witnesses, or a pattern of behaviour where any single action appears relatively minor but the actions as a whole add up to something deliberate and more significant: something that shows Iraq’s intention not to comply.”<sup>20</sup>
- Who would decide what happened if there was a material breach? Mr Straw argued that if a “material breach” was reported to the Security Council, “the decision on whether there had been a material breach will effectively have been

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<sup>17</sup> House of Commons, *Official Report*, 25 November 2002, column 47.

<sup>18</sup> [Email Powell to Manning, 23 November 2002, ‘Jack’s Iraq Statement’](#).

<sup>19</sup> [Manuscript comment Blair on Email Powell to Manning, 23 November 2002, ‘Jack’s Iraq Statement’](#).

<sup>20</sup> House of Commons, *Official Report*, 25 November 2002, column 51.

made by the Iraqis ... there will be no decision to be made. The Security Council will undoubtedly then act.”

- Would there be a second Security Council resolution if military action proved necessary? Mr Straw stated: “the moment there is any evidence of a material breach ... there will be a meeting of the Security Council at which it is ... open for any member to move any resolution ... Our preference is for a Security Council resolution, and I hope we would move it.”
- If military action was necessary, would the House of Commons be able to vote on it and, if so, when? Mr Straw stated: “No decision on military action has yet been taken ... and I fervently hope that none will be necessary ... Any decision ... to take military action will be put to the House as soon as possible after it has been taken ... the Government have no difficulty about the idea of a substantive motion on military action ... at the appropriate time ... [I]f we can and if it is safe to do so, we will propose a resolution seeking the House’s approval of decisions ... before military action takes place.”<sup>21</sup>

## FCO advice, 6 December 2002

**88.** The FCO advised on 6 December that there was no agreement in the Security Council on precise criteria for what would constitute a material breach. Each case would need to be considered in the light of the circumstances.

**89.** The UK position remained that deficiencies in Iraq’s declaration on its WMD programmes could not constitute a *casus belli* but if an “audit” by the inspectors subsequently discovered significant discrepancies in the declaration, that could constitute a material breach.

**90.** The FCO position was, increasingly, shifting from a single specific incident demonstrating a material breach, to the need to establish a pattern of non-co-operation over time demonstrating that Iraq had no intention of complying with its obligations.

**91.** In response to a request from Sir David Manning on 29 November, Mr Straw’s office provided advice on handling the Iraqi declaration.<sup>22</sup> The FCO also provided a refined version of the advice in its letter to Sir David of 15 November about what might comprise a material breach.

**92.** That was further refined in a letter from Mr Straw’s office on 6 December responding to Sir David’s request for further advice on what would constitute a “trigger” for action.<sup>23</sup>

**93.** The FCO stated that a material breach could not “be a minor violation but must be a violation of a provision essential to achieving the object or purpose of the original

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<sup>21</sup> House of Commons, *Official Report*, 25 November 2002, column 49.

<sup>22</sup> [Letter Sinclair to Manning, 29 November 2002, ‘Iraq: 8 December Declaration’](#).

<sup>23</sup> [Letter McDonald to Manning, 6 December 2002, ‘Iraq: Material Breach’](#).

Gulf War [1991] cease-fire". That position had been reflected in Mr Straw's remarks in the House of Commons on 25 November. The FCO expected most members of the Security Council to take a similar view.

**94.** Consistent with the advice sent to Sir David on 15 and 29 November, the FCO wrote that there were two broad areas where Iraqi behaviour could amount to a material breach:

- **Non-compliance with its disarmament obligations** – if Iraq concealed WMD. Evidence might take the form of discovery of WMD material not included in the declaration or evidence which Iraq could not satisfactorily explain which clearly pointed to a concealed WMD programme (e.g. a yellowcake receipt).
- **Non-co-operation with UNMOVIC/IAEA** – if Iraq's behaviour demonstrated that it had no intention of co-operating fully with UNMOVIC in fulfilling its mandate under resolution 1441 (2002) or other relevant resolutions. Evidence might comprise a single incident such as denying access to a particular site, information or personnel. Evidence of coaching witnesses or smuggling information out of potential sites would be "pretty damning". Attempts to impede the removal and destruction of WMD or related material would potentially be a material breach.

**95.** The FCO view was that there would be no need for "a single specific instance". A "pattern of lower level incidents" could amount to a demonstration of non-co-operation sufficiently serious to constitute a material breach. Indications of concealment could include "a series of unanswered questions identified by UNMOVIC/IAEA which suggested a concealed WMD programme" or "failure ... to demonstrate convincingly that the WMD material identified by UNSCOM [United Nations Special Commission] in 1998 had been destroyed and properly accounted for"; "Much would depend on the circumstances and whether the incidents demonstrated deliberate non-co-operation rather than inefficiency or confusion."

**96.** The FCO concluded that there were:

"... bound to be grey areas over whether Iraqi failures are sufficiently serious to constitute a material breach. There is no agreement in the Council on the precise criteria. We would need in each case to look at the particular circumstances. Moreover, some incidents of non-compliance may be susceptible to remedial action by UNMOVIC/IAEA (e.g. by destroying weapons etc). In such cases, those seeking to trigger enforcement action would need to explain how such action would be necessary to enforce Iraqi compliance."

## Obtaining Lord Goldsmith's opinion

### Instructions for Lord Goldsmith to advise

**97.** On 9 December, after receipt of the Iraqi declaration, the FCO issued a formal request seeking Lord Goldsmith's advice on whether a further decision by the Security Council would be required before force could be used to secure Iraq's compliance with its disarmament obligations.

**98.** Mr Wood set out the "two broad views" on the interpretation of resolution 1441 and whether a further decision was required by the Security Council to authorise the use of force.

**99.** Mr Straw asked Mr Wood to make clear to Lord Goldsmith that his advice was not needed "now".

**100.** Several drafts of the instructions for Lord Goldsmith were prepared and circulated within the FCO.

**101.** Mr Wood sought the views of senior FCO officials on 21 November, including Sir Michael Jay and Mr Iain Macleod, the Legal Counsellor in the UK Permanent Mission to the UN in New York (UKMIS New York). He also wrote that he planned to give Mr Straw the opportunity to comment on the draft the following week.<sup>24</sup>

**102.** Ms Cathy Adams, Legal Counsellor to Lord Goldsmith between 2002 and 2005, informed Lord Goldsmith on 29 November that the letter from Mr Wood had "been in gestation for a couple of weeks now and I understand the original draft has been subject to extensive comments from UKMIS New York".<sup>25</sup>

**103.** Mr Stephen Pattison, Head of FCO UN Department, told the Inquiry that all those people involved in Mr Ricketts' core group saw the draft instructions, but very few officials commented from a sense that it was for the lawyers to sort out, and that officials should not give the impression of interfering.<sup>26</sup>

**104.** Sir Michael Wood told the Inquiry:

"... I received extensive comments from UKMIS New York, conveyed to me by Iain Macleod and as I understood it, reflecting Sir Jeremy Greenstock's views. These essentially concerned the alternative arguments to which they attached importance, based in part on the negotiating history of the resolution. As I recall, I incorporated all or virtually all of UKMIS's suggestions into my letter ...

"I do not recall receiving comments on the draft from other quarters."<sup>27</sup>

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<sup>24</sup> [Minute Wood to Ricketts, 21 November 2002, 'Iraq: SCR 1441: Letter to LSLO'](#).

<sup>25</sup> Minute Adams to Attorney General, 29 November 2002, 'Iraq'.

<sup>26</sup> Public hearing, 31 January 2011, pages 48-49.

<sup>27</sup> Statement, 15 March 2011, page 19.

**105.** Mr Wood’s letter incorporating instructions for Lord Goldsmith was sent to Ms Adams on 9 December 2002, with a copy to Mr Martin Hemming, the MOD Legal Adviser.<sup>28</sup> It briefly described the provisions of resolution 1441, the history of the negotiation and adoption of resolution 1441 and subsequent developments, and the legal background.

**106.** Mr Wood wrote:

“The main legal issue raised by the resolution ... is whether a further decision by the Security Council would be required before force could lawfully be used to ensure Iraqi compliance with its disarmament obligations. (This question is often put in the form ‘Is a second resolution required?’, but a further decision by the Council could take other forms, in particular it could be a statement made on behalf of the Council or its members.)”

**107.** Describing resolution 1441 as a “consensus text” and stating that, “as is often the case, the drafting leaves something to be desired”, Mr Wood wrote (paragraph 5 of his letter) that there were two broad views of the interpretation of resolution 1441:

- the first was that resolution 1441 “does not authorise the use of force or revive the Council’s earlier authorisation; a further Council decision is needed for that”; and
- the second was that “taking account of previous Council practice, the negotiating history and the statements made on adoption”, resolution 1441 “can be read as meaning that the Council has already conditionally authorised the use of force against Iraq; the conditions being (a) that Iraq fails to take the final opportunity if it has been offered and (b) that there is Council discussion (not necessarily a decision) under paragraph 12 of the resolution. If these conditions are met, the material breach is uncovered and (on the ‘revival of authorisation’ argument based on Security Council resolutions 678 (1990) and 687 (1991)) force can be taken to be authorised under SCR 1441.”

### The revival argument

The UK justification for the use of military force against Iraq in 1993 and in December 1998 (Operation Desert Fox) relied on the concept that the use of force authorised in resolution 678 (1990) could be “revived” by a Security Council determination that Iraq was in “material breach” of the cease-fire provisions in resolution 687 (1991).

Resolution 678, adopted on 29 November 1990, demanded:

“... that Iraq comply fully with resolution 660 (1990) [which required its immediate withdrawal from Kuwait] and all subsequent resolutions”; and

“unless Iraq on or before 15 January 1991 fully” implemented those resolutions, authorised:

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<sup>28</sup> [Letter Wood to Adams, 9 December 2002, ‘Iraq: Security Council Resolution 1441 \(2002\)’.](#)

“... Member States co-operating with the Government of Kuwait ... to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area.”

The resolution stated that the Security Council was “acting under Chapter VII of the Charter”. Chapter VII is the only part of the United Nations Charter governing the use of force, and it does so in the context of: “Action with respect to threats to the peace, breaches of the peace, and acts of aggression.”

After the suspension of hostilities at the end of February 1991, resolutions 686 and 687 of 1991 contained a number of demands which Iraq had to fulfil in relation to the cessation of hostilities and the commencement of reparations.

The obligations included provisions in relation to:

- the Iraq/Kuwait border;
- repatriation of Kuwaiti nationals and property, and the payment of compensation by Iraq;
- sanctions; and
- disarmament of WMD, and inspections.

It was expressly stated that the authority to use force in resolution 678 (1990) remained valid during the period required for Iraq to comply with those demands.

In resolution 707 of August 1991 the Security Council condemned Iraq’s serious violations of its disarmament obligations as a “material breach” of the relevant provisions of resolution 687 (1991), “which established a cease-fire and provided the conditions essential to the restoration of peace and security in the region”.

In January 1993, two further serious incidents arose in relation to Iraq’s implementation of resolution 687 (1991). This led to the adoption of two further Presidential Statements, on 8 and 11 January, which contained a direct warning of serious consequences.<sup>29</sup> Within days the US, UK and France carried out air and missile strikes on Iraq.

In August 1992, Dr Carl-August Fleischhauer, then the UN Legal Counsel, provided advice to the UN Secretary-General on the legal and procedural basis for the use of force against Iraq.<sup>30</sup>

The key elements of Dr. Fleischhauer’s advice included:

- The authorisation to use all necessary means in resolution 678 (1990) was limited to the achievement of the objectives in that resolution - “to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area” - but was not limited in time; it was not addressed to a defined group of states except for “the vague notion of ‘states cooperating with Kuwait’”, and it was clear by the words “all necessary means” that it was understood to include the use of armed force.

<sup>29</sup> Presidential Statement, S/25081, 8 January 1993; Presidential Statement, S/25091, 11 January 1993.

<sup>30</sup> Zacklin R, The United Nations Secretariat And The Use of Force In A Unipolar World, Hersch Lauterpacht Memorial Lectures, University of Cambridge, 22 January 2008. The advice of the UN Legal Counsel can be sought by the Secretary-General, and by the organs of the UN, but not by the Member States, who rely on their own legal advisers. It is not determinative and does not bind Member States.

- Resolution 687 (1991) permitted the conclusion that once the Security Council was satisfied that Iraq had complied with all its obligations under the resolution, the authorisation to use force would lapse. But resolution 687 (1991) did not itself terminate that authorisation, expressly or by inference. That followed from the fact that the preambular paragraphs (PPs) of resolution 687 (1991) affirmed all the Security Council's previous resolutions on Iraq, including resolution 678 (1990).
- A cease-fire is by its nature a transitory measure but, during its duration, the cease-fire superseded the ability to implement the authorisation to use force. The promise contained in the cease-fire to cease hostilities under certain conditions created an international obligation, which, as long as those conditions pertained, excluded the recourse to armed force. Under general international law the obligation created could be terminated only if the conditions on which it had been established were violated. In other words, the authority to use force had been suspended, but not terminated. A sufficiently serious violation of Iraq's obligations under resolution 687 (1991) could withdraw the basis for the cease-fire and re-open the way to a renewed use of force. That possibility was not limited by the passage of time that had then elapsed.
- Authority to use force could be revived in circumstances where a two-part pre-condition was met: the Security Council should be in agreement that there was a violation of the obligations undertaken by Iraq; and the Security Council considered the violation sufficiently serious to destroy the basis of the cease-fire.
- Those findings need not be in the form of a resolution, but could be recorded in the form of a Presidential Statement. But the content must make clear that the Council considered that the violation of resolution 687 (1991) was such that all means deemed appropriate by Member States were justified in order to bring Iraq back into compliance with resolution 687 (1991). Under no circumstances should the assessment of that condition be left to individual Member States; since the original authorisation came from the Council, the return to it should also come from that source and not be left to the subjective evaluation made by individual Member States and their Governments.

In January 1993, two further serious incidents arose in relation to Iraq's implementation of resolution 687 (1991), which led to the adoption of two further Presidential Statements on 8 and 11 January.<sup>31</sup>

Unlike resolution 707 (1991) and the Presidential Statements in 1992, in which the warning of serious consequences had been conveyed in indirect language, the statements in 1993 contained a direct warning of serious consequences. Within days the US, UK and France carried out air and missile strikes on Iraq.

On 14 January 1993, in relation to military action on the previous day, the UN Secretary-General was reported as having said:

"The raid yesterday, and the forces which carried out the raid, have received a mandate from the Security Council, according to resolution 678 and the cause of the raid was the violation by Iraq of resolution 687 concerning the cease-fire. So, as Secretary-General of the United Nations, I can say that this action was taken and conforms to the resolutions of the Security Council and conforms to the Charter of the United Nations."<sup>32</sup>

<sup>31</sup> Presidential Statement, S/25081, 8 January 1993; Presidential Statement, S/25091, 11 January 1993.

<sup>32</sup> Paper FCO, 17 March 2003, 'Iraq: Legal Basis for the Use of Force'.

In essence, the statement was an explicit acknowledgement that the authority to use force in resolution 678 (1990) had been “revived”.

From June 1997, Iraq had begun to interfere with the activities of the UN Special Commission (UNSCOM), which had been established to monitor Iraq’s WMD. Reports of Iraqi failures to comply with the obligations in resolution 687 (1991) were made by UNSCOM to the UN Security Council (see Section 2.2). Several resolutions were adopted and Presidential Statements were issued condemning Iraqi actions.

In March 1998, the Security Council adopted resolution 1154, stating that the Council was acting under Chapter VII of the Charter, and stressing the need for Iraq to comply with its obligations to provide access to UNSCOM in order to implement resolution 687 (1991). It stated that “any violation would have severest consequences for Iraq”. That resolution did not, however, make a finding that Iraq was in breach of its obligations.

In October 1998, Dr Richard Butler, UNSCOM’s Executive Chairman, reported to the Security Council that Iraq had suspended its co-operation; Iraq’s decision to suspend co-operation made it “impossible for the Commission to implement its disarmament and monitoring rights and responsibilities”.<sup>33</sup>

On 5 November, the Security Council adopted resolution 1205, condemning Iraq’s decision to cease co-operation with UNSCOM as a “flagrant violation” of resolution 687 (1991) and other relevant resolutions. In the final paragraph of the resolution the Security Council decided “in accordance with its primary responsibility under the Charter for the maintenance of international peace and security, to remain actively seized of the matter”.

Diplomatic contact between the UN and Iraq continued, as did discussions within the Security Council, but on 16 December 1998, the US and UK launched air attacks against Iraq, Operation Desert Fox.

Mr John Morris (Attorney General from 1997 to 1999), supported by Lord Falconer (as Solicitor General), advised Mr Blair in November 1997:

“Charles [Lord Falconer] and I remain of the view that, in the circumstances presently prevailing, an essential precondition of the renewed use of force to compel compliance with the cease-fire conditions is that the Security Council has, in whatever language – whether expressly or impliedly – stated that there has been a breach of the cease-fire conditions and that the Council considers the breach sufficiently grave to undermine the basis or effective operation of the cease-fire.”<sup>34</sup>

**108.** Recognising that “final decisions” could “only be made in the light of circumstances at the time (including what transpires in the Council)”, Mr Wood addressed the provisions of the resolution and the rules for their interpretation. As regards the latter, he wrote:

“The rules for treaty interpretation set out in Articles 31 to 33 of the Vienna Convention on the Law of Treaties are a useful starting point, but these have to be applied in a way that takes into account the different nature of resolutions of the

<sup>33</sup> Letter Executive Chairman of UNSCOM to President of the Security Council, 2 November 1998, ‘S/1998/1032’.

<sup>34</sup> [Minute Goldsmith to Prime Minister, 30 July 2002, ‘Iraq’](#).

Security Council. The basic principle to be derived from the Vienna Convention is that a Security Council resolution is to be interpreted in good faith in accordance with the ordinary meaning given to its terms in their context and in the light of its object and purpose.”

## **The Vienna Convention on the Law of Treaties Articles 31-33**

### **“ARTICLE 31: GENERAL RULE OF INTERPRETATION**

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
  - (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
  - (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
  - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
  - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
  - (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

### **“ARTICLE 32: SUPPLEMENTARY MEANS OF INTERPRETATION**

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd.

**“ARTICLE 33: INTERPRETATION OF TREATIES AUTHENTICATED IN TWO OR MORE LANGUAGES**

When a treaty has been authenticated in two or more languages the text of each version is equally authoritative unless the parties to the treaty have agreed otherwise.

The terms of each version are presumed to have the same meaning.

If a difference in meaning should emerge, the meaning which best reconciles the texts, having regard to the objects of the treaty, shall be the meaning adopted.”

**109.** Referring to a number of telegrams describing the formal and informal negotiation of the resolution, Mr Wood cautioned:

“If the matter were ever brought to court, none of these records would be likely to be acceptable as *travaux préparatoires*<sup>35</sup> of the resolution, since they are not independent or agreed records, and the meetings themselves were behind closed doors.”

**110.** Mr Wood set out the arguments relevant to the two broad views of the interpretation of resolution 1441. For the first, Mr Wood identified the considerations which suggested that, taken as a whole, the resolution meant that, in the event of non-compliance, the Council itself would decide what action was needed.

**111.** In relation to the second, Mr Wood wrote: “UKMIS New York are of the view that this argument is consistent with the negotiating history, and requires serious consideration”. He set out four supporting points for the second view before identifying a number of “possible difficulties”.

**112.** Mr Wood concluded: “Whichever line of argument is adopted” it would “still be necessary” to address what “type of Iraqi non-compliance” would be “of a magnitude which would undermine the cease-fire”. He also re-stated the governing principles of necessity and proportionality for the use of force.

**113.** On receipt of Mr Wood’s letter of 9 December, Ms Adams prepared advice for Lord Goldsmith, including a full set of background papers.<sup>36</sup>

**114.** Addressing the “two alternative views” on the legal effect of resolution 1441, Ms Adams wrote that, while Mr Wood did not “say so expressly”, she understood Mr Wood believed the first view, that resolution 1441 “does not authorise the use of force

<sup>35</sup> The expression used in the French version of the Vienna Convention in place of “preparatory work”. *Travaux préparatoires* are regarded as useful for the interpretation of treaties when the evidence as regards particular words or phrases reveals a common understanding: *Kasikili/Sedudu Island (Botswana/Namibia)* ICJ Reports 1999 at pp. 1074-1075, 1101; *Avena and Other Mexican Nationals (Mexico v. United States of America)* ICJ Reports 2004 at p. 49; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* ICJ Reports 2007 at para. 194.

<sup>36</sup> [Minute Adams to Attorney General, 11 December 2002, ‘Iraq: Interpretation of Resolution 1441’.](#)

expressly or revive the authorisation in resolution 678 (1990)", to be "the better analysis of the resolution".

**115.** Commenting on the way in which Mr Wood had addressed the "second view", that resolution 1441 had conditionally authorised the use of force, Ms Adams wrote: "I am not convinced that he puts the arguments in support of this view at their strongest."

**116.** Setting out an alternative analysis, Ms Adams wrote that "one thing is clearer following adoption" of resolution 1441:

"... the existence of the 'revival argument' did not seem to be doubted within the Security Council. The whole basis of the negotiation ... was that the words 'material breach' and 'serious consequences' were code for authorising the use of force. There is now therefore a much sounder basis for relying on the revival argument than previously.

"... [T]he question of whether resolution 1441 alone satisfies the conditions for reviving the authorisation in resolution 678 without a further decision of the Council is far from clear from the text ... It is therefore not easy to ascertain the intention of the Security Council."

**117.** Ms Adams continued:

"What advice you give ... may therefore depend on the view you take as to your role in advising on use of force issues. For example, you might give a different answer to the question: what is the better interpretation of resolution 1441? than to the question: can it reasonably be argued that resolution 1441 is capable of authorising the use of force without a further Council decision?"

"You have previously indicated that you are not entirely comfortable with advising that 'there is a respectable argument' that the use of force is lawful, given your quasi-judicial role in this area. Previous Law Officers have of course advised in these terms ..."

**118.** Ms Adams concluded:

"For my own part, I think that the first view is the better interpretation, but that the arguments in favour of the second view are probably as strong as the legal case for relying on the revival argument in December 1998 when the UK participated in Operation Desert Fox."

**119.** Ms Adams wrote that she understood the statement that Lord Goldsmith's advice was not "required now" reflected Mr Straw's views, and:

"While it is certainly true that definitive advice could not be given at this stage on whether a further Council decision is required (because such advice would need to take account of all the circumstances at the time, including further discussions in the Council), there is no reason why advice could not be given now on whether

resolution 1441 is capable in any circumstances of being interpreted as authorising the use of force without a further Security Council decision.”

**120.** Ms Adams added:

“... I think a serious issue for consideration is whether, if you were to reach the view that resolution 1441 was under no circumstances capable of being interpreted as authorising force without a further Council decision ... this should be relayed to the Foreign Office and No.10.”

**121.** Observing that “the Foreign Secretary (and other Ministers) have gone beyond the neutral line suggested ... stating that resolution 1441 does not ‘necessarily’ require a further Council decision”, Ms Adams suggested that if Lord Goldsmith was “not minded” to give advice: “An alternative option ... might be for me to reply to Michael [Wood]’s letter confirming that you do not propose to advise at this stage, but stressing the need for neutrality in HMG’s public line for so long as you have not advised on the interpretation of the resolution.”

**122.** Lord Goldsmith told the Inquiry that the instructions set out both arguments “without expressing a view between them, although I think I knew what view Sir Michael took about it”.<sup>37</sup>

**123.** Mr Straw told the Inquiry that he had asked Mr Wood to ensure Lord Goldsmith was given a balanced view.<sup>38</sup>

**124.** Mr Straw added that, if Sir Michael had thought there was only one view, that was “what he would have written” to Lord Goldsmith. Mr Straw stated that he:

“... had no input, as far as I recall – and we have been through the records – whatsoever in what he [Sir Michael] wrote to the Attorney General. Quite properly. I don’t think I, so far as I recall, ever saw the letter until after it had been written, and that’s entirely proper.

“If his view had been, ‘There is no doubt we require a second resolution’ ... then that’s what he should have written, but he didn’t.”<sup>39</sup>

**125.** In his statement for the Inquiry, Mr Pattison wrote:

“With hindsight, the letter ... probably steered [Lord Goldsmith] in a particular direction: although it set out competing interpretations of SCR 1441, it was loaded in favour of one.”<sup>40</sup>

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<sup>37</sup> Public hearing, 27 January 2010, page 62.

<sup>38</sup> Public hearing, 8 February 2010, page 13.

<sup>39</sup> Public hearing, 8 February 2010, page 15.

<sup>40</sup> Statement, January 2011, paragraph 35.

**126.** Sir Michael Wood disagreed with Mr Pattison's conclusion:

"This is not so. I set out the arguments as fairly as I could, taking full account of extensive comments from UKMIS New York."<sup>41</sup>

**127.** Sir Michael wrote in his statement:

"I was instructed ... that the Foreign Secretary was content for me to send the letter provided I did not include in the letter a statement of my own view of the law; and provided that I made it clear in the letter that no advice was needed at present. I was not happy with these instructions ...

"There are broadly two ways for a departmental lawyer to consult the Attorney: by setting out the different possibilities, without expressing a view; or, and this is much more common and usually more helpful, by setting out the differing possibilities and giving a view. In the present case, I was instructed to do the former, though the Attorney was anyway well aware of my views."

**128.** In the final version of the "instructions" for Lord Goldsmith, Mr Wood wrote:

"No advice is required now. Any decisions in the future would clearly need to take account of all the circumstances, including any further deliberation in the Security Council."<sup>42</sup>

**129.** In his statement for the Inquiry, Lord Goldsmith wrote that he had been told that it was the view of Mr Straw that the instructions of 9 December should make clear that no advice was needed at that time.<sup>43</sup>

**130.** The Inquiry sought the views of a number of witnesses about whether Lord Goldsmith's advice should have been available at an earlier stage.

**131.** In his statement to the Inquiry, Sir Michael Wood wrote that he did not agree with Mr Straw's view that advice was not needed until later:

"While it may not have been essential to have advice at that time, it was in my view highly desirable ... FCO Legal Advisers were in a very uncomfortable position ... We were having to advise on whether SCR 1441 authorised the use of force without a further decision of the Security Council without the benefit of the Attorney's advice. It would have been possible for the Attorney to have given advice on the meaning of SCR 1441 soon after its adoption, since all the relevant considerations were then known, though that advice would no doubt have had to be kept under review in the light of developments."<sup>44</sup>

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<sup>41</sup> Statement, 15 March 2011, page 19.

<sup>42</sup> [Letter Wood to Adams, 9 December 2002, 'Iraq: Security Council Resolution 1441 \(2002\)'](#).

<sup>43</sup> Statement, 17 January 2011, paragraph 1.12.

<sup>44</sup> Statement, 15 March 2011, page 20.

**132.** Sir Michael added that he had explained in a meeting with Lord Goldsmith “as late as January 2003” that his “position within the FCO was becoming very difficult” since he was still having to advise Mr Straw and others “without being able to refer to” Lord Goldsmith’s advice, even though he was “aware of his [Lord Goldsmith’s] thinking at that time”.

**133.** Sir Michael told the Inquiry:

“... it was certainly a problem for me within the Foreign Office, because I was having to react to public statements by Ministers, to prepare briefings for people, on the basis of my views, without having a definitive view from the Attorney, although I think I know what his thinking was at that time.

“So I think it was a problem in terms of giving legal advice within the Foreign Office ... in the broader sense ... it was a problem for government as a whole, because they really needed advice, even if they didn’t want it at that stage, in order to develop their policy in the weeks leading up to the failure to get the second resolution.”<sup>45</sup>

**134.** Asked what he meant, Sir Michael added:

“I think it was clear to me that the Attorney would give advice when he was asked for it, and there were various stages when he was not asked for it ... [M]y impression was that there was a reluctance in some quarters to seek the Attorney’s advice too early.”<sup>46</sup>

**135.** Asked whether it would have helped if his advice had been provided earlier, Lord Goldsmith told the Inquiry that he did not think so. He said he had:

“... been at pains, as you have seen, to try to make sure that those who were moulding the policy didn’t have a misunderstanding about, at least, what my view might be and I had been involved ...”<sup>47</sup>

**136.** Lord Goldsmith added:

“My view was, if I thought it was necessary for a Minister to know, I would tell them, whether they wanted to hear it or not.”

**137.** Asked if he had been involved at the right time in terms of policy development, Lord Goldsmith stated:

“I don’t know. I don’t know what difference, if any, it would have made. My own view is that it is right that the Senior Legal Adviser, and all Legal Advisers, should be involved in the policy development, because that helps Ministers, once you

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<sup>45</sup> Public hearing, 26 January 2010, page 39.

<sup>46</sup> Public hearing, 26 January 2010, page 40.

<sup>47</sup> Public hearing, 27 January 2010, page 101.

understand what their objectives are, to reach a way of achieving those which is lawful ...”<sup>48</sup>

**138.** Asked about whether the legal issues were folded into the developing policy questions, Lord Goldsmith replied:

“I think in the event that did happen. As you have heard, on two occasions I insisted on offering a view, even though it wasn’t being asked for, to make sure the policy, as it were, took account of that.”<sup>49</sup>

**139.** Ms Elizabeth Wilmshurst, a Deputy FCO Legal Adviser, identified a particular risk that arose from the lateness of the definitive advice:

“... on the process of obtaining the Law Officers’ advice, it was clearly far from satisfactory, and it seemed to have been left right until the end, the request to him for his formal opinion, as if it was simply an impediment that had to be got over before the policy could be implemented, and perhaps a lesson to be learned is that, if the Law Officers’ advice needs to be obtained, as it always does for the use of force issues, then it should be obtained before the deployment of substantial forces. For the Attorney to have advised that the conflict would have been unlawful without a second resolution would have been very difficult at that stage without handing Saddam Hussein a massive public relations advantage. It was extraordinary, frankly, to leave the request to him so late in the day.”<sup>50</sup>

**140.** Asked if it would have been useful to have had the formal advice of the Attorney General during the period after resolution 1441 when the Armed Forces were preparing for military action, Mr Blair replied:

“No. I think what was important for him to do was to explain to us what his concerns were ... Peter was quite rightly saying to us, ‘These are my concerns. This is why I don’t think 1441 in itself is enough’.

“... [W]e had begun military preparations even before we got the ... 1441 resolution. We had to do that otherwise we would never have been in a position to take military action. But let me make it absolutely clear, if Peter in the end had said, ‘This cannot be justified lawfully’, we would have been unable to take action.”<sup>51</sup>

**141.** Asked if he had any observations on the process by which Lord Goldsmith’s advice had been obtained, Lord Turnbull, Cabinet Secretary between September 2002 and September 2005, said: “I can see that it would have been better if this had been done earlier, but the list of things for which that is true runs to many pages.”<sup>52</sup>

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<sup>48</sup> Public hearing, 27 January 2010, page 102.

<sup>49</sup> Public hearing, 27 January 2010, page 232.

<sup>50</sup> Public hearing, 26 January 2010, pages 24-25.

<sup>51</sup> Public hearing, 29 January 2010, page 150.

<sup>52</sup> Public hearing, 25 January 2011, page 25.

## Lord Goldsmith's meeting with No.10 officials, 19 December 2002

**142.** In a meeting held at his request with No.10 officials on 19 December, Lord Goldsmith was again told that he was not at that stage being asked for advice; and that the UK was pushing for a second resolution.

**143.** Lord Goldsmith was also told that, when he was asked for advice, it would be helpful if he were to discuss a draft with Mr Blair.

**144.** As requested by Lord Goldsmith, Ms Adams set up a meeting with Mr Powell.<sup>53</sup>

**145.** The meeting took place on 19 December.

**146.** A minute produced by Mr David Brummell, the Legal Secretary to the Law Officers from August 2000 to November 2004, stated that Sir David Manning and Baroness Sally Morgan, the No.10 Director of Political and Government Relations, were also present, as well as Mr Powell, and that the meeting's purpose was to provide Lord Goldsmith "with an update on developments and likely timings for any future action, rather than for the AG to provide specific legal advice".<sup>54</sup>

**147.** Mr Brummell recorded that Mr Powell had sketched out three "possible scenarios":

- "Saddam Hussein does something very stupid and the weapons inspectors find some WMD, which leads to a UN ... resolution finding material breach and authorising the use of force."
- "The inspectors catch out Saddam Hussein in some way but the response of members of the Security Council is such that there is no second resolution."
- "... [T]he US become frustrated with the UN process and decide to take military action regardless, i.e. without UN support."

**148.** Mr Brummell wrote that Mr Powell had commented:

- "if the US and UK were to decide that military action was justified, the British Cabinet would be unanimous in their support";
- "There would be no question of the UK supporting military action" in the third scenario; and "it was unlikely that the US would proceed" in the "absence of UK support"; and
- military action could start as early as mid-February.

**149.** Mr Brummell reported that Sir David Manning had confirmed that the UK was pushing for a second resolution and he thought there was a "reasonably good prospect (i.e. a 50:50 or so chance)" of success. Iraq had also made the "mistake of alienating Russia" by cancelling an oil contract which "would change the political weather".

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<sup>53</sup> [Minute Adams to Attorney General, 11 December 2002, 'Iraq: Interpretation of Resolution 1441'](#).

<sup>54</sup> [Minute Brummell, 19 December 2002, 'Iraq: Note of Meeting at No. 10 Downing Street – 4.00 pm, 19 December 2002'](#).

**150.** Sir David had also confirmed that the “basic assumption” was that Dr Blix would report any evidence of breaches to the Security Council and:

“The SC would then debate whether the reported breaches were serious or trivial. It would then be for the Security Council, in the light of that debate, to decide what action should be taken. It was noted that this would suggest that it was expected that the SC would have to express its view.”

**151.** Mr Brummell recorded that Lord Goldsmith had agreed that the adoption of resolution 1441:

“... which represented a ‘complex compromise’ had been a considerable achievement. He thought that a key question arose in relation to the interpretation of OP4 ... What could the phrase ‘for assessment’ mean if it did not mean an assessment as to whether the breach was sufficiently material to justify resort to use of force?”

**152.** Mr Brummell also recorded that there would be “a full Cabinet discussion on Iraq some time in the middle of January, i.e. before the Security Council met at the end of January”. It had been agreed that:

- Lord Goldsmith would be invited to attend Cabinet “for this purpose”;
- it would be useful for him to speak to Sir Jeremy Greenstock “to get a fuller picture of the history of the negotiation of resolution 1441”;
- Lord Goldsmith “was not being called on to give advice at this stage. But he would be giving further consideration to all these issues”; and
- it “might be helpful” if Lord Goldsmith “were to discuss a legal advice paper in draft with the Prime Minister”.

**153.** There is no No.10 record of the meeting.

**154.** Lord Goldsmith told the Inquiry that he was concerned about what was meant by the expression “for assessment” in OP 4, which seemed “to be an essential issue”.<sup>55</sup>

**155.** Lord Goldsmith said:

“I wanted to understand principally what was meant by ‘for assessment’, and I also wanted to know what were the – what the answers to a number of other textual points that I raised as giving rise to questions about what was meant by 1441.”<sup>56</sup>

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<sup>55</sup> Public hearing, 27 January 2010, page 65.

<sup>56</sup> Public hearing, 27 January 2010, pages 65-66.

**156.** Asked if this request could have been channelled through Ms Adams to the Foreign Office Legal Advisers, Lord Goldsmith explained:

“There are a number of ways it could have been done, and I’m not sure that the Foreign Office would have been able to deal ultimately with the US side, but it could have been.”<sup>57</sup>

**157.** Lord Goldsmith said:

“I wasn’t expecting to discuss it with Jonathan Powell. That wasn’t the point. I did want to discuss that with the Prime Minister, with the Foreign Secretary, who had been very closely involved in the negotiations, and this was a channel.”<sup>58</sup>

**158.** Lord Goldsmith told the Inquiry that he wanted to have “from the client, you know, ‘What do you say in relation to certain of these arguments?’”<sup>59</sup>

**159.** Lord Goldsmith told the Inquiry that he viewed Mr Blair as “ultimately” the client for his advice.<sup>60</sup>

**160.** Asked whether the client was, at that stage, “expressing a view on how soon” the advice would be required, Lord Goldsmith told the Inquiry:

“I don’t recall. Certainly there wasn’t ... any request at that stage for final advice, but given what I said about needing to understand certain further matters ... it obviously wasn’t going to be then and there.”<sup>61</sup>

**161.** Asked whether the client was concerned that he should not “come in too soon” with his advice, Lord Goldsmith told the Inquiry that that question would need to be put to Mr Blair; and that Mr Powell and his very close advisers knew what Mr Blair’s mind was.<sup>62</sup>

**162.** Asked what indications he had been given about the timing of his replies, Lord Goldsmith stated:

“I don’t recall ...

“All I was saying was I wasn’t actually in a position to provide my advice at that stage – because I hadn’t completed my researches and my enquiries – and it was agreed that I would provide a draft advice which would be something that would then enable me to raise questions which were causing me concern, so I could understand what the response to them was.”<sup>63</sup>

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<sup>57</sup> Public hearing, 27 January 2010, page 65.

<sup>58</sup> Public hearing, 27 January 2010, page 66.

<sup>59</sup> Public hearing, 27 January 2010, page 67.

<sup>60</sup> Public hearing, 27 January 2010, page 68.

<sup>61</sup> Public hearing, 27 January 2010, page 68.

<sup>62</sup> Public hearing, 27 January 2010, page 68.

<sup>63</sup> Public hearing, 27 January 2010, page 69.

**163.** Lord Turnbull told the Inquiry that he, Admiral Sir Michael Boyce, Chief of the Defence Staff (CDS), the diplomatic service and others were all clients for Lord Goldsmith's advice.<sup>64</sup> The characterisation of Mr Blair as the client was not "a very good description of the importance of this advice".

**164.** In his written statement, Lord Goldsmith cited his telephone call with Mr Powell on 11 November and the meeting on 19 December as occasions when he had been "discouraged from providing" his advice.<sup>65</sup>

**165.** Asked if he was aware that Lord Goldsmith felt he was being discouraged, Mr Blair told the Inquiry:

"I think it was more that we knew obviously when we came to the point of decision we were going to need formal advice. We knew also this was a very tricky and difficult question. It was important actually that he gave this advice. I think the only concern, and I am speaking from memory here; generating bits of paper the entire time on it, but, I mean, it was obviously important that he was involved."<sup>66</sup>

## Lord Goldsmith's provisional view

### Lord Goldsmith's draft advice of 14 January 2003

**166.** As agreed with Mr Powell on 19 December 2002, Lord Goldsmith handed his draft advice to Mr Blair on 14 January 2003.

**167.** The draft advice stated that a further decision by the Security Council would be required to revive the authorisation to use force contained in resolution 678 (1990) although that decision did not need to be in the form of a further resolution.

**168.** Lord Goldsmith saw no grounds for self-defence or humanitarian intervention providing the legal basis for military action in Iraq.

**169.** Lord Goldsmith's draft advice did not explicitly address the possibility, identified by the Law Officers in 1997, of other "exceptional circumstances" arising if the international community "as a whole" had accepted that Iraq had repudiated the cease-fire, but the Security Council was "unable to act".

**170.** The advice did, however, address both the precedent of Kosovo and the question of whether a veto exercised by a Permanent Member of the Security Council might be deemed to be unreasonable, stating that the Kosovo precedent did not apply in the prevailing circumstances of Iraq; and that there was no "room for arguing that a condition of reasonableness [could] be implied as a precondition for the exercise of a veto".

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<sup>64</sup> Public hearing, 25 January 2011, page 28.

<sup>65</sup> Statement, 4 January 2011, paragraph 4.2.

<sup>66</sup> Public hearing, 21 January 2011, page 59.

**171.** Ms Adams informed Lord Goldsmith on 10 January that a meeting with Mr Blair had been arranged, at No.10's request, for noon on 14 January. There would be a full Cabinet discussion on 16 January and arrangements were being made for Lord Goldsmith to attend.

**172.** Ms Adams told the Inquiry she had prepared a submission analysing the arguments as she saw them and including her own view, which was essentially the same as that of Mr Wood. Lord Goldsmith then made comments on it which she adopted to produce a draft advice.<sup>67</sup>

**173.** Lord Goldsmith's draft advice stated that it was "clear that resolution 1441" contained "no express authorisation by the Security Council for the use of force".<sup>68</sup>

**174.** The revival argument had been relied on by the UK in the past but it would:

"... not be defensible if the Council has made it clear either that action short of the use of force should be taken to ensure compliance with the cease-fire or that it intends to decide subsequently what action is required ..."<sup>69</sup>

**175.** Lord Goldsmith wrote that OP1 contained a finding that Iraq was in material breach of its obligations, but it was accepted that the effect of the "firebreak" in OP 2 was that resolution 1441 did not immediately revive the authorisation to use force in resolution 678. In his view:

"The key question in relation to the interpretation of resolution 1441 is whether the terms of [operative] paragraph 12 ... indicate that the Council has reserved to itself the power to decide on what further action is required to enforce the cease-fire in the event of a further material breach by Iraq.

"... to answer this question, it is necessary to analyse the terms of resolution 1441 as a whole ..."

**176.** In his analysis, Lord Goldsmith made the following observations:

- The references to resolution 678 (1990) and resolution 687 (1991) in preambular paragraphs 4, 5 and 10 of the resolution suggested "that the Council had the revival argument in mind" when it adopted the resolution.
- The reference to "material breach" in OP1 signified "a finding by the Council of a sufficiently serious breach of the cease-fire conditions to revive the authorisation in resolution 678".
- The "final opportunity" in OP2 implied that the Council had "determined that compliance with resolution 1441" was Iraq's "last chance before the cease-fire resolution will be enforced".

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<sup>67</sup> Public hearing, 30 June 2010, pages 20-22.

<sup>68</sup> Minute Adams to Attorney General, 10 January 2003, 'Iraq: Resolution 1441'.

<sup>69</sup> [Minute \[Draft\] \[Goldsmith to Prime Minister\], 14 January 2003, 'Iraq: Interpretation of Resolution 1441'](#).

- The first part of OP4, that false statements or omissions in the Iraqi declaration and failure to comply with and co-operate fully in the implementation of resolution 1441 would “constitute a further material breach”, suggested that the Council had “determined that any failure by Iraq to comply with or co-operate in the implementation of the resolution will be a material breach”.
- The later reference in OP4 to a requirement to report that breach “to the Council for assessment under paragraphs 11 and 12” raised the “key question” as to whether that was “merely a procedural requirement for a Council discussion (the stated US/UK position)” or whether it indicated “the need for a determination of some sort ... that force was now justified”.
- It appeared “to be accepted that only serious cases of non-compliance would constitute a material breach, on the basis that it would be difficult to justify the use of force in relation to a very minor infringement of the terms of the resolution”.
- Mr Straw had told Parliament on 25 November that a material breach would need “as a whole to add up to something deliberate and more significant: something that shows Iraq’s intention not to comply”.
- If that was the case, “then any Iraqi misconduct must be assessed to determine whether it is sufficiently serious as to constitute a material breach”.
- The question then was “who is to make that assessment”.
- In the event of a reported breach, OP12 stated that the Council would “consider the situation and the need for compliance with all relevant resolutions in order to secure international peace and security”.
- Proposals to amend OP12 “which would have made clear that a further decision was required were rejected”.
- “The previous practice of the Council and statements made during the negotiation” of resolution 1441 demonstrated that the phrase “serious consequences” in OP13 was “accepted as indicating the use of force”.

**177.** In the light of that examination, Lord Goldsmith identified two critical questions:

- “(a) whether it would be legitimate to rely on the revival argument; and
- (b) what are the conditions for revival.”

**178.** Lord Goldsmith wrote:

- He considered “in relation to OP1” that “a finding of ‘material breach’” constituted a “determination of a sufficiently serious breach of the terms of the cease-fire resolution [resolution 687] to revive the authorisation to use for[ce] in resolution 678”.
- If OP4 had stopped after the words “breach of Iraq’s obligations”, there “would have been a good argument that the Security Council was authorising the use

of force in advance if there was a failure by Iraq to comply and co-operate fully with the implementation of the resolution”.

**179.** Considering the words “for assessment under paragraphs 11 and 12”, which had been added at the end of OP4, Lord Goldsmith observed that they “must mean something”. He wrote that it was “hard not to read these words as indicating that it is for the Council [to] assess if an Iraqi breach is sufficiently significant in light of all the circumstances”.

**180.** Lord Goldsmith explained that “three principal factors” had led him to that conclusion:

- The words “for assessment” implied the “need for a substantive assessment”. The view that OP12 required “merely a Council discussion ... would reduce the Council’s role to a procedural formality, so that even if the majority of the Council’s members expressed themselves opposed to the use of force this would have no effect”.
- It was “accepted that” OP4 did “not mean that every Iraqi breach would trigger the use of force, so someone must assess whether or not the breach is ‘material’”. It was “more consistent with the underlying basis of the revival argument” to interpret OP4 as meaning that it was “for the Council to carry out that assessment”.
- He did not find the “contrary arguments concerning the meaning of ‘for assessment’ sufficiently convincing”.

**181.** While Lord Goldsmith described the fact that French and Russian attempts to “make it plain” that a further breach would “only be ‘material’ when assessed as such by the Council” had not been accepted as the “strongest” point in favour of the view that a determination by the Council was not required, he cautioned:

“But what matters principally in interpreting a resolution is what the text actually says, not the negotiation which preceded its adoption.”

**182.** Lord Goldsmith added that he did “not find much difference” between the French proposals and the final text of the resolution.

**183.** Addressing the Explanations of Vote (EOVs) provided when resolution 1441 was adopted on 8 November 2002, Lord Goldsmith wrote that they “did not assist greatly in determining the correct interpretation of the text of OPs 4 and 12”.

**184.** Lord Goldsmith concluded:

“... my opinion is that resolution 1441 does not revive the authorisation to use of [sic] force contained in resolution 678 in the absence of a further decision of the Security Council. The difference between this view of the resolution and the approach which argues that no further decision is required is narrow, but key.

“The further decision need not be in the form of a further resolution. It is possible that following a discussion under OP12 of the resolution, the Council could make clear by other means, e.g. a Presidential statement, that it believes force is now justified to enforce the cease-fire.”

**185.** Addressing the principle of proportionality, Lord Goldsmith emphasised that:

“Any force used pursuant to the authorisation in resolution 678:

- must have as its objective the enforcement of the terms of the cease-fire contained in resolution 687 (1990) [sic] and subsequent relevant resolutions;
- be limited to what is necessary to achieve that objective; and
- must be proportionate to that objective, i.e. securing compliance with Iraq’s disarmament objectives.

“That is not to say that action may not be taken to remove Saddam Hussein from power if it can be shown that such action is necessary to secure the disarmament of Iraq and that it is a proportionate response to that objective. But regime change cannot be the objective of military action. This should be borne in mind in making public statements about any campaign.”

**186.** As he had promised following the meeting on 22 October, when Mr Blair had asked about the consequences of a perverse or unreasonable veto “of a second resolution intended to authorise the use of force”, Lord Goldsmith also addressed other legal bases for military action.

**187.** In her minute of 14 October 2002, Ms Adams had drawn Lord Goldsmith’s attention to the Law Officers’ advice to Mr Blair in 1997 which identified the possibility that there could be:

“... exceptional circumstances in which although the Council had not made a determination of material breach it was evident to and generally accepted by the international community as a whole that Iraq had in effect repudiated the cease-fire and that a resort to military force to deal with the consequences of Iraq’s conduct was the only way to ensure compliance with the cease-fire conditions.”<sup>70</sup>

**188.** Ms Adams added:

“I understand this passage was included in the advice to cover the sort of situation where the Council was unable to act. But of course the counter view would be that if the Council has rejected a resolution authorising the use of force, then under the scheme of the Charter, it cannot be said that force is legally justified.”

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<sup>70</sup> [Minute Adams to Attorney General, 14 October 2002, ‘Iraq: Meeting with David Manning, 14 October’.](#)

**189.** In the “lines to take” provided for Lord Goldsmith’s meeting with Mr Blair, Ms Adams wrote:

“It is impossible to give a firm view on this now. We should certainly not plan on being able to rely on such a justification. There does not seem to [be] wide support for military action among the wider international community at present.”<sup>71</sup>

**190.** In his draft advice of 14 January 2003, Lord Goldsmith wrote that:

“In ruling out the use of force without a further decision of the Council, I am not saying that other circumstances may not arise in which the use of force may be justified on other legal grounds, eg if the conditions for self-defence or humanitarian intervention were met. However, at present, I have seen nothing to suggest there would be a legal justification on either of these bases.”<sup>72</sup>

**191.** In relation to the “Kosovo Option”, Lord Goldsmith wrote that the UK had been “able to take action ... because there was an alternative legal base which could be relied on which did not depend on Council authorisation, namely intervention to avert an overwhelming humanitarian catastrophe”.

**192.** Lord Goldsmith did not, however, address whether any other “exceptional circumstances” could arise which might provide the basis for action against Iraq.

**193.** Lord Goldsmith also addressed the question of whether, in the event that, “following a flagrant violation by Iraq”, one of the five Permanent Members (P5) of the Council “perversely or unreasonably vetoed [a] further Council decision intended to authorise the use of force”, the Coalition would be justified in acting without Security Council authorisation.

**194.** Lord Goldsmith wrote that the scheme of the UN Charter clearly envisaged “the possibility of a P5 veto” and did “not provide that such vetoes may only be exercised on ‘reasonable grounds’”. In those circumstances, he did not believe that there was:

“... room for arguing that a condition of reasonableness can be implied as a precondition for the lawful exercise of a veto. Thus, if one of the P5 were to veto a further Council decision pursuant to OPs 4 and 12 of resolution 1441, there would be no Council authorisation for military action.”

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<sup>71</sup> [Minute Adams to Attorney General, 22 October 2002, ‘Iraq: Meeting with the Prime Minister, 22 October’ attaching ‘Lines to Take’.](#)

<sup>72</sup> [Minute \[Draft\] \[Goldsmith to Prime Minister\], 14 January 2003, ‘Iraq: Interpretation of Resolution 1441’.](#)

**195.** Lord Goldsmith told the Inquiry that he had handed the draft paper to Mr Blair and there was some discussion, but he did not think there had been a long discussion:

“The one thing I do recall was that he [Mr Blair] said ... ‘I do understand that your advice is your advice’. In other words, the Prime Minister made it clear he accepted that it was for me to reach a judgement and that he had to accept that.”<sup>73</sup>

**196.** No.10 did not seek Lord Goldsmith’s further views about the legal basis for the use of force until the end of February, and he did not discuss the issues again with Mr Blair until 11 March.

### **No.10’s reaction to Lord Goldsmith’s advice**

**197.** Mr Powell proposed that Sir Jeremy Greenstock should be asked to suggest alternatives to Lord Goldsmith.

**198.** Mr Blair’s response to Mr Powell indicated that he himself was not confident that resolution 1441, of itself, provided a legal basis for the use of force. Mr Blair’s response suggested a readiness to seek any ground on which Lord Goldsmith would be able to conclude that there was a legal basis for military action.

**199.** Given the consistent and unambiguous advice of the FCO Legal Advisers from March 2002 onwards and Lord Goldsmith’s advice from 30 July 2002, that self-defence could not provide a basis for military action in Iraq, the Inquiry has seen nothing to support Mr Blair’s idea that a self-defence argument might be “revived”.

**200.** Lord Goldsmith’s draft advice stated that:

“It was proposed before Christmas that it would be worthwhile to discuss the negotiation of the resolution and particularly the genesis of the words ‘for assessment’ with Sir Jeremy Greenstock. It is not clear if and when he will be able to come to London for such a meeting.”<sup>74</sup>

**201.** Mr Powell sent an undated note to Mr Blair advising: “We should get Jeremy Greenstock over to suggest alternatives to him.”<sup>75</sup>

**202.** Mr Blair replied to Mr Powell:

“We need to explore, especially (a) whether we c[oul]d revive the self-defence etc arguments or (b) whether the UNSCR [sic] c[oul]d have a discussion, no resolution authorising force but nonetheless the terms of the discussion and/or decision, make it plain there is a breach.”<sup>76</sup>

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<sup>73</sup> Public hearing, 27 January 2010, page 72.

<sup>74</sup> [Minute \[Draft\] \[Goldsmith to Prime Minister\], 14 January 2003, ‘Iraq: Interpretation of Resolution 1441’.](#)

<sup>75</sup> Note [handwritten] Powell to PM, [undated and untitled].

<sup>76</sup> Note [handwritten] [Blair to Powell], [undated and untitled].

**203.** Asked whether his response to Mr Powell’s manuscript note on Lord Goldsmith’s draft advice of 14 January was mostly about Lord Goldsmith understanding the negotiating history, or whether he was keen to find an alternative that might persuade Lord Goldsmith that there was a basis for military action, Mr Blair told the Inquiry that he thought it was “both”.<sup>77</sup>

**204.** Mr Blair added that he thought Lord Goldsmith himself had suggested meeting Sir Jeremy:

“So in a sense he had already raised that issue ... I think I was simply casting about ... I was saying ‘Have a look at this point. Have a look at that’, but the key thing was indeed that he was to speak to Jeremy.”

**205.** Mr Brummell’s record of Lord Goldsmith’s meeting with No.10 officials on 19 December records only that it would be “useful” for Lord Goldsmith to “speak to Sir Jeremy Greenstock, to get a fuller picture of the history of the negotiation of resolution 1441”.<sup>78</sup>

**206.** Despite Lord Goldsmith’s draft advice, Mr Blair continued to say in public that he would not rule out military action if a further resolution in response to an Iraqi breach was vetoed.

**207.** He did so in his statement to Parliament on 15 January and when he gave evidence to the Liaison Committee on 21 January about taking action in the event of an “unreasonable veto”.

**208.** These statements were at odds with the draft advice he had received and discussed with Lord Goldsmith.

**209.** During Prime Minister’s Questions on 15 January, Mr Blair was asked a series of questions by the Leader of the Opposition, Mr Iain Duncan Smith.<sup>79</sup>

**210.** Asked whether the Government’s position was that a second resolution was preferable or, as Ms Clare Short, the Development Secretary, had said, essential. Mr Blair replied:

“... we want a UN resolution. I have set out continually, not least in the House on 18 December [2002], that in circumstances where there was a breach we went back to the UN and the spirit of the UN resolution was broken because an unreasonable veto was put down, we would not rule out action. That is the same position that everybody has expressed, and I think it is the right position. However ... it is not merely preferable to have a second resolution. I believe that we will get one.”

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<sup>77</sup> Public hearing, 21 January 2011, page 63.

<sup>78</sup> [Minute Brummell, 19 December 2002, ‘Iraq – Note of meeting at No.10 Downing Street, 19 December 2002’.](#)

<sup>79</sup> House of Commons, *Official Report*, 15 January 2003, columns 677-678.

**211.** Mr Blair emphasised that the UN route had been chosen “very deliberately” because it was “important” that Saddam Hussein was “disarmed with the support of the international community”. He hoped that the House would unite around the position that if the UN resolution was breached, “action must follow, because the UN mandate has to be upheld”. The Government’s position was that a “second UN resolution” was “preferable”, but it had:

“... also said that there are circumstances in which a UN resolution is not necessary, because it is necessary to be able to say in circumstances where an unreasonable veto is put down that we would still act.”<sup>80</sup>

**212.** In his evidence to the Liaison Committee on 21 January, Mr Blair was asked about the impact of taking action without a second resolution.<sup>81</sup>

**213.** In his responses, Mr Blair emphasised a second resolution would be highly desirable, but argued that action should not be “unreasonably blocked”.

- It would be “easier in every respect” if there was a second resolution, but there could not be “a situation where there is a material breach recognised by everybody and yet action is unreasonably blocked”. Without that “qualification”, the discussion in the Security Council was “not likely to be as productive as it should be”.
- It would be “highly desirable” to have a second resolution.
- It would be “more difficult” to act without one, but if the inspectors said that they could not do their job properly or they made a finding that there were weapons of mass destruction, it would “be wrong” in the face of a veto “if we said ‘Right, well there is nothing we can do, he can carry on and develop these weapons.’ ... We must not give a signal to Saddam that there is a way out of this ... [It] is best done with the maximum international support but it will not be done at all if Saddam thinks there is any weakness ...” That “would be disastrous”.

**214.** Lord Goldsmith was asked by the Inquiry about the timing and substance of his advice to Mr Blair on the impact of a veto.<sup>82</sup>

**215.** Lord Goldsmith wrote:

“... I do not think that there was any doubt about my view. I had been clear at the meeting with the Prime Minister on 22 October 2002, and I provided a written record of my view in David Brummell’s letter of 23 October 2002. Although I said I would consider the issue further, the sense that I conveyed was that I would look at the issue again to see if anything changed my mind. To that end, I did have a discussion

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<sup>80</sup> House of Commons, *Official Report*, 15 January 2003, column 678.

<sup>81</sup> Minutes 21 January 2003, Liaison Committee (House of Commons), [Minutes of Evidence], Q&A 25, 27-28, 52, 54.

<sup>82</sup> Statement, 17 January 2011, paragraphs 4.1-4.7.

with John Grainger [FCO Legal Counsellor] and Michael Wood on 5 November 2002 and asked for further information ... but after this further consideration my view remained the same. If I had reached a different view, I am sure that I would have made this known, but I didn't. I decided therefore to wrap the issue up ... in my draft advice of 14 January 2003."

**216.** Lord Goldsmith's meeting with Mr Blair on 22 October 2002 is described in Section 3.5.

**217.** Asked whether that advice was draft or definitive, Lord Goldsmith wrote: "In one sense the whole of the advice of 14 January 2003 was draft", but he "was clear" that, in relation to the exercise of a veto, "that must have been understood by the Prime Minister".

**218.** Asked whether that was clear to Mr Blair, Lord Goldsmith wrote:

"I believe so."

**219.** Asked whether Mr Blair's words that it was "necessary to be able to say in circumstances where an unreasonable veto is put down that we would still act", and Mr Blair's later comments<sup>83</sup> during a *BBC Newsnight* interview on 6 February, were compatible with his advice, Lord Goldsmith replied: "No."

**220.** Asked if he was aware of Mr Blair's statements at the time, and, if so, what he thought of them, and what action he had taken, Lord Goldsmith replied:

"I became aware at some stage of the statements the Prime Minister made, though I cannot recall precisely when. I was uncomfortable about them, and I believe that I discussed my concerns with Jack Straw and my own staff, though I can find no record of a formal note of any such conversations. I understood entirely the need to make public statements which left Saddam Hussein in no doubt about our firmness of purpose. It was more likely that he would co-operate if he thought that there was a real likelihood of conflict. My concern was that we should not box ourselves in by the public statements that were made, and create a situation which might then have to be unravelled."<sup>84</sup>

**221.** The Inquiry asked Mr Blair:

- whether he considered that what he said on 15 January and 6 February was compatible with Lord Goldsmith's advice;
- whether he had received any other legal advice on the issue;
- whether his view that action could be taken was derived from the use of force without a UNSCR in relation to Kosovo; and

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<sup>83</sup> "If the inspectors do report that they can't do their work properly because Iraq is not co-operating there's no doubt ... that is a breach of the resolution. In those circumstances there should be a further resolution. If, however ... a country unreasonably in those circumstances put down a veto then I would consider action outside of that."; Statement, 17 January 2011, paragraphs 4.5-4.6.

<sup>84</sup> Statement, 17 January 2011, paragraph 4.7.

- given that the need to prevent an overwhelming humanitarian catastrophe would not provide the basis for action in Iraq, the legal basis on which he thought the UK would act.<sup>85</sup>

**222.** In his statement for the Inquiry, Mr Blair did not address the substance of Lord Goldsmith's advice that, in the event of a veto, there would be no Security Council authorisation for the use of force.<sup>86</sup> He wrote:

"I never believed that action in Iraq could be on the same legal basis as Kosovo ... So I never raised Kosovo as a direct precedent. However in Kosovo, we had had to accept we could not get a UN resolution even though we wanted one because Russia had made it clear it would wield a political veto. So we, not the UNSC, made the judgement that the humanitarian catastrophe was overwhelming.

"... [I]f it were clear and accepted by a UNSC member that there was a breach of [resolution] 1441, but nonetheless they still vetoed, surely that must have some relevance as to whether a breach had occurred, and thus to revival of resolution 678 authorising force ... I was not suggesting that we, subjectively and without more, could say: this is unreasonable, but that a veto in circumstances where [a] breach was accepted, surely could not override the consequences of such a breach set out in 1441 ie they could not make a bad faith assessment."

**223.** Mr Blair added:

"I was aware ... of Peter Goldsmith's advice on 14 January ... but ... I was also aware that he had not yet had the opportunity to speak to Sir Jeremy Greenstock or to the US counterparty.

"I had not yet got to the stage of a formal request for advice and neither had he got to the point of formally giving it. So I was continuing to hold to the position that another resolution was not necessary. I knew that the language of 1441 had represented a political compromise. But I also knew it had to have a meaning and that meaning, in circumstances where lack of clarity was the outcome of a political negotiation, must depend on what was understood by the parties to the negotiation.

"I knew that the US had been crystal clear and explicit throughout. This was the cardinal importance of not just including the phrase 'final opportunity' which to me meant 'last chance'; but also the designation in advance of a failure to comply fully and unconditionally, as a 'material breach' – words with a plain and legally defined meaning.

"Peter's view at that time was, because of the word 'assessment' in OP4 of 1441, there should be a further decision. But I was aware that ... had been precisely and openly rejected by the US and UK when negotiating the text. That is why

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<sup>85</sup> Inquiry request for a witness statement, 13 December 2010, Q7, page 4.

<sup>86</sup> Statement, 14 January 2011, pages 9-10.

his provisional advice was always going to be influenced by what was said and meant during the course of the negotiation of 1441. So I asked that he speak to Sir Jeremy Greenstock and later to the US.”

**224.** Asked if he had understood that his answer in Parliament was inconsistent with the legal advice he had been given, Mr Blair told the Inquiry:

“I was making basically a political point. However I accept entirely that there was an inconsistency between what he was saying and what I was saying ... but I was saying it not ... as a lawyer, but politically.”<sup>87</sup>

**225.** Asked if he could really distinguish between making a political point and a legal point when presenting a legal interpretation to the House of Commons, Mr Blair told the Inquiry:

“I understand that ... I was trying to hold that line ... I was less making a legal declaration ... because I could not do that, but a political point, if there was a breach we had to be able to act ... throughout this period of time ... we were going for this second resolution. It was always going to be difficult to get it, but we thought we might ...”<sup>88</sup>

**226.** Mr Blair added:

“I tried to choose my words carefully all the way through. In the two quotes you have, I chose them less carefully ...”<sup>89</sup>

**227.** Mr Blair made similar points justifying the position he had taken in his discussion with President Bush on 31 January and his interview on the *BBC Newsnight* programme on 6 February.

### **Cabinet, 16 January 2003**

**228.** As promised by Mr Blair on 19 December, Cabinet discussed Iraq on 16 January 2003.

**229.** Mr Blair told Cabinet that the strategy remained to pursue the UN course. The inspectors needed time to achieve results. If Iraq was not complying with the demands of the Security Council, a second resolution would be agreed.

**230.** Mr Straw stated that the UK should not rule out the possibility of military action without a second resolution. Mr Blair repeated that statement in his concluding remarks.

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<sup>87</sup> Public hearing, 21 January 2011, page 71.

<sup>88</sup> Public hearing, 21 January 2011, page 74.

<sup>89</sup> Public hearing, 21 January 2011, page 75.

**231.** Mr Blair's decision to ask for Lord Goldsmith's draft advice and his invitation to Lord Goldsmith to attend Cabinet suggest that he intended the advice to inform discussion in Cabinet on 16 January.

**232.** But Mr Blair did not reveal that he had received Lord Goldsmith's draft advice which indicated that a further determination by the Security Council that Iraq was in material breach of its obligations would be required to authorise the revival of the authority to take military action in resolution 678.

**233.** As the Attorney General, Lord Goldsmith was the Government's Legal Adviser not just the Legal Adviser to Mr Blair.

**234.** There is no evidence that Mr Straw was aware of Lord Goldsmith's draft advice before Cabinet on 16 January, although he was aware of Lord Goldsmith's position.

**235.** There is no evidence that Lord Goldsmith had communicated his concerns to Mr Hoon or to any other member of Cabinet.

**236.** Mr Blair's decision not to invite Lord Goldsmith to speak meant that Cabinet Ministers, including those whose responsibilities were directly engaged, were not informed of the doubts expressed in Lord Goldsmith's draft advice about the legal basis of the UK's policy.

**237.** It may not have been appropriate for Lord Goldsmith to challenge the assertions made by Mr Blair and Mr Straw, which repeated their previous public statements, during Cabinet.

**238.** Notwithstanding the draft nature of his advice, it would have been advisable for Lord Goldsmith to have told Mr Straw and Mr Hoon of his concerns.

**239.** Lord Goldsmith could also have expressed his concerns subsequently in private. Other than his conversations with Mr Straw in early February, there is no evidence that he did so.

**240.** Ms Adams' brief for Lord Goldsmith for Cabinet on 16 January stated:

"In the light of our discussion yesterday, if asked for your views on the interpretation of resolution 1441, you might say that:

- "you have not given advice";
- "you are waiting for further briefing from the FCO before finalising your views (alluding to the proposed Greenstock discussion)";
- "it is therefore premature to express a view"; and

- “in any event, interpretation of resolution [1441] may be influenced by subsequent Council discussion following further Iraqi non-compliance”.<sup>90</sup>

**241.** Lord Goldsmith’s manuscript comments indicated that he had reservations about the first bullet point in Ms Adams’ proposed “lines to take”.<sup>91</sup>

**242.** At Cabinet on 16 January, Mr Blair said that:

“... he wanted to make the United Nations route work. The inspectors were doing their job inside Iraq and he was optimistic that they would discover weapons of mass destruction and their associated programmes which had been concealed. They needed time to achieve results, including from better co-ordinated intelligence. If Iraq was not complying with the demands of the United Nations, he believed the ... Security Council would pass a second resolution.”<sup>92</sup>

**243.** Mr Blair told his colleagues that evidence from the inspectors would make a veto of a second resolution by other Permanent Members of the Security Council “less likely”:

“Meanwhile, British and American forces were being built up in the Gulf. If it came to conflict, it would be important for success to be achieved quickly. The [military] build up was having an effect on the Iraqi regime, with internal support dwindling for President Saddam Hussein ... The strategy remained to pursue the United Nations course.”

**244.** Mr Blair concluded by telling Cabinet that he would be meeting President Bush at the end of the month to discuss Iraq, after Dr Blix’s report to the Security Council on 27 January.

**245.** Mr Straw said:

“... he was aware of anxieties about the possibility of having to diverge from the United Nations path. There was a good prospect of achieving a second resolution. Many had been doubtful about achieving the first resolution; in the event, the ... Security Council vote had been unanimous. While sticking with the United Nations route we should not rule out the possibility of military action without a second resolution. Voting decisions in the Security Council could be driven by domestic politics, not the demands of the international situation.”

**246.** Mr Straw added that:

“In his recent contacts with the Muslim and Arab world, all could see the benefit of Saddam Hussein’s demise. He had utterly rejected the notion that we were hostile

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<sup>90</sup> [Minute Adams to Attorney General, 15 January 2003, ‘Cabinet Meeting, Thursday 16 January: Iraq’.](#)

<sup>91</sup> [Manuscript comment Goldsmith on Minute Adams to Attorney General, 15 January 2003, ‘Cabinet Meeting, Thursday 16 January: Iraq’.](#)

<sup>92</sup> [Cabinet Conclusions, 16 January 2003.](#)

to Islam ... Saddam Hussein had attacked his own people and his neighbours – all of whom were Muslims.”

**247.** Summing up the discussion, Mr Blair said:

“... the strategy based on the United Nations route was clear, although the uncertainties loomed large and there was a natural reluctance to go to war. It was to be expected that the public would want the inspectors to find the evidence before military action was taken. Pursuing the United Nations route was the right policy, but we should not rule out the possibility of military action without a second resolution. The priorities for the immediate future were:

- improved communications, which would set out the Government’s strategy and be promoted by the whole Cabinet;
- preparatory work on planning the aftermath of any military action and the role of the United Nations in that, which should in turn be conveyed to the Iraqi people so that they had a vision of a better life in prospect; and
- contingency work on the unintended consequences which could arise from the Iraqi use of weapons of mass destruction, environmental catastrophe or internecine strife within Iraq.”

### **Lord Goldsmith’s meeting with Sir Jeremy Greenstock, 23 January 2003**

**248.** Ms Adams sent Sir Jeremy Greenstock a copy of Lord Goldsmith’s draft advice, stating that it indicated the view he had “provisionally formed regarding the interpretation of the resolution”; and that:

“The Attorney would welcome your comments on the view he has reached. In particular, he would be interested to know if you feel that there are any significant arguments which he has overlooked which would point to a different conclusion. The note has been passed by the Attorney to No.10, but has not been circulated more widely. I have been asked to stress that the note should not be copied further.”<sup>93</sup>

**249.** In preparation for a meeting between Sir Jeremy and Mr Blair on 23 January to discuss negotiation of a second resolution and related issues, Mr Rycroft told Mr Blair that Sir Jeremy would explore Mr Blair’s “ideas” with Lord Goldsmith later that day.<sup>94</sup>

**250.** There is no mention of the issues to be discussed with Lord Goldsmith in the No.10 record of the meeting with Sir Jeremy.<sup>95</sup>

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<sup>93</sup> [Letter Adams to Greenstock, 21 January 2003, ‘Meeting with the Attorney General, 23 January’.](#)

<sup>94</sup> [Minute Rycroft to Prime Minister, 22 January 2003, ‘Iraq: Meeting with Jeremy Greenstock’.](#)

<sup>95</sup> [Minute Rycroft to Manning, 23 January 2003, ‘Iraq: Prime Minister’s Meeting with Jeremy Greenstock’.](#)

**251.** Sir Jeremy Greenstock wrote to Sir David Manning on 24 January with his perspective on the discussion with Lord Goldsmith.<sup>96</sup>

**252.** Sir Jeremy recorded that the “central issue” debated was whether the wording of OP4 “meant that the Council had something substantive to do in the second stage (viz determining that a breach was material and deciding on consequent action) before action could be taken on the further material breach; or whether further discussion/consideration in the Council ... sufficed”.

**253.** Sir Jeremy said he had told Lord Goldsmith that:

- the negotiations had “settled the wording of OPs 11-13 before a draft OP4 was ever proposed”;
- in that “tussle”, the “French/Russians/ Chinese lost (their ... EOVs were indicative in this respect) an explicit requirement for a new decision by the Council”;
- France “wanted ‘further material breach, when assessed’, and accepted with difficulty the final wording. This suggested they saw the difference between the two”;
- the US had come to the UN “to give the Security Council a further opportunity to be the channel for action”; and
- the “intention of the sponsors was that the fact of a further material breach would be established in a report from the inspectors”.

**254.** Sir Jeremy had argued that Lord Goldsmith’s draft advice “took insufficient account of the alternative routes to OP12 ... The fact that OP4 was a late addition was an indication that the route through OPs 1, 2, 11, 12 and 13 had separate validity.” There was “no question in the co-sponsors’ minds of ... conceding that the Council had to assess what was a breach”.

**255.** Sir Jeremy’s view was that “the natural interpretation of ‘assessment’ ... was that the Council would assess the options for the next steps ... after a material breach had occurred”.

**256.** Lord Goldsmith’s position had been to argue “the opposite case, that the late addition of ‘assessment’ ... must add something significant”.

**257.** Sir Jeremy identified “an intermediate interpretation, whereby the fact of the material breach particularly if reported by the inspectors as directed in OP11, automatically brought the final opportunity to an end”. Sir Jeremy suggested that “interpretation was ... given weight by the absence of clear wording in OP12 on the need for a further decision. And it had a close precedent in the US/UK action on 16 December 1998 ...”

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<sup>96</sup> Letter Greenstock to Manning, 24 January 2003, [untitled].

**258.** Sir David Manning submitted the letter to Mr Blair, commenting: “To be aware that Jeremy G[reenstock] is in debate with the AG.”<sup>97</sup>

**259.** A copy of Sir Jeremy’s letter was sent only to Lord Goldsmith’s office.

**260.** In a minute to Lord Goldsmith on 24 January, Ms Adams addressed the points made by Sir Jeremy on the textual arguments; the history of the negotiations; the precedent provided by resolution 1205 (1998); and references that had been made by Sir Jeremy to a paper submitted by Professor Christopher Greenwood Q.C., Professor of International Law, LSE, to the Foreign Affairs Committee (FAC) in October 2002.<sup>98</sup>

**261.** Ms Adams concluded:

“Overall, although I don’t believe that the arguments can all be taken without challenge, I certainly think they strengthen the case for the second view and make the balance of view as to which is the better of the two alternative interpretations rather closer.”

**262.** Ms Adams suggested that Lord Goldsmith “might want to consider” whether he “would like to put these arguments to Michael Wood”. Although that would “probably mean disclosing to him your provisional view of the resolution and perhaps even the draft advice”.

**263.** Ms Adams commented to Lord Goldsmith that Sir Jeremy’s letter to Sir David Manning “helpfully sets out his view of the arguments, although I don’t think there are any points which are not covered in my minute of 24 January”.<sup>99</sup>

**264.** Lord Goldsmith’s undated minute to Ms Adams, inviting her to draft a note setting out his views, suggested that he did not share Sir Jeremy’s view that the wording of OP4 was the “central issue”.<sup>100</sup>

**265.** Lord Goldsmith wrote that Sir Jeremy’s main argument had been that there was “no need to focus on the words ‘for assessment’ in OP4 because there is a trigger in OP1 suspended by OP2 but which suspension will be lifted if Iraq ‘fails to take the final opportunity’”.

**266.** Lord Goldsmith wrote that he did “not consider that this argument can in fact work to create a form of automaticity if the final opportunity is not taken”. He focused on the fact that OPs 4 and 11 both led to OP12 and the need for the Security Council to meet “to consider the situation ... and the need for full compliance with all the relevant

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<sup>97</sup> [Manuscript comment Manning to PM, 25 January 2003, on Letter Greenstock to Manning, 24 January 2003, \[untitled\]](#).

<sup>98</sup> [Minute Adams to Attorney General, 24 January 2003, ‘Iraq: Resolution 1441: Sir Jeremy Greenstock’s points’](#).

<sup>99</sup> [Manuscript comment Adams to AG, 27 January 2003, on Letter Greenstock to Manning, 24 January 2003, \[untitled\]](#).

<sup>100</sup> Minute Attorney General to Adams, [24 January 2003], [untitled].

Security Council resolutions in order to secure international peace and security”; and that the resolution had to be read as a whole. In his view, that meant the Council had to “consider what is needed in order to secure international peace and security and, in particular, whether full compliance is necessary”. OP12 required “a determination by the Security Council of what is now required”.

**267.** Lord Goldsmith also addressed Sir Jeremy’s argument that resolution 1205 (1998) provided a precedent. Lord Goldsmith wrote that the point was not that the resolution validated the revival argument; he did not regard the fact that there was “strong evidence of disagreement of other States with the proposition” as “a matter of concern”. The question was “not whether such an argument exists but what are the conditions which attach to its existence”.

### **Mr Blair’s interview on *BBC Breakfast with Frost*, 26 January 2003**

**268.** In an interview on 26 January, Mr Blair stated explicitly that failure to co-operate with the inspectors would be a material breach of resolution 1441.

**269.** In an extended interview on *BBC TV’s Breakfast with Frost* on 26 January, Mr Blair set out in detail his position on Iraq.<sup>101</sup>

**270.** Pressed as to whether non-compliance rather than evidence of weapons of mass destruction justified “a war”, Mr Blair replied that he “profoundly” disagreed with the idea that a refusal to co-operate was of a “lesser order”:

“... if he fails to co-operate in being honest and he is pursuing a programme of concealment, that is every bit as much a breach as finding, for example, a missile or chemical agent.”

**271.** Asked whether a second resolution was needed, required or preferred, Mr Blair replied:

“Of course we want a second resolution and there is only one set of circumstances in which I’ve said that we would move without one ... all this stuff that ... we’re indifferent ... is nonsense. We’re very focused on getting a UN resolution.

“... [Y]ou damage the UN if the UN inspectors say he’s not co-operating, he’s in breach, and the world does nothing about it. But I don’t believe that will happen ...”

### **Options for a second resolution**

**272.** Intensive discussions on a second resolution took place at the end of January.

**273.** Ms Wilmshurst wrote to Ms Adams on 27 January with draft texts for two options for a second resolution, one expressly authorising the use of force, the other containing

<sup>101</sup> *BBC News*, 26 January 2003, *Prime Minister prepares for war*.

implicit authority.<sup>102</sup> Ms Wilmshurst wrote that no decisions had been taken on the drafts and no discussions had begun with the US, but the FCO would welcome any comments Lord Goldsmith might wish to make on the options.

**274.** Ms Adams replied that, having regard to the terms of resolution 1441 and the previous practice of the Council, Lord Goldsmith considered that “where the Security Council determines that Iraq had committed a sufficiently serious breach of the conditions of the cease-fire imposed by resolution 687 (1991)” to revive the authorisation in resolution 678(1990), an implicit resolution would be sufficient to revive the authorisation to use force in resolution 678.<sup>103</sup>

**275.** The “critical element” was that “there has been a finding, in whatever form, by the Security Council itself”, and that “A Presidential Statement would also be sufficient”.

**276.** Ms Adams wrote that Lord Goldsmith did not at that stage intend to offer any detailed drafting comments on the proposed text, “given that it is likely that they will change in discussions with the US”.

**277.** In relation to the possibility of issuing an “ultimatum”, Lord Goldsmith’s view was that “would need to be expressed in very clear terms so there is no room for doubt whether or not Iraq had met the Council’s demands. Otherwise there is a risk of opening up a debate about whether there is a need for a further determination by the Council that Iraq had failed to comply with the new ultimatum.”

**278.** Ms Adams recorded that Lord Goldsmith wished to make clear that a second resolution authorising the use of force “would not give an unlimited right to use force against Iraq”. Lord Goldsmith considered that any use of force would have to be directed towards the objective of securing compliance with the disarmament obligations, which the Security Council had already determined in resolution 687(1991) and subsequent relevant resolutions were “necessary requirements for restoring international peace and security in the area”. The use of force would, moreover, have to be limited to what was “necessary to enforce those obligations, and be a proportionate response to Iraq’s breach”.

**279.** Ms Adams explicitly stated that Lord Goldsmith’s comments were “made without prejudice to the separate question ... of whether a second resolution is legally required”. He had also asked to be “kept closely informed of developments” and wished “to have the opportunity to comment on any draft which is to be tabled for discussion with other members of the Council”.

**280.** Mr Grainger wrote to Mr Macleod, to convey the substance of the advice in Ms Adams’ letter.<sup>104</sup>

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<sup>102</sup> Letter Wilmshurst to Adams, 27 January 2003, ‘Iraq: Second Resolution’.

<sup>103</sup> [Letter Adams to Wilmshurst, 30 January 2003, ‘Iraq: Second Resolution’](#).

<sup>104</sup> [Letter Grainger to Macleod, 31 January 2003, ‘Iraq: Second Resolution’](#).

## Lord Goldsmith's advice, 30 January 2003

**281.** Ms Adams had written to Sir David Manning on 28 January, recording that Lord Goldsmith had found Sir Jeremy Greenstock's letter of 24 January "a useful record of Sir Jeremy's arguments on which the Attorney is reflecting"; but that Lord Goldsmith:

"... would like to make clear, in order to avoid any doubt about his position, that the purpose of the meeting was to allow the Attorney to hear the best arguments which could be made in support of the view that resolution 1441 can be interpreted as authorising the use of force, under certain conditions, without a further Council decision. The Attorney was therefore principally in listening mode ..." <sup>105</sup>

**282.** Ms Adams wrote that there was "one point on which Lord Goldsmith would find it helpful to have further information". Sir Jeremy's arguments had relied "heavily on the negotiating history ... and the fact that other delegations sought, but failed to obtain, certain language in OPs 4 and 12". Lord Goldsmith wanted to know "if possible, to what extent other members of the Council were aware of these bilateral discussions and therefore the significance of the language". Lord Goldsmith also wished to take up Sir Jeremy's suggestion to meet US counterparts, including to "hear their views on what is necessary in practice to trigger the authorisation to use force".

**283.** Ms Adams concluded that Lord Goldsmith was conscious that Mr Blair was due to meet President Bush later that week. The letter stated:

"The Prime Minister is aware of the Attorney's provisional view of the interpretation of the resolution. However, if the Attorney is to consider the arguments of his US counterparts before reaching a definitive view, he will not be in a position to finalise his advice this week. The Attorney would therefore like to know whether you see any difficulty with this and whether the Prime Minister would wish to have the Attorney's considered advice before he departs for the US."

**284.** Sir David Manning wrote on Ms Adams' letter that someone should respond to Lord Goldsmith's question about advice for Mr Blair in his absence. <sup>106</sup>

**285.** Baroness Morgan commented: "not necessary before w/end". <sup>107</sup>

**286.** Mr Rycroft recorded: "I replied by phone as Sally said." <sup>108</sup>

**287.** A copy of Ms Adams' letter was sent to Sir Jeremy Greenstock, who responded to Lord Goldsmith's question on 29 January. <sup>109</sup>

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<sup>105</sup> [Letter Adams to Manning, 28 January 2003, 'Iraq'](#).

<sup>106</sup> [Manuscript comment Manning on Letter Adams to Manning, 28 January 2003, 'Iraq'](#).

<sup>107</sup> [Manuscript comment Morgan on Letter Adams to Manning, 28 January 2003, 'Iraq'](#).

<sup>108</sup> [Manuscript comment Rycroft on Letter Adams to Manning, 28 January 2003, 'Iraq'](#).

<sup>109</sup> Letter Greenstock to Manning, 29 January 2003, [untitled].

**288.** The points made by Sir Jeremy included:

- the early drafts of what became resolution 1441 “were discussed among members of the P5, bilaterally, and in extensive and frequent conversations at Ministerial level”;
- a text was not finally “agreed by” all members of the P5 until 7 November; and
- he had “convened meetings with the non-Permanent Members during the drafting process to make sure they were aware of developments. The significance of the proposals for what became OP 4, 11 and 12 were fully discussed on these occasions.”

**289.** Despite being told that advice was not needed for Mr Blair’s meeting with President Bush on 31 January, Lord Goldsmith wrote on 30 January to emphasise that his view remained that resolution 1441 did not authorise the use of military force without a further determination by the Security Council.

**290.** That was the third time Lord Goldsmith had felt it necessary to put his advice to Mr Blair in writing without having been asked to do so; and on this occasion he had been explicitly informed that it was not needed.

**291.** Lord Goldsmith had made only a “provisional” interpretation of resolution 1441, but his position was firmly and clearly expressed.

**292.** It was also consistent with the advice given by Mr Wood to Mr Straw.

**293.** Despite the message that his advice was not needed before the meeting with President Bush, Lord Goldsmith decided to write to Mr Blair on 30 January, stating:

“I thought you might wish to know where I stand on the question of whether a further decision of the Security Council is legally required in order to authorise the use of force against Iraq.”<sup>110</sup>

**294.** Lord Goldsmith informed Mr Blair that the meeting with Sir Jeremy Greenstock had been “extremely useful”, and that “it was in fact the first time that the arguments in support of the case that there is no need for a further Council decision had been put to me in detail”. He had “considered carefully” the “important points” Sir Jeremy had made. Lord Goldsmith wrote that he was “preparing a more detailed note of advice” which would set out his “conclusions in relation to those arguments”.

**295.** Lord Goldsmith added that he had “indicated to Sir David Manning” that he “would welcome the opportunity, if arrangements can be made in time, to hear the views of my US counterparts on the interpretation of resolution 1441”. He was “not convinced” that it would “make any difference to my view”, but he remained “ready to hear any arguments”.

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<sup>110</sup> [Minute Goldsmith to Prime Minister, 30 January 2003, ‘Iraq’](#).

**296.** Lord Goldsmith concluded:

“... notwithstanding the additional arguments put to me since our last discussion, I remain of the view that the correct legal interpretation of resolution 1441 is that it does not authorise the use of military force without a further determination by the Security Council, pursuant to paragraph 12 of the resolution, that Iraq has failed to take the final opportunity granted by the Council. I recognise that arguments can be made to support the view that paragraph 12 of the resolution merely requires a Council discussion rather than a further decision. But having considered the arguments on both sides, my view remains that a further decision is required.”

**297.** Sir David Manning commented: “Clear advice from Attorney on need for further resolution.”<sup>111</sup>

**298.** Mr Rycroft wrote: “I specifically said that we did not need further advice this week.”<sup>112</sup>

**299.** The underlining of Lord Goldsmith’s concluding paragraph quoted above is Mr Blair’s and he wrote alongside the paragraph: “I just don’t understand this.”<sup>113</sup>

**300.** Asked by the Inquiry why he had written to Mr Blair at that point, Lord Goldsmith told the Inquiry:

“I discovered that Mr Blair was going to see President Bush again at the end of January and there was concern again about views being expressed that I had now been persuaded by Sir Jeremy, so I did send a short minute to the Prime Minister to make sure that he didn’t think that was the case. I hadn’t been asked for it, but I sent it.”<sup>114</sup>

**301.** Asked to explain what it was he did not understand about Lord Goldsmith’s advice, Mr Blair wrote:

“When I received the advice on 30 January – which again was provisional – I did not understand how he could reach the conclusion that a further decision was required, when expressly we had refused such language in 1441.”<sup>115</sup>

**302.** Although Mr Blair commented that he did not understand Lord Goldsmith’s conclusion, it was consistent with the views Lord Goldsmith had set out in his meeting with Mr Blair on 22 October 2002, and subsequently in his conversations with Mr Powell on 11 November and 19 December and in his draft advice given to Mr Blair and discussed with him on 14 January 2003.

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<sup>111</sup> [Manuscript comment Manning on Minute Goldsmith to Prime Minister, 30 January 2003, ‘Iraq’.](#)

<sup>112</sup> [Manuscript comment Rycroft on Minute Goldsmith to Prime Minister, 30 January 2003, ‘Iraq’.](#)

<sup>113</sup> [Manuscript comment Blair on Minute Goldsmith to Prime Minister, 30 January 2003, ‘Iraq’.](#)

<sup>114</sup> Public hearing, 27 January 2010, page 90.

<sup>115</sup> Statement, 14 January 2011, page 10.

**303. The issue that Lord Goldsmith was addressing in his advice to Mr Blair was not what the UK's objective had been in negotiating resolution 1441 but its legal effect in the circumstances of early 2003.**

**304.** Mr Blair referred again to this manuscript comment in his oral evidence when recalling the No.10 meeting which had taken place on 17 October 2002, "which we then minuted out, including to Peter"; and his meeting with Lord Goldsmith on 22 October 2002.

**305.** Mr Blair said:

"... we had agreed on 17 October that there were clear objectives for the resolution and those objectives were, I think we actually say this very plainly, the ultimatum goes into 1441. If he breaches the ultimatum action follows. So this was the instruction given. I mean, I can't remember exactly what I said after the 22 October, but I should imagine I said "Well, you had better make sure it does meet our objectives ..."<sup>116</sup>

**306.** Mr Blair added:

"... the thing that was problematic for me throughout, and it is why I wrote ... 'I just don't understand this' is that the whole point about our instructions to our negotiators was, 'Make sure that this resolution is sufficient because we can't guarantee we are going to go back into a further iteration of this or a second resolution'."

**307.** Mr Blair's meeting on 17 October and the meeting between Lord Goldsmith and Mr Blair on 22 October are described in Section 3.5.

## **US agreement to pursue a second resolution**

**308. In the meeting on 31 January, President Bush agreed to support a second resolution to help Mr Blair.**

**309.** A briefing paper prepared by the FCO Middle East Department on 30 January described the objectives for Mr Blair's meeting with President Bush as:

"to convince President Bush that:

- our strategy, though working, needs more time;
- the military campaign will be very shocking in many parts of the world, especially in its opening phase (five times the bombing of the Gulf war);
- a second UN Security Council resolution (i) would greatly strengthen the US's position, (ii) is politically essential for the UK, and almost certainly legally essential as well;

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<sup>116</sup> Public hearing, 21 January 2011, pages 55-56.

- we should support Saudi ideas for disarmament and regime change with UN blessing; and
- the US needs to pay much more attention, quickly, to planning on 'day after' issues; and that the UN needs to be central to it."<sup>117</sup>

**310.** On the legal position, a background note stated:

"There are concerns that a second resolution authorising the use of force is needed before force may lawfully be employed against Iraq to enforce the WMD obligations in the UNSCRs. If a draft resolution fails because of a veto (or indeed because it does not receive nine positive votes), the fact that the veto is judged 'unreasonable' is immaterial from a legal point of view."

**311.** In the meeting on 31 January, Mr Blair confirmed that he was:

"... solidly with the President and ready do whatever it took to disarm Saddam."<sup>118</sup>

**312.** Mr Blair said he firmly believed that it was essential that we tackle the threats posed by WMD and terrorism. He wanted a second resolution if we could possibly get one because it would make it much easier politically to deal with Saddam Hussein. He believed that a second resolution was in reach. A second resolution was an insurance policy against the unexpected.

**313.** Mr Blair set out his position that the key argument in support of a second resolution must rest on the requirement in 1441 that Saddam Hussein must co-operate with the inspectors. Dr Blix had already said on 27 January that this was not happening; he needed to repeat that message when he reported to the Security Council in mid-February and at the end of February/early March. That would help to build the case for a second resolution.

**314.** Mr Blair added that there were various uncertainties:

- Saddam Hussein might claim at the eleventh hour to have had a change of heart; and
- we could not be sure that Dr Blix's second and third reports would be as helpful as his first.

**315.** Mr Blair was, therefore, flexible about the timing of the second resolution. The key was to ensure that we secured it. We had taken the UN route in the expectation that the UN would deal with the Iraq problem, not provide an alibi for avoiding the tough decisions. The resolution was clear that this was Saddam Hussein's final opportunity. We had been very patient. Now we should be saying that the crisis must be resolved in weeks, not months. The international community had to confront the challenges of WMD and terrorism now.

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<sup>117</sup> [Paper FCO \[MED\], 30 January 2003, 'Prime Minister's visit to Camp David, 31 January: Iraq'](#).

<sup>118</sup> Letter Manning to McDonald, 31 January 2003, 'Prime Minister's Conversation with President Bush on 31 January'.

**316.** Mr Blair argued that the second resolution:

“... was not code for delay or hesitation. It was a clear statement that Saddam was not co-operating and that the international community was determined to do whatever it took to disarm him. We needed to put the debate in a wider context. The international community had to confront the challenges of WMD and terrorism now, whether in Iraq or North Korea, otherwise the risks would only increase.”

### **Public statements by Mr Blair, February 2003**

**317.** In early February, Mr Blair made public statements implying that the UK could take part in military action if a second resolution was vetoed.

**318.** In the House of Commons on 5 February, Mr Chris Mullin (Labour) told Mr Blair that he:

“... could not support an attack on Iraq unless it was specifically endorsed by a second resolution of the United Nations Security Council.”<sup>119</sup>

**319.** Mr Blair responded:

“I have set out my position ... on many occasions. Surely, the position has to be this: if there is a breach of the original United Nations resolution 1441, a second resolution should issue.

“That was the anticipated outcome. What resolution 1441 says is that the inspectors go into Iraq, and if they notify the facts that amount to a material breach, a second resolution should issue. That is why I believe that if the inspectors continue to say, as they are now, that Iraq is not co-operating, there will be a second resolution. The only circumstances in which I have left room for us to manoeuvre are those in which it is clear that the inspectors are finding that Iraq is not co-operating, so it is clear that Iraq is in material breach, but for some reason someone puts down what I would describe as an unreasonable and capricious use of the veto.

“I do not believe that that will happen and I hope that it will not, but I do not think that it is right to restrict our freedom of manoeuvre in those circumstances because otherwise, the original spirit and letter of resolution 1441 would itself be breached. I believe and hope that we will resolve this issue through the United Nations.”<sup>120</sup>

**320.** Mr Blair gave an extended interview about Iraq and public services on *BBC TV's Newsnight* on 6 February.<sup>121</sup>

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<sup>119</sup> House of Commons, *Official Report*, 5 February 2003, column 270.

<sup>120</sup> House of Commons, *Official Report*, 5 February 2003, column 270.

<sup>121</sup> *BBC News*, 6 February 2003, *Transcript of Blair's Iraq Interview*.

**321.** During the interview Mr Jeremy Paxman challenged Mr Blair on a number of issues, including whether Mr Blair would “give an undertaking” that he would “seek another UN resolution specifically authorising the use of force”.

**322.** Explaining his position on a second resolution, Mr Blair stated that “the only circumstances in which we would agree to use force” would be with a further resolution, “except for one caveat”. That was:

“If the inspectors do report that they can’t do their work properly because Iraq is not co-operating, there’s no doubt that under the terms of the existing United Nations resolution that that’s a breach of the resolution. In those circumstances there should be a further resolution.

“... If a country unreasonably in those circumstances put down a veto then I would consider action outside of that.”

**323.** Pressed whether he considered he was “absolutely free to defy the express will of the Security Council”, Mr Blair responded that he could not “just do it with America”, there would have to be “a majority in the Security Council”, and:

“... the issue of a veto doesn’t even arise unless you get a majority in the Security Council. Secondly, the choice ... is ... If the will of the UN is the thing that is most important and I agree that it is, if there is a breach of resolution 1441 ... and we do nothing then we have flouted the will of the UN.”

**324.** Asked if he was saying that there was already an authorisation for war, Mr Blair responded:

“No, what I am saying is ... In the resolution [1441] ... we said that Iraq ... had ... a final opportunity to comply.

“The duty of compliance was defined as full co-operation with the UN inspectors. The resolution ... say[s] ‘any failure to co-operate fully is a breach of this resolution and serious consequences i.e. action, would follow’ ... [W]e then also put in that resolution that there will be a further discussion in the Security Council. But the clear understanding was that if the inspectors say that Iraq is not complying and there is a breach ... then we have to act.

“... [I]f someone ... says ... I accept there’s a breach ... but I’m issuing a veto, I think that would be unreasonable ... I don’t think that’s what will happen. I think that ... if the inspectors do end up in a situation where they’re saying there is not compliance by Iraq, then I think a second resolution will issue.”

**325.** Asked whether he agreed it was “important to get France, Russia and Germany on board”, Mr Blair replied, “Yes ... That’s what I am trying to get.”

**326.** Asked if he would “give an undertaking that he wouldn’t go to war without their agreement”, Mr Blair replied:

“... supposing in circumstances where there plainly was [a] breach ... and everyone else wished to take action, one of them put down a veto. In those circumstances it would be unreasonable.

“Then I think it [not to act] would be wrong because otherwise you couldn’t uphold the UN. Because you would have passed your resolution and then you’d have failed to act on it.”

**327.** Asked whether it was for the UK to judge what was “unreasonable”, Mr Blair envisaged that would be in circumstances where the inspectors, not the UK, had reported to the Council that they could not do their job.

**328.** Asked if the US and UK went ahead without a UN resolution would any other country listen to the UN in the future, Mr Blair replied that there was “only one set of circumstances” in which that would happen. Resolution 1441 “effectively” said that if the inspectors said they could not do their job, a second resolution would issue: “If someone then ... vetoes wrongly, what do we do?”

**329.** In his evidence to the Inquiry Mr Blair explained the position he had adopted in his meeting with President Bush and subsequent public statements. He drew the Inquiry’s attention to the political implications of acknowledging publicly the legal advice he had been given while there was still an unresolved debate within the UK Government.

**330.** Mr Blair also emphasised that he had specifically said that action would be taken only in circumstances where the inspectors had reported that they could no longer do their job.

**331.** Mr Blair told the Inquiry that the main objective of the meeting on 31 January was to convince President Bush that it was necessary to get a second resolution.<sup>122</sup> That “was obviously going to make life a lot easier politically in every respect”. Mr Blair added: “we took the view that that was not necessary, but, obviously, politically, it would have been far easier”.

**332.** Asked why he had not told President Bush that he had been advised that a further determination of the Security Council would be necessary to authorise the use of force, Mr Blair wrote in his witness statement:

“In speaking to President Bush on 31 January 2003 I was not going to go into this continuing legal debate, internal to the UK Government. I repeated my strong commitment, given publicly and privately to do what it took to disarm Saddam.”<sup>123</sup>

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<sup>122</sup> Public hearing, 29 January 2010, pages 95-96.

<sup>123</sup> Statement, 14 January 2011, page 10.

**333.** Mr Blair subsequently told the Inquiry that, in the context of trying to sustain an international coalition:

“My desire was to keep the maximum pressure on Saddam because I hoped we could get a second resolution with an ultimatum because that meant we could avoid the conflict altogether, or then have a clear consensus for removing Saddam. So I was having to carry on whilst this internal legal debate was continuing and try to hope we could overcome it.”<sup>124</sup>

**334.** Asked if he had felt constrained in making a commitment to President Bush by the advice Lord Goldsmith was continuing to give him, Mr Blair told the Inquiry:

“No. I was going to take the view, and I did right throughout that period, there might come a point at which I had to say to the President of the United States, to all the other allies, ‘I can’t be with you.’ I might have said that on legal grounds if Peter’s advice had not, having seen what the Americans told him about the negotiating process, come down on the other side. I might have had to do that politically. I was in a very, very difficult situation politically. It was by no means certain that we would get this thing through the House of Commons.

“... I was going to continue giving absolute and firm commitment until the point at which definitively I couldn’t ...”<sup>125</sup>

**335.** Mr Blair added he had taken that position:

“... because had I raised any doubt at that time, if I had suddenly said ‘Well, I can’t be sure we have got the right legal basis’. If I started to say that to President Bush, if I had said that publicly, when I was being pressed the whole time ‘Do you need a second resolution, is it essential ...?’ ... but I wasn’t going to be in a position where I stepped back until I knew I had to, because I believed that if I started to articulate this, in a sense saying ‘Look, I can’t be sure’, the effect of that both on the Americans, on the coalition and most importantly on Saddam, would have been dramatic.”

**336.** Mr Blair acknowledged that holding that line was uncomfortable, “especially in the light of what Peter [Goldsmith] had said”.

**337.** Mr Blair told the Inquiry that President Bush:

“... knew perfectly well that we needed a second resolution. We had been saying that to him throughout ... [W]e had not had the final advice yet ...

“... I was not going to ... start putting the problem before the President ... until I was in a position where I knew definitely that I had to.”<sup>126</sup>

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<sup>124</sup> Public hearing, 21 January 2011, page 65.

<sup>125</sup> Public hearing, 21 January 2011, pages 67-68.

<sup>126</sup> Public hearing, 21 January 2011, pages 68-69.

**338.** Mr Blair added:

“If I had started raising legal issues at that point with the President, I think it would have started to make him concerned as to whether we were really going to be there or not and what was really going to happen.

“Now I would have had to have done that because in the end whatever I thought about the legal position, the person whose thoughts mattered most and definitively were Peter’s, but I wasn’t going to do that until I was sure about it.”<sup>127</sup>

**339.** Subsequently, Mr Blair added that it had been “very, very difficult”. He was answering questions in the House of Commons and giving interviews and:

“... having to hold the political line in circumstances where there was this unresolved ... debate within the UK Government ...

“If I had ... in January and February said anything that indicated there was a breach in the British position ... it would have been a political catastrophe for us.”<sup>128</sup>

**340.** Mr Blair told the Inquiry that these difficulties explained why he had wanted to get Lord Goldsmith “together with the Americans and resolve this once and for all”.<sup>129</sup>

## **A disagreement between Mr Straw and Mr Wood**

**341. Mr Straw had visited Washington on 23 January and had repeated the political arguments for trying to get a second resolution.**

**342.** In a meeting on 23 January, Mr Straw and Mr Colin Powell, US Secretary of State, discussed the inspectors’ reports due to be presented to the Security Council on 27 January, the need to “shift the burden of proof to Iraq”, and the need to ensure that there were no differences between the US and UK.<sup>130</sup>

**343.** In his subsequent meeting with Vice President Dick Cheney, Mr Straw said that “the key question was how to navigate the shoals between where we were today and a possible decision to take military action”.<sup>131</sup> The UK would be “fine” if there was a second resolution; and that it would be “ok if we tried and failed (a la Kosovo). But we would need bullet-proof jackets if we did not even try”. In response to Vice President Cheney’s question whether it would be better to try and fail than not to try at all, Mr Straw said the former.

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<sup>127</sup> Public hearing, 21 January 2011, pages 69-70.

<sup>128</sup> Public hearing, 21 January 2011, pages 70-71.

<sup>129</sup> Public hearing, 21 January 2011, page 73.

<sup>130</sup> Telegram 91 Washington to FCO London, 23 January 2003, ‘Iraq: Foreign Secretary’s Lunch with US Secretary of State’.

<sup>131</sup> [Telegram 93 Washington to FCO London, 23 January 2003, ‘Foreign Secretary’s Meeting with Vice President of the United States, 23 January’.](#)

**344. Mr Wood had warned Mr Straw on 24 January that “without a further decision by the Council, and absent extraordinary circumstances”, the UK would not be able lawfully to use force against Iraq.**

**345.** Mr Wood wrote to Mr Straw on 22 and 24 January about the terms of the discussions on a second resolution.

**346.** Commenting on advice to Mr Straw for his visit to Washington, Mr Wood wrote:

“The Foreign Secretary will know that the legal advice is that a second resolution authorising the use of force is needed before any force may lawfully be employed against Iraq to enforce the WMD obligations in the SCRs. If a draft resolution fails because of a veto (or indeed because it does not receive nine positive votes), the fact that the veto (or failure to vote in favour) is ‘unreasonable’ is neither here nor there from a legal point of view. Further, who is to judge what is ‘unreasonable’?”<sup>132</sup>

**347.** In his second minute, Mr Wood expressed concern about Mr Straw’s reported remarks to Vice President Cheney.<sup>133</sup>

**348.** Mr Wood wrote that Kosovo was “no precedent”: the legal basis was the need to avert an overwhelming humanitarian catastrophe; no draft resolution had been put to the Security Council; and no draft had been vetoed. He hoped there was:

“... no doubt in anyone’s mind that without a further decision of the Council, and absent extraordinary circumstances (of which at present there is no sign), the United Kingdom cannot lawfully use force against Iraq to ensure compliance with its SCR WMD obligations. To use force without Security Council authority would amount to the crime of aggression.”

**349. Mr Straw told Mr Wood he did not accept that view and that there was a strong case for a different view.**

**350.** Mr Straw discussed the advice with Mr Wood on 28 January.<sup>134</sup>

**351.** Mr Straw wrote to Mr Wood the following day: “I note your advice, but I do not accept it.”<sup>135</sup>

**352.** Quoting his experiences as Home Secretary, Mr Straw stated that, “even on apparently open and shut issues”, he had been advised: “there could be a different view, honestly and reasonably held. And so it turned out to be time and again.”

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<sup>132</sup> [Minute Wood to PS \[FCO\], 22 January 2003, ‘Iraq: Legal Position’.](#)

<sup>133</sup> [Minute Wood to PS \[FCO\], 24 January 2003, ‘Iraq: Legal Basis for Use of Force’.](#)

<sup>134</sup> [Manuscript comment McDonald to Wood, 28 January 2003, on Minute Wood to PS \[FCO\], 24 January 2002, ‘Iraq: Legal Basis for Use of Force’.](#)

<sup>135</sup> [Minute Straw to Wood, 29 January 2003, ‘Iraq: Legal Basis for Use of Force’.](#)

**353.** Mr Straw concluded:

“I am as committed as anyone to international law and its obligations, but it is an uncertain field. There is no international court for resolving such questions in the manner of a domestic court. Moreover, in this case, the issue is an arguable one ... I hope (for political reasons) we can get a second resolution. But there is a strong case to be made that UNSCR 678, and everything which has happened since (assuming Iraq continues not to comply), provides a sufficient basis in international law to justify military action.”

**354.** Mr Straw sent copies of his letter to Lord Goldsmith and to Sir David Manning as well as to senior officials in the FCO.

**355. Lord Goldsmith reminded Mr Straw of the duties of Legal Advisers and that the principal mechanism for resolving an issue when a Minister challenged the legal advice he or she had received was to seek an opinion from the Law Officers.**

**356.** Lord Goldsmith wrote to Mr Straw on 3 February stating that he was not commenting “on the substance of the legal advice in relation to Iraq”, which he would “deal with separately”, but on the points Mr Straw had made in his letter to Mr Wood of 29 January about the role of Government Legal Advisers. They had already discussed that issue, but Lord Goldsmith thought it right to record his views.

**357.** Lord Goldsmith wrote:

“It is important for the Government that its lawyers give advice which they honestly consider to be correct ... they should give the advice they believe in, not the advice which they think others want to hear. To do otherwise would undermine their function ... in giving independent objective and impartial advice. This is not to say ... that lawyers should not be positive and constructive in helping the Government achieve its policy objectives through lawful means and be open-minded in considering other points of view.

“But if a Government legal adviser genuinely believes that a course of action would be unlawful, then it is his or her right and duty to say so. I support this right regardless of whether I agree with the substance of the advice which has been given. Where a Minister challenges the legal advice he or she has received, there are established mechanisms to deal with this. The principal such mechanism is to seek an opinion from the Law Officers.”<sup>136</sup>

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<sup>136</sup> [Minute Goldsmith to Foreign Secretary, 3 February 2003, \[untitled\]](#).

**358.** Mr Straw responded on 20 February to Lord Goldsmith’s letter of 3 February, acknowledging that the substantive issue – Iraq – was being dealt with separately, and stating:

“For the record, I want to make it completely clear that I fully respect the integrity of Michael Wood and his colleague legal advisers. I believe that officials always offer their best advice. At the same time Ministers must be able to raise legitimate questions about the advice they receive. As far as the implementation of Iraq UNSCRs is concerned, this is an uncertain area of law. The US, Netherlands and Australian Government legal advisers all, I understand, take the view that SCR 1441 provides legal sanction for military operations. The full range of views ought to be reflected in the advice offered by our Legal Advisers.”<sup>137</sup>

**359. Mr Straw, Lord Goldsmith and Sir Michael Wood all conceded that this correspondence was unusual.**

**360.** Sir Michael Wood told the Inquiry why he had felt it necessary to send his note of 24 January:

“It is something I didn’t normally have to do, but I did it quite frequently during this period. It was because of the statement that he was recorded as saying to the [US] Vice President [about Kosovo]. That was so completely wrong, from a legal point of view, that I felt it was important to draw that to his attention ... [W]e had a bilateral meeting at which he took the view that I was being very dogmatic and that international law was pretty vague and that he wasn’t used to people taking such a firm position.”<sup>138</sup>

**361.** Sir Michael emphasised that the meeting had been very amicable and that although it was quite unusual to receive a minute like the one from Mr Straw, he had not taken it amiss.

**362.** Ms Wilmshurst told the Inquiry that Sir Michael’s view that 1441 did not authorise the use of force and that a second resolution was required was shared by all the FCO Legal Advisers dealing with the matter.<sup>139</sup>

**363.** Lord Goldsmith told the Inquiry:

“I was unhappy when I saw that [Mr Straw’s minute of 29 January], not because I thought it followed that Sir Michael was right and Mr Straw was wrong about the legal issue ... but I didn’t like, to be honest, the sort of tone of what appeared to be a rebuke to a senior legal adviser for expressing his or her view. I have always

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<sup>137</sup> [Minute Straw to Attorney General, 20 February 2003, \[untitled\]](#).

<sup>138</sup> Public hearing, 26 January 2010, pages 30-32.

<sup>139</sup> Public hearing, 26 January 2010, pages 5-6.

taken the view in Government – indeed I told Government lawyers – that they should express their views, however unwelcome they might be.”<sup>140</sup>

**364.** Mr Straw submitted a ‘Supplementary Memorandum’ addressing this exchange before his hearing on 8 February 2010.<sup>141</sup>

**365.** Mr Straw wrote that following a “private meeting in mid-January” with Vice President Cheney:

“... the usual rather cryptic summary of my conversation was issued in a confidential FCO telegram ... Reading this Sir Michael sent me his minute of 24 January which, with my response, has been the subject of considerable interest by the Inquiry, and publicly.

“Far from ignoring this advice, as has been suggested publicly, I read Sir Michael’s minute with great care, and gave it the serious attention it deserved. So much so that I thought I owed him a formal and personal written response, rather than simply having a conversation with him.”

**366.** Mr Straw told the Inquiry that he had “never sent a minute like that before or since”.<sup>142</sup>

**367.** Mr Straw also acknowledged that Lord Goldsmith’s letter of 3 February was “very unusual”.<sup>143</sup> In his view, it had been sent because Lord Goldsmith thought Mr Straw was “questioning the right of legal advisers to offer me advice”. Mr Straw had told Lord Goldsmith that he was not, and had subsequently put that in writing.

**368. Mr Straw explained that his comment to Vice President Cheney about Kosovo was about military action in the absence of a Security Council resolution.**

**369.** Mr Straw’s minute did not address the substance of Mr Wood’s advice on the Kosovo issue.

**370.** Mr Straw told the Inquiry that Kosovo itself was not a precedent and he fully accepted the legal basis was different.<sup>144</sup> It was relevant “only to this extent, that ... there was an effort made to gain Security Council agreement and that failed, but the military action went ahead”.

**371.** In his ‘Supplementary Memorandum’, Mr Straw wrote that he had reached the view that he needed to respond to Mr Wood in writing because he had been “struck by the categorical nature of the advice ... and its contrast with the very balanced and

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<sup>140</sup> Public hearing, 27 January 2010, page 94.

<sup>141</sup> Statement, February 2010, ‘Supplementary Memorandum by the Rt Hon Jack Straw MP’.

<sup>142</sup> Public hearing, 8 February 2010, page 19.

<sup>143</sup> Public hearing, 8 February 2010, page 24.

<sup>144</sup> Public hearing, 8 February 2010, pages 21-22.

detailed advice the same Legal Adviser had proffered to the Attorney General”.<sup>145</sup> It was “incorrect to claim that there was ‘no doubt’ about the position” because two views had been set out in Mr Wood’s letter of instructions to Lord Goldsmith on 9 December 2002 and the issue “was at the heart of the debate on lawfulness”. That, “In turn and in part ... depended on the ‘negotiating history’”, of the resolution.

**372.** Mr Straw subsequently told the Inquiry that, if Mr Wood had thought there was “no doubt”, that was what he should have written in the instructions to Lord Goldsmith of 9 December.<sup>146</sup> The purposes of that document and Mr Wood’s minute of 24 January “were the same, to offer legal advice and ... the legal advice he had offered ... was contradictory”. In Mr Straw’s view he was “entitled to raise that”.

**373.** The evidence set out in this Report demonstrates that Mr Wood fully understood that Lord Goldsmith’s response to the letter of instruction of 9 December 2002 would provide the determinative view on the points at issue and he was not seeking to usurp that position.

**374.** Mr Wood had referred to the need to seek Lord Goldsmith’s advice on several previous occasions and it should not have been necessary to reiterate the point in every minute to Mr Straw.

**375.** Until Lord Goldsmith had reached his definitive view, FCO Legal Advisers had a duty to draw the attention of Ministers to potential legal risks; and Lord Goldsmith’s minute of 3 February confirmed that duty.

**376.** Mr Wood’s advice to Mr Straw was fully consistent with views previously expressed by Lord Goldsmith.

**377.** Lord Goldsmith’s response, insisting on the duty of Government lawyers to provide frank, honest and, if necessary, unwelcome legal advice without fear of rebuke from Ministers, was timely and justified.

**378.** In his ‘Supplementary Memorandum’, Mr Straw wrote that the:

“... decision was one for the Attorney General alone – a fact to which no reference was made nor qualification offered in the Legal Adviser’s minute to me ...”<sup>147</sup>

**379.** Mr Straw added:

“It would surely be a novel, and fundamentally flawed, constitutional doctrine that a Minister was bound to accept any advice offered ... by a Departmental Legal Adviser as determinative of an issue, if there were reasonable grounds for taking a contrary view. Such a doctrine would wholly undermine the principles of personal Ministerial responsibility and give inappropriate power to a Department’s Legal Advisers.”

<sup>145</sup> Statement, February 2010, ‘Supplementary Memorandum by the Rt Hon Jack Straw MP’.

<sup>146</sup> Public hearing, 8 February 2010, page 16.

<sup>147</sup> Statement, February 2010, ‘Supplementary Memorandum by the Rt Hon Jack Straw MP’.

**380.** In the subsequent hearing, Mr Straw told the Inquiry he had responded to Mr Wood because:

“... where I disagreed with him was that he had the right over and above the Attorney General to say what was or was not unlawful ... it is a most extraordinary constitutional doctrine that, in the absence of a decision by the Attorney General about what was or was not lawful, that a Departmental Legal Adviser is able to say what is or is not unlawful.”<sup>148</sup>

**381.** Mr Straw added:

“But in the absence of a decision by the Attorney General ... there has to be doubt. That was what I thought was strange, and, as I say, he is fully entitled to send me the note. I never challenged his right to do that, and if I may say so, there is some suggestion in the notes that I ignored the advice. I never ignore advice. I gave it the most careful attention.”<sup>149</sup>

**382.** Sir Franklin Berman, Sir Michael Wood’s predecessor as the FCO Legal Adviser, wrote:

“I have to confess (once again) to some astonishment at seeing a former Foreign Secretary implying in recent evidence to the Inquiry that he was not bound by legal advice given to him at the highest level, but was entitled to weigh it off against other legal views as the basis for policy formulation. If Ministers begin to think that they can shop around until they discover the most convenient legal view, without regard to its authority, that is a recipe for chaos.”<sup>150</sup>

**383.** As Lord Goldsmith remarked in his letter of 3 February, the remedy in case of dispute was to ask for his opinion, but he did not at that stage have Mr Blair’s agreement to share his draft views.

**384.** Mr Straw’s evidence makes clear his concern that Lord Goldsmith should not at that stage take a definitive view without fully considering the alternative interpretation advocated by Mr Straw and set out in his letter of 6 February 2003.

**385.** The balance of the evidence set out later in this Section suggests that neither Mr Straw nor Mr Wood had, by 29 January, seen Lord Goldsmith’s draft advice of 14 January.

**386.** In his ‘Supplementary Memorandum’ Mr Straw pointed out “the huge difference between the normal run of the mill legal advice on usual issues and legal advice on whether it was legal for the United Kingdom to take military action”.<sup>151</sup> That was “why, on all sides, this issue was so sensitive”.

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<sup>148</sup> Public hearing, 8 February 2010, page 11.

<sup>149</sup> Public hearing, 8 February 2010, page 14.

<sup>150</sup> Statement, 7 March 2011, paragraph 8.

<sup>151</sup> Statement, February 2010, ‘Supplementary Memorandum by the Rt Hon Jack Straw MP’.

**387.** Mr Straw added that he “had an intense appreciation” of the negotiating history of resolution 1441 and “an acute understanding” of what France, Russia and China had said in their EOVs and the subsequent Ministerial meetings of the Security Council and “crucially – what they had not said”. That needed to be “weighed in the balance before a decision”.

**388.** Mr Straw wrote:

“Once the Attorney General had uttered on this question, that would have been the end of the matter; as on any other similar legal question. It would be wholly improper of any Minister to challenge, or not accept, such an Attorney General decision, whatever it was. But we were not at that stage.”

**389.** The Inquiry asked a number of witnesses to comment on Mr Straw’s assertion that international law was an uncertain field and there was no international court to decide matters.

**390.** Mr Straw emphasised that it meant the responsibility rested on Lord Goldsmith’s shoulders.

**391.** Addressing that point, Sir Michael Wood told the Inquiry:

“... he is somehow implying that one can therefore be more flexible, and that I think is probably the opposite of the case ... because there is no court, the Legal Adviser and those taking decisions based on legal advice have to be all the more scrupulous in adhering to the law ... It is one thing for a lawyer to say, ‘Well, there is an argument here. Have a go. A court, a judge, will decide in the end’. It is quite different in the international system where that’s usually not the case. You have a duty to the law, a duty to the system. You are setting precedents by the very fact of saying and doing things.”<sup>152</sup>

**392.** Ms Wilmshurst took a similar view: “I think that, simply because there are no courts, it ought to make one more cautious about trying to keep within the law, not less.”<sup>153</sup>

**393.** On the question of whether international law was an uncertain field, Lord Goldsmith stated:

“I didn’t really agree with what he was saying about that. There obviously are areas of international law which are uncertain, but this particular issue, at the end of the day, was: what does this resolution mean?”<sup>154</sup>

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<sup>152</sup> Public hearing, 26 January 2010, pages 33-34.

<sup>153</sup> Public hearing, 26 January 2010, page 9.

<sup>154</sup> Public hearing, 27 January 2010, page 94.

**394.** In his 'Supplementary Memorandum', Mr Straw wrote:

"In this area of international law, recourse to the courts is not available. This means that international law must be inherently less certain, and that, given the seriousness of the issues, great care has to be taken in coming to a view. But the absence of an external tribunal means that a view has in the end to be taken by the Attorney General, on whose shoulders rests a great weight of responsibility."<sup>155</sup>

**395.** Asked whether there was a responsibility to be "all the more scrupulous in adhering to the law" in circumstances where there was no court with jurisdiction to rule on the use of force in Iraq, Mr Straw replied:

"Yes, of course. You have to be extremely scrupulous because it is a decision which is made internally without external determination ... but that's a very separate point from saying that ... the correct view is on one side rather than the other. The correct view was the correct view."<sup>156</sup>

### **Mr Straw's letter to Lord Goldsmith, 6 February 2003**

**396.** In a letter of 6 February, Mr Straw took issue with a number of the provisional conclusions in Lord Goldsmith's draft advice of 14 January.

**397.** Mr Straw attached great importance to concessions made by France, Russia and China (which he described as a defeat for them).

**398.** But Mr Straw dismissed concessions made by the UK and the US as a trade-off which merely offered other members of the Security Council "some procedural comfort".

**399.** That considerably understated the importance of the concessions by all members of the P5 to create sufficient ambiguity about the meaning of the resolution to command consensus in the Security Council.

**400.** The UK had explicitly recognised during the negotiation of resolution 1441 that the inclusion of a provision for the Security Council to "consider" a report would create the opportunity for France and others to argue that a further decision would be required to determine whether Iraq was in material breach of resolution 1441.

**401.** In his letter Mr Straw did not refer to Lord Goldsmith's minute to Mr Blair of 30 January.

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<sup>155</sup> Statement, February 2010, 'Supplementary Memorandum by the Rt Hon Jack Straw MP'.

<sup>156</sup> Public hearing, 8 February 2010, pages 26-27.

**402.** A minute from Ms Adams to Lord Goldsmith, in preparation for a meeting with Mr Straw on 3 February, makes clear that Lord Goldsmith planned to give Mr Straw a copy of his draft advice of 14 January and his minute to Mr Blair of 30 January.<sup>157</sup>

**403.** Ms Adams also wrote:

“David [Brummell] has not yet been able to get hold of Jonathan Powell, despite several attempts. We do not therefore know whether No.10 is content for you to pass your draft advice to the Foreign Secretary.”

**404.** There is no record of the meeting on 3 February. There was no copy of Lord Goldsmith’s minute to Mr Blair of 30 January in the papers provided by the FCO to the Inquiry or anything to indicate that Mr Straw received a copy.

**405.** Mr Straw’s Private Office sent Mr Brummell, “as promised”, the draft of a letter from Mr Straw to Lord Goldsmith on 4 February.<sup>158</sup> The letter was also sent to Sir Christopher Meyer, British Ambassador to the US, Sir David Manning and Mr Powell.

**406.** In his letter of 6 February, which was unchanged from the draft, Mr Straw wrote that he had been asked by Lord Goldsmith in the last week of January if he had seen Lord Goldsmith’s draft “opinion” on Iraq.<sup>159</sup>

**407.** Mr Straw had seen Lord Goldsmith’s draft advice, but he:

“... had not had a chance to study it in detail. This I have now done. I would be very grateful if you would carefully consider my comments below before coming to a final conclusion and I would appreciate a conversation with you as well. As you will be aware I was immersed in the line-by-line negotiations of the resolution, much of which was conducted capital to capital with P5 Foreign Ministers.”

**408.** Mr Straw continued:

“It goes without saying that a unanimous and express Security Council authorisation would be the safest basis for the use of force against Iraq. But I have doubts about the negotiability of this in current circumstances. We are likely to have to go for something less. You will know the UK attaches high priority to achieving a second resolution for domestic policy reasons and to ensure wide international support for any military action. This was the case the Prime Minister was making in Washington [on 31 January]. We are working hard to achieve it.”

**409.** Referring to his minute to Mr Wood of 29 January, Mr Straw stated that he “had been very forcefully struck by a paradox in the culture of Government lawyers, which is that the less certain the law is, the more certain in their views they become”.

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<sup>157</sup> [Minute Adams to Attorney General, 3 February 2003, ‘Iraq: Key Papers’.](#)

<sup>158</sup> [Letter Sinclair to Brummell, 4 February 2003, ‘Iraq: Second Resolution’.](#)

<sup>159</sup> [Letter Straw to Goldsmith, 6 February 2003, ‘Iraq: Second Resolution’.](#)

**410.** Mr Straw wrote:

“Jeremy Greenstock has given you the negotiating history of OP4 and of how the words ‘for assessment’ were included. It is crucial to emphasise, as Jeremy spelt out, that the overwhelming issue between US/UK and the French/Russians/Chinese (F/R/C) was whether a second resolution was required to authorise any use of force or not. As Jeremy told you the F/R/C lost on this, and they knew they had lost. To achieve this, however, we had to show that the discussions on the first resolution would not be the end of the matter. So the trade-off ... for the F/R/C defeat on the substantive issue of a second resolution was some procedural comfort – provided in OPs 4, 11 and 12. If there were a further material breach this would be “reported to the Council for assessment in accordance with paragraphs 11 and 12 below ...””

**411.** Addressing Lord Goldsmith’s view that he did not “find much difference” between the French text and the final wording of OP4, Mr Straw stated that there was “all the difference in the world”. The French text<sup>160</sup> “would have given the Security Council ... the exclusive right to determine whether there had been an OP4 further material breach”. The US and UK had resisted that.

**412.** Mr Straw also challenged Lord Goldsmith’s view that the Council “must” assess whether a breach was material. That was “to ignore both the negotiating history and the wording. We were deliberate in not specifying who would determine that there had been a material breach.”

**413.** Addressing the meaning of the term “for assessment”, Mr Straw wrote that OP4 itself offered “meaning by the following words ‘in accordance with paragraphs 11 and 12 below’.” OP12 provided that the Council would “consider the situation”, which Mr Straw argued stopped short of “decide”. Assessment was not, as Lord Goldsmith had characterised it, “a procedural ‘formality’”. That would be “to parody what we had in mind; but certainly a process in which the outcome was quite deliberately at large”. The resolution had given the F/R/C:

“... further discussions and time, further reports – and an ability to influence events, in return for no automatic second resolution being necessary. And in return – a major US concession – the US/UK agreed not to rely on 1441 as an authorisation for the use of force immediately after its adoption (so called automaticity).”

**414.** Mr Straw concluded:

“Putting all this together, I think the better interpretation of the scheme laid out in 1441 is that (i) the fact of the material breach, (ii) (possibly) a further UNMOVIC report and (iii) ‘consideration’ in the Council together revive 678. At the very least, this interpretation, which coincides with our firm policy intention and that of our

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<sup>160</sup> On 2 November, France proposed the words “shall constitute a further material breach of Iraq’s obligations when assessed by the Security Council”. See Section 3.5.

co-sponsors, deserves to be given the same weight as a view which in effect hands the F/R/C the very legal prize they failed to achieve in the negotiation of 1441.”

**415.** Mr Straw told the Inquiry that he had “spent some time drafting” his letter to Lord Goldsmith, and that:

“Obviously I’m pretty certain that Sir Jeremy Greenstock would have seen the draft and his legal adviser Iain Macleod, certainly Peter Ricketts ... But ... I then put it together from the negotiating history ...”<sup>161</sup>

### Further advice on a second resolution

**416.** Lord Goldsmith was asked on 4 February for urgent advice on a second resolution determining that Iraq had failed to take the final opportunity offered in resolution 1441.

**417.** Following a number of bilateral contacts about the nature of the second resolution, Mr Grainger wrote to Ms Adams on 4 February warning that the indications were that some key Security Council members, “such as France”, might not be persuaded that the Council should adopt even an “implicit” resolution that mentioned material breach. Mr Grainger sought Lord Goldsmith’s views “as soon as possible” on the elements of a second resolution necessary to make clear that Iraq had failed to take the final opportunity provided in resolution 1441 and that serious consequences would follow.<sup>162</sup>

**418.** After rehearsing the key provisions of OPs 1, 2, 4, 11, 12 and 13, Mr Grainger wrote:

“... the relationship between these various paragraphs is a matter of some complexity. It is however clear that the serious consequences which the Council has repeatedly warned Iraq it will face as a result of its continued violations of its obligations ... are to occur in the context of paragraph 12 – that is following consideration of the situation by the Council in accordance with that paragraph. The consideration ... can take place only when a report – either of a material breach under paragraph 4, or of the interference or failure to comply mentioned in paragraph 11 – has been made.

“In our view once Council consideration has taken place, a specific reference to material breach is not required in any decision by the Council: what is necessary is that the Council should conclude that the serious consequences for Iraq referred to in paragraph 13 are triggered. If the Council has considered a report under paragraph 4, the finding of material breach will be implicit. If ... the Council has considered a report under paragraph 11, it will be clear that the new enhanced inspections regime has not worked and therefore the material breach finding in paragraph 1 is still operative.”

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<sup>161</sup> Public hearing, 8 February 2010, page 30.

<sup>162</sup> Letter Grainger to Adams, 4 February 2003, ‘Iraq: Second Resolution’.

**419.** Ms Adams responded on 6 February that Lord Goldsmith had agreed that:

“Provided the new resolution is linked back sufficiently to resolution 1441 so that it is clear that the Council has concluded that Iraq has failed to take the final opportunity granted by resolution 1441, it should be possible to rely on the finding of material breach in that resolution in order to revive the use of force in resolution 678.”<sup>163</sup>

**420.** Addressing draft text suggested by Mr Grainger, Ms Adams also recorded that Lord Goldsmith:

“... has some doubts about the generality of the wording ‘Iraq has still not complied’ because not every incident of non-compliance will constitute a further material breach under OP4 of resolution 1441 (see for example statements by the Foreign Secretary to Parliament<sup>164</sup>). Moreover, the Attorney recalls that Blix has indicated that only serious cases of non-compliance would be reported to the Council under OP11.”

**421.** Ms Adams suggested that a better minimalist version for a resolution would be one which:

“... stated simply that the Council has concluded that Iraq has failed to take the final opportunity offered by resolution 1441. This would indicate that the finding of material breach in OP1 of resolution 1441 is no longer suspended, thus reviving the authorisation to use force in resolution 678. In this case there would be no need for an operative paragraph on ‘serious consequences’ because this would follow from the terms of resolution 1441.”<sup>165</sup>

## **Lord Goldsmith’s visit to Washington, 10 February 2003**

**422.** Lord Goldsmith’s discussions in Washington on 10 February confirmed that the US position was that Iraq was in material breach of resolution 1441 and the conditions for the cease-fire were, therefore, no longer in place.

**423.** The US maintained that the Security Council had already considered that fact as required by OP12.

**424.** The US Administration attached importance to helping the UK find a way to join them in action against Iraq.

**425.** As discussed with No.10, Lord Goldsmith travelled to Washington, accompanied by Ms Adams, to meet leading US lawyers involved in the negotiation of resolution 1441 on 10 February 2003.

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<sup>163</sup> [Letter Adams to Grainger, 6 February 2003, ‘Iraq: Second Resolution’.](#)

<sup>164</sup> House of Commons, *Official Report*, 25 November 2002, column 51.

<sup>165</sup> [Letter Adams to Grainger, 6 February 2003, ‘Iraq: Second Resolution’.](#)

**426.** Lord Goldsmith met Mr John Bellinger III (the NSC Legal Adviser), Judge Alberto Gonzales (Counsel to the President), Dr Rice, Mr William Taft IV (Legal Adviser at the State Department), Mr Marc Grossman (Under Secretary of State for Political Affairs) and Mr William Haynes II (General Counsel at the DoD).<sup>166</sup>

**427.** Ms Adams' record of the discussions set out the questions which had been addressed and the US responses, including:

- Resolution 1441 contained two determinations of material breach (in OPs 1 and 4) and the US view was that the conditions of OP4 had already been met. There was, therefore, a Security Council determination of material breach by Iraq, meaning that the conditions for the cease-fire were no longer in place.
- The use of the term "material breach" had been avoided in 1998. Its use in resolution 1441 strengthened the argument that the Council intended to revive resolution 678.
- The use of the term "co-operate fully" had been retained in the resolution in order to ensure that any instances of non-co-operation would be material. In the US view, "any" Iraqi non-compliance was sufficient to constitute a material breach.
- The US recognised the UK's concerns about de minimis breaches (eg an hour's delay in getting access to a site), but considered that the situation was "well past" that point.
- The inspectors were "reporters not assessors".
- The US would not have accepted a resolution implying that a further decision was required.
- OP12 was not a "purely procedural requirement". The members of the Council were "under a good faith obligation to participate in the further consideration of the matter within the meaning of OP12".
- The US had satisfied that requirement by the actions they had already taken, for example Secretary Powell's report to the Council on 5 February.<sup>167</sup>

**428.** Mr Brenton commented that there had been "no problem lining up a good range of senior interlocutors" for Lord Goldsmith to meet, "underlining how important the Administration consider it to help the UK to be in a position to join them in action against Iraq".<sup>168</sup>

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<sup>166</sup> Letter Brenton to Goldsmith, 11 February 2003, 'Visit to Washington, January [sic] 10; Iraq'.

<sup>167</sup> Letter Adams to McDonald, 14 February 2003, 'Attorney General's Visit to Washington, 10 January [sic]: Iraq' attaching Minute Adams to Attorney General, 14 February 2003, 'US Responses to Questions on Resolution 1441'.

<sup>168</sup> Letter Brenton to Goldsmith, 11 February 2003, 'Visit to Washington, January [sic] 10; Iraq'.

**429.** Mr Brenton subsequently reported on 6 March that the US “had also gained the impression that we need the resolution for legal reasons: I explained the real situation”.<sup>169</sup>

**430.** Asked by the Inquiry what he had understood “the real situation” to be, Mr Brenton said that Lord Goldsmith had not told him anything, but he had sat in on Lord Goldsmith’s conversations with the US Attorney General and “got the impression from him [Lord Goldsmith] that there was a legal case for our involvement, even if we didn’t get the second resolution”.<sup>170</sup>

**431.** Ms Adams produced a revised draft for Lord Goldsmith on 12 February, which for the first time concluded:

“... having regard to the arguments of our co-sponsors which I heard in Washington, I am prepared to accept that a reasonable case can be made that resolution 1441 revives the authorisation to use force in resolution 678.”<sup>171</sup>

## Agreement on a second resolution

**432.** Following discussion between Mr Blair and President Bush on 19 February, the UK agreed a “light draft resolution” with the US.

**433.** Lord Goldsmith subsequently advised that draft would be “sufficient” to authorise the use of force if it was all that would be negotiable.

**434.** Lord Goldsmith did not, however, accept the underpinning legal analysis offered by Sir Jeremy Greenstock.

**435.** Reflecting the seriousness of his concerns about the implications of recent developments, Mr Blair sent President Bush a Note on 19 February about the need for a second resolution (see Section 3.7).

**436.** Mr Blair proposed focusing on the absence of full co-operation and a “simple” resolution stating that Iraq had failed to take the final opportunity, with a side statement defining tough tests of co-operation and a vote on 14 March to provide a deadline for action.

**437.** Sir Jeremy gave Ambassador John Negroponte, US Permanent Representative to the UN, a revised “light draft resolution” on 19 February which:

- noted [draft preambular paragraph (PP) 5] that Iraq had “submitted a declaration ... containing false statements and omissions and has failed to comply with and co-operate fully in the implementation of that resolution [1441]”; and

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<sup>169</sup> [Telegram 294 Washington to FCO London, 6 March 2003, ‘Iraq: UN Endgame’](#).

<sup>170</sup> Private hearing, 17 January 2011, pages 25-26.

<sup>171</sup> Note [draft] Adams, 12 February 2003, ‘Iraq: Interpretation of 1441’.

- decided [draft OP1] that Iraq had “failed to take the final opportunity afforded to it in resolution 1441 (2002)”.<sup>172</sup>

**438.** Sir Jeremy reported that he had told Ambassador Negroponte that the draft “was thin on anything with which Council members could argue and would be less frightening to the middle ground”. It did not refer to “serious consequences” and that “instead of relying on OP4 of 1441”, the draft resolution “relied on OP1 of 1441, re-establishing the material breach suspended in OP2”.<sup>173</sup>

**439.** Sir Jeremy added that issuing the draft would signal the intent to move to a final debate, which they should seek to focus “not on individual elements of co-operation but on the failure by Iraq to voluntarily disarm” and avoid being “thrown off course by individual benchmarks or judgement by Blix”. It should be accompanied by a “powerful statement about what 1441 had asked for” which had “been twisted into partial, procedural, and grudging co-operation from Iraq”; and that “substantive, active and voluntary co-operation was not happening”.

**440.** In response to a question from the US about whether the “central premise”, that the final opportunity was “now over”, would be disputed, Sir Jeremy said that:

“... was where we would have to define our terms carefully: voluntary disarmament was not happening.”

**441.** Ms Adams wrote to Mr Grainger on 20 February. She thanked him for drawing her attention to the telegrams from Sir Jeremy Greenstock.<sup>174</sup> She pointed out that Lord Goldsmith did “not agree with the legal analysis” in Sir Jeremy Greenstock’s first telegram. Lord Goldsmith considered:

“... that OP4 of resolution 1441 is highly relevant to determining whether or not Iraq has taken the final opportunity granted by OP2 ... Moreover, PP5 of the draft text uses language drawn from OP4 to establish the fact that Iraq has failed to comply ... the Attorney does not consider that it is accurate to say that the draft text relies on OP1 ... rather than OP4.”

**442.** On the draft text, Ms Adams wrote that Lord Goldsmith considered:

“... it would be preferable for any resolution to indicate as clearly as possible that the resolution is intended to authorise the use of force. The clearer the resolution, the easier it will be to defend legally the reliance on the ‘revival argument’, which ... is ... controversial. A resolution which included the terms ‘material breach’ and ‘serious consequences’ ... would therefore be desirable ... However, the Attorney has previously advised that it is not essential in legal terms for a second resolution

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<sup>172</sup> [Telegram 288 UKMIS New York to FCO London, 20 February 2003, ‘Iraq: 19 February: Draft Resolution’.](#)

<sup>173</sup> [Telegram 287 UKMIS New York to FCO London, 20 February 2003, ‘Iraq: 19 February’.](#)

<sup>174</sup> [Letter Adams to Grainger, 20 February 2003, ‘Iraq: Second resolution’.](#)

to include this language. Therefore, if a resolution in the form contained ... [in the advice from UKMIS New York] is all that is likely to be negotiable, he considers it would be sufficient ...”

## A second resolution is tabled

**443. Sir Jeremy Greenstock remained concerned about the lack of support in the Security Council and the implications, including the legal implications, of putting the resolution to a vote and failing to get it adopted.**

**444.** A draft of a second resolution was tabled by the UK, US and Spain on 24 February. The draft operative paragraphs stated simply that the Security Council:

- “Decides that Iraq has failed to take the final opportunity afforded to it by resolution 1441.”
- “Decides to remain seized of the matter.”<sup>175</sup>

**445.** France, Russia and Germany responded by tabling a memorandum which proposed strengthening inspections and bringing forward the work programme specified in resolution 1284 (1999) and accelerating its timetable.<sup>176</sup>

**446.** Canada also circulated ideas for a process based on key tasks identified by UNMOVIC.<sup>177</sup>

**447.** Sir Jeremy Greenstock advised that in circumstances where there were fewer than nine positive votes but everyone else abstained, the resolution would not be adopted and it would have no legal effect.<sup>178</sup> He found it:

“... hard to see how we could draw much legal comfort from such an outcome; but an authoritative determination would be a matter for the Law Officers. (Kosovo was different: in that case a Russian draft condemning the NATO action as illegal was heavily defeated, leaving open the claim that the action was lawful ... (or at least was so regarded by the majority of the Council).

“Furthermore, in the current climate ... the political mandate to be drawn from a draft which failed to achieve nine positive votes seems to me likely to be (at best) weak ... The stark reality would remain that the US and UK had tried and failed to persuade the Council to endorse the use of force against Iraq. And the French

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<sup>175</sup> [Telegram 302 UKMIS New York to FCO London, 25 February 2003, 'Iraq: Tabling of US/UK/Spanish Draft Resolution: Draft Resolution'](#).

<sup>176</sup> UN Security Council, 23 February 2003, 'Letter dated 24 February 2003 from the Permanent Representatives of France, Germany and the Russian Federation to the United Nations addressed to the President of the Security Council' (S/2003/214).

<sup>177</sup> [Letter Wright to Colleagues, 24 February 2003, \[untitled\] attaching 'Non-paper: Ideas on Bridging the Divide'](#).

<sup>178</sup> [Letter Greenstock to Manning, 25 February 2003, \[untitled\]](#).

(and the Russians and Chinese) would no doubt be sitting comfortably among the abstainers ...

“My feeling ... is that our interests are better served by not putting a draft to a vote unless we were sure that it had sufficient votes to be adopted ... But we should revisit this issue later – a lot still had to be played out in the Council.”

**448. Mr Blair told Cabinet on 27 February that he would continue to push for a further Security Council resolution.**

**449.** Mr Alastair Campbell, Mr Blair’s Director of Communications between May 1997 and August 2003, wrote in his diaries that Mr Blair had had a meeting with Mr Prescott, the Deputy Prime Minister, and Mr Straw, “at which we went over the distinct possibility of no second resolution because the majority was not there for it”. Mr Blair “knew that meant real problems, but he remained determined on this, and convinced it was the right course”.<sup>179</sup>

**450.** Mr Blair told Cabinet that he would continue to push for a further Security Council resolution.<sup>180</sup> He described the debate in the UK and Parliament as “open”:

“Feelings were running high and the concerns expressed were genuine. But decisions had to be made. The central arguments remained the threat posed by weapons of mass destruction in the hands of Iraq; the brutal nature of the Iraqi regime; and the importance of maintaining the authority of the UN in the international order. Failure to achieve a further Security Council resolution would reinforce the hand of the unilateralists in the American Administration.”

## A “reasonable case”

### Lord Goldsmith’s meeting with No.10 officials, 27 February 2003

**451.** When Lord Goldsmith met No.10 officials on 27 February he advised that the safest legal course would be to secure a further Security Council resolution.

**452.** Lord Goldsmith told them, however, that he had reached the view that a “reasonable case” could be made that resolution 1441 was capable of reviving the authorisation to use force in resolution 678 (1990) without a further resolution, if there were strong factual grounds for concluding that Iraq had failed to take the final opportunity offered by resolution 1441.

**453.** Lord Goldsmith advised that, to avoid undermining the case for reliance on resolution 1441, it would be important to avoid giving any impression that the UK believed a second resolution was legally required.

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<sup>179</sup> Campbell A & Hagerty B. *The Alastair Campbell Diaries. Volume 4. The Burden of Power: Countdown to Iraq*. Hutchinson, 2012.

<sup>180</sup> Cabinet Conclusions, 27 February 2003.

**454. Mr Powell confirmed that No.10 did not wish the Attorney General's advice to "become public".**

**455. Lord Goldsmith did not inform Mr Straw or Mr Hoon of his change of view.**

**456. As their responsibilities were directly engaged, they should have been told of Lord Goldsmith's change of position.**

**457.** At the request of No.10, Lord Goldsmith met Mr Powell, Baroness Morgan and Sir David Manning on 27 February.<sup>181</sup>

**458.** Ms Adams advised Lord Goldsmith that the purpose of the meeting was to "discuss the French veto", which she interpreted as meaning "the scope for action in the absence of a second resolution".

**459.** Ms Adams provided a speaking note for Lord Goldsmith, setting out the legal arguments in detail, including:

- the discussions with Mr Straw, Sir Jeremy Greenstock and the US Administration "were valuable" and had given Lord Goldsmith "background information on the negotiating history" which he had "not previously had";
- the US discussions were "particularly useful" as they gave "a clearer insight into the important US/French bilateral discussions over the terms of OP12 of resolution 1441";
- that was "relevant to the interpretation of the resolution";
- while the revival argument was "controversial", Lord Goldsmith had "already made clear" that he agreed with the advice of his predecessors that it provided "a valid legal basis for the use of force provided that the conditions for revival" were "satisfied";
- the "arguments in support of the revival argument" were "stronger following adoption of resolution 1441";
- "elements" of resolution 1441 indicated that the Security Council "intended to revive the authorisation in [resolution] 678";
- but the Council "clearly ... did not intend 678 to revive immediately";
- the procedure set out in OPs 4, 11 and 12 "for determining whether or not Iraq has taken the final opportunity" were "somewhat ambiguous";
- it was "clear" that if Iraq did not comply there would be "a further Council discussion" but it was "not clear what happens next";
- it was "arguable" that OPs 4 and 12 indicated that "a further Council decision" was "required";
- Lord Goldsmith had been "impressed" by the "strength and sincerity" of the US view that they had "conceded a Council discussion and no more";

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<sup>181</sup> [Minute Adams to Attorney General, 26 February 2003, 'Iraq: Meeting at No.10, 27 February'](#).

- the difficulty of relying on the assertions of US officials that the French knew and accepted what they were voting for when there was little “hard evidence beyond a couple of telegrams recording admissions by French negotiators that they knew the US would not accept a resolution which required a further Council decision”;
- “the possibility remains that the French and others accepted OP12 because in their view it gave them a sufficient basis on which to argue that a second resolution was required (even if that was not made expressly clear)”; and
- the statements made on adoption of the resolution indicated that “there were differing views within the Council as to the legal effect of the resolution”.<sup>182</sup>

**460.** Lord Goldsmith was advised to state that he remained “of the view that the safest legal course would be to secure a further Security Council resolution” which, as he had advised the FCO, need not explicitly authorise the use of force as long as it made clear that the Council had “concluded that Iraq has not taken its final opportunity”.

**461.** Ms Adams advised that he should further state:

“Nevertheless, having regard to the further information on the negotiating history which I have been given and to the arguments of the US administration which I heard in Washington, I am prepared to accept – and I am choosing my words carefully here – that a reasonable case can be made that resolution 1441 is capable of reviving the authorisation in 678 without a further resolution if there are strong factual grounds for concluding that Iraq has failed to take the final opportunity. In other words we would need to demonstrate hard evidence of non-compliance and non-co-operation.”

**462.** Lord Goldsmith was also advised:

- that a court “might well conclude” that OPs 4 and 12 did “require a further Council decision”, but that “the counter view can reasonably be maintained”;
- that the analysis applied “whether a second resolution fails to be adopted because of a lack of votes or because it is vetoed. I do not see any difference between the two cases”; and
- it was “important that in the course of negotiations on the second resolution we do not give the impression that we believe it is legally required. That would undermine our case for reliance on resolution 1441”.

**463.** There is no No.10 record of the 27 February meeting.

**464.** In his record of a telephone call from Lord Goldsmith reporting the meeting, Mr Brummell wrote that Lord Goldsmith “confirmed that he had deployed in full” the lines prepared by Ms Adams, with the exception of the reference to the fact that “on a number

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<sup>182</sup> [Minute Adams to Attorney General, 27 February 2003, ‘Iraq: Lines to Take for No 10 Meeting’.](#)

of previous occasions” the Government had engaged in military action on a legal basis that was no more than “reasonably arguable”.<sup>183</sup>

**465.** Mr Brummell also wrote:

“Jonathan Powell said that he understood the Attorney’s advice in summary to mean that by far the safest way forward is to obtain a second resolution, but that, if we are unable to obtain one, it might be arguable that we do not need one, although we could not be confident that a court would agree with this.

“The No.10 representatives confirmed that the US and UK Governments were continuing with their intensive efforts to secure the passage of a second resolution, if at all possible.

“Jonathan Powell confirmed that No.10 did not wish the Attorney’s advice to become public.”

**466.** Mr Powell told the Inquiry that he did not really remember the meeting.<sup>184</sup>

**467.** Lord Goldsmith told the Inquiry that he did not know why he had not informed No.10 that there was a reasonable case before 27 February. He said:

“After I came back from the United States ... I had taken the view there was a reasonable case. A draft was produced which reflected that. I don’t know why it took me until 27 February, but that may have been the first time there was a meeting. I met with Jonathan Powell, Sir David Manning and Baroness Morgan and told them that I had been very much assisted in my considerations by Jeremy Greenstock, the Americans – I may have mentioned Jack Straw as well, and I was able to tell them that it was my view that there was a reasonable case.”<sup>185</sup>

**468.** Lord Goldsmith added:

“Obviously, I had prepared what I was going to say. Then – so I told them – and I had given them, therefore, as I saw it, and as I believe they saw it ... the green light, if you will, that it was lawful to take military action, should there not be a second resolution and should it be politically decided that that was the right course to take.”

**469.** Lord Goldsmith identified three main influences on his thinking which contributed to the change in his position by the end of February that a reasonable case could be made that resolution 1441 authorised the use of force without the requirement for a further resolution:

- the meeting with Sir Jeremy Greenstock on 23 January;

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<sup>183</sup> [Minute Brummell, 27 February 2003, ‘Iraq: Attorney General’s Meeting at No. 10 on 27th February 2003’.](#)

<sup>184</sup> Public hearing, 18 January 2010, page 104.

<sup>185</sup> Public hearing, 27 January 2010, pages 130-131.

- the views of Mr Straw as expressed in his letter of 6 February 2003; and
- meetings in the US on 10 February.

**470.** Lord Goldsmith described the purpose of his meeting with Sir Jeremy as:

“... to get first-hand from our principal negotiator at the United Nations his observations on the negotiating history and on the text which had been agreed and his understanding of what it meant, particularly to get his comments on the textual arguments we had raised.

“... It doesn't mean I follow it, but it is helpful to me ... because if you understand what somebody is trying to achieve, you can then often look at the document with that in mind, and then the words which are used become clearer to you.”<sup>186</sup>

**471.** Lord Goldsmith also told the Inquiry that Sir Jeremy:

“... was very clear in saying the French, Russians lost and they knew they had lost ... and his argument was – that's why the resolution is worded the way that it is.

...

“... It was a compromise, but compromise in this sense: that the United States had conceded a Council discussion but no more.”<sup>187</sup>

**472.** Lord Goldsmith told the Inquiry:

“Sir Jeremy had made some good points and he had made some headway with me, but, frankly there was still work for me to do and he hadn't got me there, if you like, yet.”<sup>188</sup>

**473.** Mr Straw told the Inquiry that his letter of 6 February to Lord Goldsmith, was “really the sum” of what he had said.<sup>189</sup>

**474.** Following his meetings in the US on 10 February, Lord Goldsmith was impressed by the fact that, in negotiating 1441, the US had a single red line which was not to lose the freedom of action to use force that they believed they had before 1441, and their certainty that they had not done so.

**475.** Asked to explain how the US belief that it had preserved its “red line” had influenced his considerations, Lord Goldsmith told the Inquiry that all his US interlocutors had spoken with one voice on the issue of the interpretation of 1441:

“The discussion involved some detailed textual questions ... On one point they were absolutely speaking with one voice, which is they were very clear that what mattered

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<sup>186</sup> Public hearing, 27 January 2010, pages 75-76.

<sup>187</sup> Public hearing, 27 January 2010, page 77.

<sup>188</sup> Public hearing, 27 January 2010, page 89.

<sup>189</sup> Public hearing, 8 February 2010, page 30.

to them, what mattered to President Bush, is whether they would ... concede a veto ... that the red line was that they shouldn't do that, and they were confident that they had not ...

"... [T]he red line was 'We believe' they were saying 'that we have a right to go without this resolution. We have been persuaded to come to the United Nations' ... 'but the one thing that mustn't happen is that by going down this route, we then find we lose the freedom of action we think we now have' and if the resolution had said there must be a further decision by the Security Council, that's what it would have done, and the United States would have been tied into that.

"They were all very, very clear that was the most important point to them and that they hadn't conceded that, and they were very clear that the French understood that, that they said that they had discussed this with other members of the Security Council as well and they all understood that was the position."<sup>190</sup>

**476.** Lord Goldsmith stated:

"It was frankly, quite hard to believe, given what I had been told about the one red line that President Bush had, that all these experienced lawyers and negotiators in the United States could actually have stumbled into doing the one thing that they had been told mustn't happen ... a red line means a red line. It was the only one, I was told, that mattered. They didn't mind what else went into the resolution, so long as it did not provide a veto, and if it required a decision then one of the Security Council members, perhaps the French, could then have vetoed action by the United States, which, up to that point, they believed they could take in any event."<sup>191</sup>

**477.** Asked whether his US interlocutors had been able to provide him with any evidence that France had acknowledged the US position, Lord Goldsmith replied:

"I wish they had presented me with more. That was one of the difficulties, and I make reference to this, that, at the end of the day we were sort of dependent upon their view in relation to that ... I looked very carefully at all the negotiating telegrams and I had seen that there were some acknowledgements of that, acknowledgements that the French understood the United States' position, at least, in telegrams that I had seen, and I was told of occasions when this had been clearly stated to the French."<sup>192</sup>

**478.** Correspondence between Ms Adams and the British Embassy Washington recorded that Lord Goldsmith had asked the US lawyers if they had any evidence that the French had acknowledged that no second resolution was needed, and the US lawyers had offered to check. The subsequent reply was that, although they had

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<sup>190</sup> Public hearing, 27 January 2010, pages 110-111.

<sup>191</sup> Public hearing, 27 January 2010, pages 127-128.

<sup>192</sup> Public hearing, 27 January 2010, page 112.

made their position abundantly clear to the French, the US lawyers had been unable to find a statement from the French acknowledging that a second resolution would not be needed.<sup>193</sup>

**479.** Asked if he should also have sought the views of the French, Lord Goldsmith replied:

“No I couldn’t do that. I plainly could not have done that ... because, there we were, plainly by this stage, in a major diplomatic stand-off between the United States and France ... you couldn’t have had the British Attorney General being seen to go to the French to ask them ‘What do you think?’ The message that that would have given Saddam Hussein about the degree of our commitment would have been huge.”<sup>194</sup>

**480.** Others had a different view.

**481.** Mr Straw told the Inquiry that if Lord Goldsmith “had asked to talk to the French, of course, we would have facilitated that ... I have no recollection of that ever being raised with me at all”.<sup>195</sup>

**482.** Asked about Lord Goldsmith’s evidence that he could not speak to French officials about the interpretation of resolution 1441, Sir John Holmes, British Ambassador to France from 2002 to 2007, replied:

“I don’t see why he couldn’t have done, or at least somebody else ask the question on his behalf. But I think what is true is that the French were, again, very wary about ever saying what their own legal position was. They took a very strong political position about no automaticity ... but they were very careful, I don’t remember them ever actually saying what their own legal position was.”<sup>196</sup>

**483.** Asked whether the legal position would have mattered as much to the French as it did to us, Sir John responded: “No because the automatic assumption increasingly was that they weren’t going to be part of it.”<sup>197</sup>

### **Mr Straw’s evidence to the Foreign Affairs Committee, 4 March 2003**

**484.** Mr Straw told the Foreign Affairs Committee on 4 March that it was “a matter of fact” that Iraq had been in material breach “for some weeks” and resolution 1441 provided sufficient legal authority to justify military action against Iraq if it was “in further material breach”.

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<sup>193</sup> Letter Brenton to Adams, 13 February 2003, ‘Attorney General’s Visit to Washington’.

<sup>194</sup> Public hearing, 27 January 2010, page 115.

<sup>195</sup> Public hearing, 8 February 2010, page 31.

<sup>196</sup> Public hearing, 29 June 2010, page 32.

<sup>197</sup> Public hearing, 29 June 2010, page 32.

**485. Mr Straw also stated that a majority of members of the Security Council had been opposed to the suggestion that resolution 1441 should state explicitly that military action could be taken only if there were a second resolution.**

**486.** In his evidence to the FAC on 4 March, Mr Straw was asked a series of questions by Mr Donald Anderson, the Chairman of the Committee, about the legality of military action without a second resolution.<sup>198</sup>

**487.** Asked about Mr Blair’s “escape clause” and that the Government “would not feel bound to await” a second resolution “or to abide by it if it were to be vetoed unreasonably”, Mr Straw replied:

“The reason why we have drawn a parallel with Kosovo is ... it was not possible to get a direct Security Council resolution and instead the Government and those that participated in the action had to fall back on previous ... resolutions and general international law ... to justify the action that was taken ... We are satisfied that we have sufficient legal authority in 1441 back to the originating resolution 660 [1990] ... to justify military action against Iraq if they are in further material breach.”

**488.** Mr Straw added that that was “clearly laid down and it was anticipated when we put 1441 together”. The Government would “much prefer” military action, if that proved necessary, “to be backed by a second resolution”, but it had had to reserve its options if such a second resolution did not prove possible. That was what Mr Blair had “spelt out”.

**489.** Asked if the Government should proceed without the express authority of the UN, Mr Straw replied:

“We believe there is express authority ... There was a ... a very intensive debate – about whether ... 1441 should say explicitly ... that military action to enforce this resolution could only be taken if there were a second resolution. That ... was not acceptable to a majority of members of the Security Council, it was never put before the ... Council. Instead ... what the Council has to do ... is to consider the situation ...”

**490.** Mr Straw told Sir Patrick Cormack (Conservative) that Iraq had “been in material breach as a matter of fact for some weeks now because they were told they had to co-operate immediately, unconditionally and actively”. He added:

“... we are anxious to gain a political consensus, if that can be achieved ... which recognises the state of Iraq’s flagrant violation of its obligations. As far as ... the British Government is concerned, that is a matter of fact; the facts speak for themselves.”<sup>199</sup>

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<sup>198</sup> Minutes, 4 March 2003, Foreign Affairs Committee (House of Commons), [Evidence Session], Q 147-151.

<sup>199</sup> Minutes, 4 March 2003, Foreign Affairs Committee (House of Commons), [Evidence Session], Q 154.

**491.** Asked by Mr Andrew Mackinley (Labour) how there was going to be “proper conscious decision-making” about whether Iraq was complying, Mr Straw replied:

“... we make our judgement on the basis of the best evidence. I have to say it was on the basis of the best evidence that the international community made its judgement on 8 November. They had hundreds of pages of reports ...”<sup>200</sup>

### **Sir Jeremy Greenstock’s advice on “end game options”, 4 March 2003**

**492.** In his advice “on the end game options”, Sir Jeremy Greenstock stated that there was little chance of bridging the gap with the French – “senior politicians were dug in too deep”; and that a French veto appeared “more of a danger than failure to get nine votes”.<sup>201</sup>

**493.** Sir Jeremy identified the options as:

- “stay firm ... and go with the US military campaign in the second half of March with the best arguments we can muster if a second resolution ... is unobtainable, we fall back on 1441 and regret that the UN was not up to it ...”;
- “make some small concessions that might just be enough to get, e.g. Chile and Mexico on board”. The “most obvious step” might be “ultimatum language” making military action the default if the Council did not agree that Iraq had come into compliance with resolution 1441;
- “try something on benchmarks, probably building on Blix’s cluster document”. That “would be better done outside the draft resolution” to “avoid diluting 1441 (and avoid placing too much weight on Blix’s shoulders)”; and
- “putting forward a second resolution not authorising force”, although it was clear that Sir Jeremy envisaged there would be an “eventual use of force”.

**494.** Sir Jeremy commented: “In the end, it may be best just to forge ahead on present lines.”

**495.** Mr Ricketts told Mr Straw that he and Sir David Manning had discussed Sir Jeremy’s advice and believed that the “best package” might comprise:

- adding a deadline to the draft resolution requiring “a bit more time”. A US suggestion “that Iraq should have ‘unconditionally disarmed’ in ten days” would be “seen as unreasonable”;
- a small number of carefully chosen benchmarks “set out separately from the resolution, ideally by the Chileans and Mexicans ... We could then use the clusters document to illustrate how little compliance there had been across the board”; and

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<sup>200</sup> Minutes, 4 March 2003, Foreign Affairs Committee (House of Commons), [Evidence Session], Q 166.

<sup>201</sup> Telegram 339 UKMIS New York to FCO London, 4 March 2003, ‘Personal Iraq: End Game Options’.

- the US to make clear that it “accepted a significant UN role in post-conflict Iraq”.<sup>202</sup>

**496.** Mr Grainger sent a copy of Mr Ricketts’ advice to Mr Straw to Ms Adams, setting out the ultimatum language under consideration which he thought “would be entirely consistent with the advice previously given by the Attorney”, including the need for any ultimatum to be expressed in very clear terms so that there was no room for doubt about whether Iraq had met the Council’s demands.<sup>203</sup>

### **Mr Blair’s conversation with President Bush, 5 March 2003**

**497.** In the light of the failure to secure support for the draft resolution of 24 February, Mr Blair proposed a revised strategy to President Bush on 5 March.

**498.** Despite Lord Goldsmith’s previous advice that, if a further resolution was vetoed, there would be no Council authorisation for military action, Mr Blair told President Bush that, if nine votes could be secured, military action in the face of a veto would be “politically and legally ... acceptable”.

**499.** Mr Blair spoke to President Bush on 5 March proposing further amendment to the draft resolution to give members of the Security Council a reason to support the US/UK approaches.<sup>204</sup>

**500.** Mr Blair said that an ultimatum should include a deadline of 10 days from the date of the resolution for the Security Council to decide that: “Unless ... Iraq is complying by [no date specified], then Iraq is in material breach.”

**501.** Mr Blair stated that if there were nine votes but a French veto, he thought that “politically and legally” UK participation in military action would be acceptable. “But if we did not get nine votes, such participation might be legal”, but he would face major obstacles. It would be “touch and go”.

### **Advice on the effect of a “veto”**

**502.** In response to a request from Mr Straw about “whether it was possible for a Permanent Member of the Security Council to vote against a resolution while making it clear that this negative vote shall not be regarded as a ‘veto’”, Mr Wood advised that the “short answer is ‘no’”.<sup>205</sup>

**503.** Lord Goldsmith’s draft advice of 14 January stated explicitly that the exercise of a veto in relation to a further Security Council decision would mean “no Council authorisation for military action”.<sup>206</sup>

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<sup>202</sup> Minute Ricketts to PS [FCO], 4 March 2003, ‘Iraq: UN Tactics’.

<sup>203</sup> Letter Grainger to Adams, 4 March 2003, ‘Iraq: Second Resolution’.

<sup>204</sup> Letter Rycroft to McDonald, ‘Iraq: Prime Minister’s Conversation with Bush, 5 March’.

<sup>205</sup> [Minute Wood to Private Secretary \[FCO\], 7 March 2003, ‘Iraq: Security Council Voting’.](#)

<sup>206</sup> [Minute \[Goldsmith to Prime Minister\], 14 January 2003, ‘Iraq: Interpretation of Resolution 1441’.](#)

**504.** Ms Adams described the purpose of the meeting between Lord Goldsmith and No.10 officials on 27 February as to “discuss the French veto”, and her advice dismissed the concept of an “unreasonable” veto. The advice and Lord Goldsmith’s subsequent account to Mr Brummell of the discussion did not address the question of the legality of action in the face of a veto.

**505. Sir Kevin Tebbit, MOD Permanent Under Secretary, raised the absence of an agreed legal basis for military action with Sir Andrew Turnbull on 5 March.**

**506.** Sir Kevin Tebbit wrote to Sir Andrew Turnbull on 5 March stating:

“I am sure you have this in hand already, but in case it might help, I should like to offer you my thoughts on the procedure for handling the legal basis for any offensive operations ... in Iraq – a subject touching on my responsibilities since it is the CDS [Chief of the Defence Staff] who will need to be assured that he will be acting on the basis of a lawful instruction from the Prime Minister and the Defence Secretary.

“It is not possible to be certain about the precise circumstances in which this would arise because we cannot be sure about the UN scenario involved ... Clearly full UN cover is devoutly to be desired – and not just for the military operation itself ...

“My purpose in writing, however, is not to argue the legal merits of the case ... but to flag up ... that the call to action from President Bush could come at quite short notice and that we need to be prepared to handle the legalities so we can deliver ...

“In these circumstances, I suggest that the Prime Minister should be prepared to convene a special meeting of the inner ‘war’ Cabinet (Defence and Foreign Secretaries certainly, Chancellor, DPM [Deputy Prime Minister], Home Secretary possibly, Attorney General, crucially) at which CDS effectively receives his legal and constitutional authorisation. We have already given the Attorney General information and MOD briefings on objectives and rationale, and I understand that John Scarlett [Chairman of the Joint Intelligence Committee (JIC)] is conducting further briefing on the basis of the intelligence material.

“While it is not possible to predict the timing of the event precisely ... [it] could conceivably be as early as 10 March ... in the event, albeit unlikely, that the Americans lost hope in the UN and move fast. Michael Jay may have a better fix on this, but I guess the more likely timing would be for Security Council action around the weekend of 15/16 March, and therefore for a meeting after that.”<sup>207</sup>

**507.** Copies of the letter were sent to Sir Michael Jay and Sir David Manning.

**508.** Sir Michael commented that both Adml Boyce and General Sir Mike Jackson, Chief of the General Staff, had told him that they would need “explicit legal

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<sup>207</sup> [Letter Tebbit to Turnbull, 5 March 2003, \[untitled\]](#).

authorisation". Sir Kevin's proposal "would be one way of achieving this: though the timetable looks a bit leisurely".<sup>208</sup>

**509.** Sir David Manning advised Mr Blair, through Mr Powell, that he should have an early meeting to discuss the issues.<sup>209</sup>

**510.** Mr Blair agreed.<sup>210</sup>

### **Cabinet, 6 March 2003**

**511. At Cabinet on 6 March, Mr Blair concluded that it was for the Security Council to determine whether Iraq was co-operating fully.**

**512.** Summing up the discussion at Cabinet on 6 March, Mr Blair said it was "the responsibility of the Chief Inspectors to present the truth about Saddam Hussein's co-operation with the United Nations, so that the Security Council could discharge its responsibilities in making the necessary political decisions". The UK was "lobbying hard in favour of the draft Security Council resolution". It was the duty of Saddam Hussein to co-operate fully, "and it was for the Security Council to determine whether that had been the case".<sup>211</sup>

**513.** A revised resolution was tabled in the Security Council on 7 March (See the Box below).

**514.** Mr Straw asked, on behalf of the UK, US and Spain as co-sponsors, for a revised draft of the second resolution to be circulated.<sup>212</sup>

#### **UK/US/Spanish draft resolution, 7 March 2003**

The draft resolution recalled the provisions of previous Security Council resolutions on Iraq and noted that:

- The Council had "repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations"; and
- Iraq had "submitted a declaration ... containing false statements and omissions and has failed to comply with, and co-operate fully in the implementation of, that resolution".

The draft stated that the Council:

- "Mindful of its primary responsibility under the Charter ... for the maintenance of international peace and stability;

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<sup>208</sup> [Manuscript comment Jay to Ricketts, 5 March 2003, on Letter Tebbit to Turnbull, 5 March 2003, \[untitled\].](#)

<sup>209</sup> [Manuscript comment Manning to Powell and Prime Minister, 6 March 2003, on Letter Tebbit to Turnbull, 5 March 2003, \[untitled\].](#)

<sup>210</sup> [Manuscript comment Prime Minister to Manning, on Letter Tebbit to Turnbull, 5 March 2003, \[untitled\].](#)

<sup>211</sup> Cabinet Conclusions, 6 March 2003.

<sup>212</sup> Telegram 378 UKMIS New York to FCO London, 7 March 2003, 'Iraq: Draft Resolution'.

- Recognising the threat Iraq's non-compliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles poses to international peace and security;
- Determined to secure full compliance with its decisions and to restore international peace and security in the area;
- Acting under Chapter VII ...;
- Reaffirms the need for full implementation of resolution 1441 (2002);
- Calls on Iraq immediately to take the decisions necessary in the interests of its people and the region;
- "Decides that Iraq will have failed to take the final opportunity afforded by resolution 1441 (2002) unless, on or before 17 March 2003, the Council concludes that Iraq has demonstrated full, unconditional, immediate and active co-operation in accordance with its disarmament obligations under resolution 1441 (2002) and previous relevant resolutions, and is yielding possession to UNMOVIC and the IAEA of all weapons, weapon delivery and support systems and structures, prohibited by resolution 687 (1991) and all subsequent resolutions, and all information regarding prior destruction of such items; and
- "Decides to remain seized of the matter."

## Lord Goldsmith's advice, 7 March 2003

**515.** Lord Goldsmith submitted formal advice to Mr Blair on 7 March, in which he noted that he had been asked for advice on the legality of military action against Iraq without another resolution of the Security Council, further to resolution 1441.<sup>213</sup>

**516.** Lord Goldsmith identified three possible bases for the use of military force. He explained that neither self-defence nor the use of force to avert overwhelming humanitarian catastrophe applied in this case.

**517.** As regards the third basis, he wrote that force may be used:

"... where this is authorised by the UN Security Council acting under Chapter VII of the UN Charter. The key question is whether resolution 1441 has the effect of providing such authorisation ..."

**518.** He wrote:

"As you are aware, the argument that resolution 1441 itself provides the authorisation to use force depends on the revival of the express authorisation to use force given in 1990 by Security Council Resolution 678."

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<sup>213</sup> Minute Goldsmith to Prime Minister, 7 March 2003, 'Iraq: Resolution 1441'.

**519.** Lord Goldsmith posed and answered two questions. First, he considered whether the revival argument was a sound legal basis in principle. Second, he considered the question of whether resolution 1441 had the effect of reviving the authority to use military force in resolution 678 (1990).

### **The revival argument – a sound basis “in principle”**

**520.** Lord Goldsmith set out the basic principles of the revival argument and described how, in January 1993 (following UN Presidential Statements condemning particular failures by Iraq to observe the terms of the cease-fire resolution) and again in December 1998 (for Operation Desert Fox), following a series of Security Council resolutions, notably 1205 (1998), the use of force had relied on the revival argument.

**521.** He wrote:

“Law Officers have advised in the past that, provided the conditions are made out, the revival argument does provide a sufficient justification in international law for the use of force against Iraq.”

**522.** Having referred to the opinion, expressed in August 1992, by then UN Legal Counsel, Carl-August Fleischauer, as supportive of the UK view, Lord Goldsmith continued:

“However, the UK has consistently taken the view (as did the Fleischauer opinion) that as the cease-fire conditions were set by the Security Council in resolution 687, it is for the Council to assess whether any such breach of those obligations has occurred.

“The US have a rather different view: they maintain that the fact of whether Iraq is in breach is a matter of objective fact which may therefore be assessed by individual Member States. I am not aware of any other state which supports this view. This is an issue of critical importance when considering the effect of resolution 1441.”

**523.** Lord Goldsmith concluded:

“The revival argument is controversial. It is not widely accepted among academic commentators. However, I agree with my predecessors’ advice on this issue. Further, I believe that the arguments in support of the revival argument are stronger following adoption of resolution 1441.”

**524.** Lord Goldsmith explained that this was because of the terms of the resolution and the negotiations which led to its adoption. He noted that PPs 4, 5 and 10 of the resolution recalled “the authorisation to use force in resolution 678 and that resolution 687 imposed obligations on Iraq as a necessary condition of the cease-fire”; that OP 1 provided that Iraq had been and remained in material breach of relevant resolutions including resolution 687; and that OP13 recalled that Iraq had been “warned repeatedly” that “serious consequences” would “result from continued violations of its obligations”.

**525.** Lord Goldsmith noted:

“... Previous practice of the Council and statements made by Council members during the negotiation of resolution 1441 demonstrate that the phrase ‘material breach’ signifies a finding by the Council of a sufficiently serious breach of the cease-fire conditions to revive the authorisation in resolution 678 and that ‘serious consequences’ is accepted as indicating the use of force.”

**526.** Lord Goldsmith wrote:

“... I disagree, therefore, with those commentators and lawyers who assert that nothing less than an explicit authorisation to use force in a Security Council resolution will be sufficient.”

### **The revival argument – the effect of resolution 1441 (2002)**

**527.** Having accepted the validity of the revival argument Lord Goldsmith addressed the question of whether resolution 1441 was sufficient to revive the authorisation in resolution 678 without an assessment by the Security Council that the basis of the cease-fire established in resolution 687 had been destroyed.

**528.** Lord Goldsmith wrote:

“In order for the authorisation to use force in resolution 678 to be revived, there needs to be a determination by the Security Council that there is a violation of the conditions of the cease-fire and that the Security Council considers it sufficiently serious to destroy the basis of the cease-fire. Revival will not, however, take place, notwithstanding a finding of violation, if the Security Council has made clear either that action short of the use of force should be taken to ensure compliance with the terms of the cease-fire, or that it intends to decide subsequently what action is required to ensure compliance.”

**529.** He continued:

“Notwithstanding the determination of material breach in OP1 of resolution 1441, it is clear that the Council did not intend that the authorisation in resolution 678 should revive immediately following the adoption of resolution 1441, since OP2 of the resolution affords Iraq a ‘final opportunity’ to comply with its disarmament obligations under previous resolutions by co-operating with the enhanced inspection regime described in OPs 3 and 5-9. But OP2 also states that the Council has determined that compliance with resolution 1441 is Iraq’s last chance before the cease-fire resolution will be enforced.”

**530.** On that basis, Lord Goldsmith expressed the view that:

“OP2 has the effect therefore of suspending the legal consequences of the OP1 determination of material breach which would otherwise have triggered the revival

of the authorisation in resolution 678. The narrow but key question is: on the true interpretation of resolution 1441, what has the Security Council decided will be the consequences of Iraq's failure to comply with the enhanced regime."

**531.** Lord Goldsmith told the Inquiry:

"... without a firebreak, they [members of the Security Council] understood from past practice, from what happened in 1998 after resolution 1205, that the United States and the United Kingdom, and perhaps other states, would have then taken that as saying 'We now have the authority of the United Nations to move today'."<sup>214</sup>

**532.** Lord Goldsmith identified OPs 4, 11 and 12 as the provisions relevant to the question of whether or not Iraq had taken the final opportunity:

"It is clear from the text of the resolution, and is apparent from the negotiating history, that if Iraq fails to comply, there will be a further Security Council discussion. The text is, however, ambiguous and unclear on what happens next."

**533.** On that question, Lord Goldsmith identified and summarised the "two competing arguments":

- "that provided there is a Council discussion, if it does not reach a conclusion, there remains an authorisation to use force"; or
- "that nothing short of a further Council decision will be a legitimate basis for the use of force".

## The first line of argument

**534.** The first line of argument maintained that, provided there was a Council discussion, whether conclusive or not, there remained an authorisation to use force.

**535.** It relied on the following steps:

- Iraq had been found to be in material breach of relevant resolutions including resolutions 678 and 687. Its violations were therefore, in principle, sufficient to revive the authorisation to use force in resolution 678.
- Iraq had been given a final opportunity to comply and had been warned that it would face serious consequences if it did not do so.
- OP4 of resolution 1441 had the effect of determining in advance that any false statements by Iraq in its declaration and failure by Iraq at any time to comply with and co-operate fully in the implementation of the resolution would constitute a further material breach and would thus revive the authority which had been suspended without any further determination by the Security Council.

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<sup>214</sup>Public hearing, 27 January 2010, page 84.

- It was necessary, however, for the Security Council to meet “to consider the situation.
- As the resolution had not specified that the Security Council should “decide” what action should be taken, such a meeting would provide an opportunity for further action by the Security Council, but it was not essential that it reach a decision. Once the procedural requirement was satisfied, the authority to take military action in resolution 678 was, once again, fully revived.

## The second line of argument

**536.** The second line of argument focused, by contrast, on the words in OP4 (“and will be reported to the Council for assessment in accordance with paragraphs 11 and 12 below”) and on the requirement in OP12 for the Security Council to “consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security”. According to the second line of argument, these provisions implied a return to the Security Council for a decision.

**537.** Lord Goldsmith wrote that one view in support of the second line of argument was that the wording of OP4 “indicated the need for an assessment by the Security Council of how serious any Iraqi breaches [were] and whether any Iraqi breaches [were] sufficiently serious to destroy the basis of the cease-fire”. He pointed out that this had been the position taken by Mr Straw when he told Parliament on 25 November that “material breach means something significant; some behaviour or pattern of behaviour where any single action appears relatively minor but the action as a whole adds up to something more deliberate and significant: something that shows Iraq’s intention not to comply”. If that was so, the question was by whom such an assessment was to be carried out. Lord Goldsmith noted that, according to the UK view of the revival argument, it could only be the Security Council.

**538.** Lord Goldsmith set out the counter position as:

“If OP4 means what it says: the words ‘co-operate fully’ were included specifically to ensure that any instances of non-co-operation would amount to material breach. This is the US analysis of OP4 and is undoubtedly more consistent with the view that no further decision of the Council is necessary to authorise force, because it can be argued that the Council has determined in advance that any failure will be a material breach.”

**539.** Lord Goldsmith advised that the critical issue was, nonetheless, what was to happen when a report came to the Security Council under OP4 or OP11. “In other words”, he wrote, “what does OP12 require”.

## The significance of OP12

**540.** Lord Goldsmith noted that the language of OP12 was a compromise and was unclear. But it did provide that there should be a meeting of the Council “to consider the situation and the need for compliance in order to secure international peace and security”.

**541.** Thus, Lord Goldsmith observed, the Security Council was provided with an opportunity to take a further decision expressly authorising the use of force or, “conceivably, to decide that other enforcement measures should be used”. If it did not do so, however, he stated that the “clear US view” was that “the determination” of material breach in OPs 1 and 4 would remain valid, thus authorising the use of force without a further decision.

**542.** Lord Goldsmith wrote that his view was:

“... that different considerations apply in different circumstances. The OP12 discussion might make clear that the Council view is that military action is appropriate but that no further decision is required because of the terms of resolution 1441. In such a case, there would be good grounds for relying on the existing resolution as the legal basis for any subsequent military action. The more difficult scenario is if the views of Council members are divided and a further resolution is not adopted either because it fails to attract 9 votes or because it is vetoed.”

**543.** Lord Goldsmith rehearsed the arguments for and against the view that, in those circumstances, no further decision of the Security Council was needed to authorise the use of force.

**544.** He identified the principal argument in favour of this interpretation to be that the word “consider” had been chosen deliberately and that French and Russian proposals to amend this provision so that the Security Council should be required to “decide” what was to happen had not been accepted.

**545.** Lord Goldsmith wrote that he had been impressed by the strength and sincerity of the views of the US Administration on this point. At the same time, “the difficulty” was that the UK was “reliant” on US “assertions” that France and others:

“... knew and accepted that they were voting for a further discussion and no more. We have very little evidence of this beyond a couple of telegrams recording admissions by French negotiators that they knew the US would not accept a resolution which required a Council decision. The possibility remains that the French and others accepted OP12 because in their view it gave them a sufficient basis on which to argue that a second resolution was required (even if that was not made expressly clear).”

**546.** Lord Goldsmith added:

“A further difficulty is that, if the matter ever came before a court, it is very uncertain to what extent the court would accept evidence of the negotiating history to support a particular interpretation of the resolution, given that most of the negotiations were conducted in private and there are no agreed or official records.”

**547.** Lord Goldsmith identified three arguments in support of the view that a further decision was needed:

- The word “assessment” in OP4 and the language of OP12 indicated that the Council would be assessing the seriousness of any Iraqi breach.
- There was special significance in the words “in order to secure international peace and security” reflecting the responsibility of the Security Council under Article 39 of the UN Charter and it could be argued that the Council was to exercise a determinative role on the issue.
- Any other construction reduced the role of the Security Council to a formality.

**548.** Lord Goldsmith wrote:

“Others have jibbed at this categorisation, but I remain of the opinion that this would be the effect in legal terms of the view that no further resolution is required. The Council would be required to meet, and all members of the Council would be under an obligation to participate in the discussion in good faith, but even if an overwhelming majority of the Council were opposed to the use of force, military action could proceed regardless.”

**549.** Lord Goldsmith pointed out that the statements made by Security Council members on the adoption of resolution 1441, which might be referred to in circumstances when the wording of the resolution was not clear, were not conclusive. He wrote:

“Only the US explicitly stated that it believed that the resolution did not constrain the use of force by States ‘to enforce relevant United Nations resolutions and protect world peace and security’ regardless of whether there was a further Security Council decision. Conversely, two other Council members, Mexico and Ireland, made clear that in their view a further decision of the Council was required before the use of force would be authorised. Syria also stated that the resolution should not be interpreted, through certain paragraphs, as authorising any State to use force.”

## **Other arguments rejected**

**550.** Lord Goldsmith rejected the argument that it was possible to establish that Iraq had failed to take its final opportunity through the procedures in OPs 11 and 12 without regard to the words “for assessment” in OP4. He accepted that the words “and shall be reported to the Council for assessment in accordance with paragraphs 11 and 12” were

added at a late stage, but noted that it was substituted for other language “which would clearly have had the effect of making any finding of material breach subject to a further Council decision”. He wrote:

“It is clear ... that any Iraqi conduct which would be sufficient to trigger a report from the inspectors under OP11 would also amount to a failure to comply with and co-operate fully in the implementation of the resolution and would thus be covered by OP4. In addition, the reference to paragraph 11 in OP4 cannot be ignored. It is not entirely clear what this means, but the most convincing explanation seems to be that it is a recognition that an OP11 inspectors’ report would also constitute a report of a further material breach within the meaning of OP4 and would thus be assessed by the Council under OP12.”

**551.** Addressing whether the differences between the US and UK objectives had any impact on the interpretation of resolution 1441, Lord Goldsmith wrote:

“I have considered whether this difference in the underlying legal view means that the effect of the resolution might be different for the US than for the UK, but I have concluded that it does not affect the position. If OP12 of the resolution, properly interpreted, were to mean that a further Council decision was required before force was authorised, this would constrain the US just as much as the UK. It was therefore an essential negotiating point for the US that the resolution should not concede the need for a second resolution. They are convinced that they succeeded.”

## Lord Goldsmith’s conclusions

**552.** In paragraphs headed “Summary”, Lord Goldsmith set out his conclusions.

**553.** He wrote that the language of resolution 1441:

“... leaves the position unclear and the statements made on adoption of the resolution suggest that there were differences of view within the Council as to the legal effect of the resolution. Arguments can be made on both sides.

“A key question is whether there is ... a need for an assessment of whether Iraq’s conduct constitutes a failure to take the final opportunity or has constituted a failure fully to co-operate within the meaning of OP4 such that the basis of the cease-fire is destroyed. If an assessment is needed of that sort, it would be for the Council to make it.

“A narrow textual reading of the resolution suggests that sort of assessment is not needed, because the Council has pre-determined the issue. Public statements, on the other hand, say otherwise.”

**554.** Lord Goldsmith wrote that he remained “of the opinion that the safest legal course would be to secure the adoption of a further resolution to authorise the use of force”, and that he had “already advised” that he did “not believe that such a resolution need be

explicit in its terms” if it established that the Council had “concluded” that Iraq had “failed to take the final opportunity offered by resolution 1441”.

**555.** Lord Goldsmith added:

“Nevertheless, having regard to the information on the negotiating history which I have been given and to the arguments of the US Administration which I heard in Washington, I accept that a reasonable case can be made that resolution 1441 is capable in principle of reviving the authorisation in 678 without a further resolution.”

**556.** Lord Goldsmith added that that would:

“... only be sustainable if there are strong factual grounds for concluding that Iraq has failed to take the final opportunity. In other words, we would need to be able to demonstrate hard evidence of non-compliance and non-co-operation. Given the structure of the resolution as a whole, the views of UNMOVIC and the IAEA will be highly significant in this respect. In the light of the latest reporting by UNMOVIC, you will need to consider extremely carefully whether the evidence ... is sufficiently compelling to justify the conclusion that Iraq has failed to take the final opportunity.”

**557.** Lord Goldsmith wrote:

“In reaching my conclusions, I have taken account of the fact that on a number of previous occasions, including in relation to Operation Desert Fox in December 1998 and Kosovo in 1999, UK forces have participated in military action on the basis of advice from my predecessors that the legality of the action under international law was no more than reasonably arguable.

“But a ‘reasonable case’ does not mean that if the matter ever came before a court I would be confident that the court would agree with this view. I judge that, having regard to the arguments on both sides, and considering the resolution as a whole in the light of the statements made on adoption and subsequently, a court might well conclude that OPs 4 and 12 do require a further Council decision in order to revive the authorisation in resolution 678. But equally I consider that the counter view can reasonably be maintained.

“However, it must be recognised that on previous occasions when military action was taken on the basis of a reasonably arguable case, the degree of public and Parliamentary scrutiny of the legal issue was nothing like as great as it is today.”

**558.** Lord Goldsmith’s advice of 7 March did not present the “reasonable case” as stronger or “better” than the opposing case.

**559.** Nevertheless, in making that judgement, Lord Goldsmith took responsibility for a decision that a reasonable case was sufficient to provide the legal basis for the UK Government to take military action in Iraq.

**560.** Lord Goldsmith told the Inquiry that it was:

“... very clear that the precedent in the United Kingdom was that a reasonable case was a sufficient lawful basis for taking military action ... I checked this at the time, because this is what I had been told by my officials – it was the basis for the action in Kosovo, it was also the basis for the action in 1998 ... as a matter of precedent it was standard practice to use the reasonable case basis for deciding on the lawfulness of military action.”<sup>215</sup>

**561.** Lord Goldsmith added that he was saying that it was “the right test to use”, and that:

“... as a matter of precedent it was standard practice to use the reasonable case basis for deciding on the lawfulness of military action.”

**562.** Asked to explain the meaning of the word “reasonable”, Lord Goldsmith told the Inquiry:

“It means a case which not just has some reasoning behind it, put in practical terms, it is a case that you would be content to argue in court, if it came to it, with a reasonable prospect of success. It is not making the judgment whether it is right or wrong ...”<sup>216</sup>

**563.** Asked whether the reference in his 7 March advice to action being taken in Iraq in Operation Desert Fox in 1998 and in Kosovo in 1999 on the basis that the legality of the action was “reasonably arguable” was a “somewhat lesser standard” than others that he might have liked to present, Lord Goldsmith replied that the distinction he was making:

“... was between the authority based on the assessment that there was a reasonable case that it was lawful, to authority which is based upon having balanced all the arguments and come down on one side or the other, is it, in fact, lawful?”<sup>217</sup>

**564.** Lord Goldsmith added:

“I had originally been not that instinctively in favour of this ‘reasonable case’ approach, but these precedents were helpful, because, although Kosovo was a different legal basis, the point was that the British Government had committed itself to military action on the basis of legal advice that there was a reasonable case. That was the precedent. It had been pressed upon me that that was the precedent in the past.

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<sup>215</sup> Public hearing, 27 January 2010, page 97.

<sup>216</sup> Public hearing, 27 January 2010, pages 97-98.

<sup>217</sup> Public hearing, 27 January 2010, pages 169-170.

“I can see ... that, with hindsight, I was being overly cautious in expressing it in this way, but that was the precedent that had been used and I went along with it. Not ‘I went along with it’, I followed the same practice.”<sup>218</sup>

**565.** Asked about his advice to Mr Blair that he could not be confident that a court would agree with the view that there was a “reasonable case”, Lord Goldsmith replied:

“I think ... I’m explaining what I mean by ‘reasonable case’, and this is – if you like – the ‘yes, but’ point. I wanted to ... underline to the Prime Minister that I was saying that reasonable case is enough. I’m saying it is a reasonable case. So that is the green light ... but I want to underline, ‘Please don’t misunderstand, a reasonable case doesn’t mean of itself that, if this matter were to go to court, you would necessarily win’. ‘On the other hand, the counter view can reasonably be maintained’.”<sup>219</sup>

**566.** Ms Adams told the Inquiry that, when she arrived in Lord Goldsmith’s office, one of her predecessors had already put together a file of previous Law Officers’ advice on the use of force over the last “ten years or so” which “contained all the key advice on the revival argument”.<sup>220</sup> In her view, “it was self-evident from this file, that there had been a number of occasions when the Law Officers had ... endorsed ... military action on the basis of a reasonable case”.

**567.** Addressing Lord Goldsmith’s reference to precedent, Ms Adams stated:

“It wasn’t a precedent in the sense of something that had to be followed; it was a precedent in the sense of something which had, as a matter of fact, taken place.”<sup>221</sup>

**568.** Asked if the term “reasonable case” had a meaning in international law, Ms Adams told the Inquiry that it did not, it was:

“... one which can be reasonably argued. Obviously, it has to have a reasoned basis to it because otherwise it is not going to be reasonable to a court. There has to be a reasonable prospect ... of success for this argument, but it doesn’t mean to say it is the better legal opinion. That would be my interpretation.”<sup>222</sup>

**569.** The Inquiry has seen the advice from the Law Officers on the use of force described by Ms Adams, in which the formulation “respectable legal argument” is used.

**570.** Asked whether there was any significant difference between a “reasonable case” and a “respectable legal argument”, Lord Goldsmith wrote that he preferred the former, though he treated “respectable case” as amounting to the same test in practice, and “certainly not a higher test”.<sup>223</sup>

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<sup>218</sup> Public hearing, 27 January 2010, pages 170-171.

<sup>219</sup> Public hearing, 27 January 2010, pages 173-174.

<sup>220</sup> Public hearing, 30 June 2010, page 43.

<sup>221</sup> Public hearing, 30 June 2010, page 45.

<sup>222</sup> Public hearing, 30 June 2010, page 45.

<sup>223</sup> Statement, 4 January 2011, paragraph 6.1.

**571.** Asked how his “characterisation of his 7 March advice as a ‘green light’” sat with his explanation that a “reasonable case does not mean that if the matter came before a court” he “would be confident that the court would agree”, Lord Goldsmith wrote:

“I was relying on the precedent established in previous cases that a reasonable or respectable case was sufficient. Precedent in the Law Officers’ department is commonly followed. However I was careful to explain what I meant by the phrase ‘reasonable case’ and to highlight in my advice all the difficulties in interpreting the effect of the resolution.”<sup>224</sup>

**572.** Lord Goldsmith added that, after delivering his advice of 7 March, he had:

“... continued to reflect on the position and on 13 March 2003 concluded that the better view was there was a lawful basis for the use of force without a further resolution.”

**573.** Asked how his “characterisation of his 7 March advice as a ‘green light’” sat “with the number of difficulties with the argument that no further Security Council determination” was needed which he had identified but not resolved in that advice, Lord Goldsmith wrote:

“I was well aware of the contrary arguments and had set them out in detail in my advice. They could not be resolved because the language of the resolution lacked clarity and the statements made on adoption revealed differences of view within the Council on the legal effect of the resolution. The issue for me therefore was to consider whether the argument that the resolution authorised the use of force was of sufficient weight to reach the threshold of certainty that my predecessors had concluded was necessary. I concluded that it was and I knew that therefore I was giving a ‘green light’.”<sup>225</sup>

**574.** Asked how his view – that a “reasonable case” was sufficient to decide on the lawfulness of military action – reflected the framework of the UN Charter and the prohibition on the use of force except in self-defence or where clearly authorised by the Security Council in the circumstances set out in Chapter VII of the Charter, Lord Goldsmith wrote:

“A ‘clear’ or ‘certain’ basis for the use of force will always be preferable to a ‘reasonable’ or ‘respectable’ one. That is why I argued in my advice of 7 March 2003 that the safest legal course would be to secure the adoption of a further resolution to authorise the use of force ... If we had achieved the second resolution that would have provided more certainty – although even then it is still likely to have been in terms relying on the revival of the original 1990/91 authorisation which would not have satisfied all international lawyers. We had however previously engaged

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<sup>224</sup> Statement, 4 January 2011, paragraph 6.3.

<sup>225</sup> Statement, 4 January 2011, paragraph 6.4.

in the use of force on the basis of a reasonable or respectable case that action is authorised by a UNSCR or self defence or humanitarian intervention and my understanding was and is that this is a sufficient basis.”<sup>226</sup>

## **Other matters dealt with in Lord Goldsmith’s 7 March advice**

**575. Lord Goldsmith reiterated the categorical advice, previously expressed in his 14 January draft, that there were no grounds for arguing that “an unreasonable veto” would permit the US and UK to ignore such a veto.**

**576.** Addressing the effect of an “unreasonable” veto, Lord Goldsmith stressed:

“The analysis set out above applies whether a second resolution fails to be adopted because of a lack of votes or because it is vetoed. As I have said before ... there are no grounds for arguing that an ‘unreasonable veto’ would entitle us to proceed on the basis of a presumed Security Council authorisation. In any event, if the majority of world opinion remains opposed to military action, it is likely to be difficult on the facts to categorise a French veto as ‘unreasonable’.”

**577. Lord Goldsmith stressed the importance of the circumstances at the time a decision was taken.**

**578.** Addressing the importance of circumstances, Lord Goldsmith concluded:

“The legal analysis may, however, be affected by the course of events over the next week or so, e.g. the discussions on the draft second resolution. If we fail to achieve the adoption of a second resolution, we would need to consider urgently at that stage the strength of our legal case in the light of the circumstances at that time.”

**579. Lord Goldsmith recognised that there was a possibility of a legal challenge.**

**580.** Lord Goldsmith set out the possible consequences of acting without a further resolution, in particular the ways in which the matter might be brought before a court, some of which he described as “fairly remote possibilities”.

**581.** Lord Goldsmith outlined the potential risks of action before both International and UK Courts, concluding:

“... it would not be surprising if some attempts were made to get a case of some sort off the ground. We cannot be certain that they would not succeed. The GA route [the General Assembly of the United Nations requesting an advisory opinion on the legality of the military action from the International Court of Justice] may be the most likely ...”

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<sup>226</sup> Statement, 4 January 2011, paragraph 6.5.

**582.** Sir Michael Wood had provided advice on the possibility of legal challenge in October 2002.<sup>227</sup>

**583. Lord Goldsmith stressed the importance of the principle of proportionality in the use of force during the campaign.**

**584.** Addressing the principle of proportionality, Lord Goldsmith stressed that the lawfulness of military action depended not only on the existence of a legal basis, but also on the exercise of force during the campaign being proportionate.<sup>228</sup>

**585.** Lord Goldsmith wrote that any force used pursuant to the authorisation in resolution 678 must have as its objective the enforcement of the terms of the cease-fire contained in resolution 687 and subsequent relevant resolutions; be limited to what is necessary to achieve that objective; and must be a proportionate response to that objective. That was “not to say that action may not be taken to remove Saddam Hussein from power if it can be demonstrated that such action is a necessary and proportionate measure to secure the disarmament of Iraq. But regime change cannot be the objective of military action.”

**586.** Asked if he thought that the matter would be closed by his 7 March advice, Lord Goldsmith told the Inquiry:

“... at the time, I thought it was, because I thought I had given the green light in February, I was following precedent in giving the green light again, and I thought, therefore, the issue was closed, and therefore, if, politically, the decision was taken wherever it needed to be taken in the United Kingdom, and no doubt the United States, about military action, then that would be it.

“... [R]ecognising that things could change, I said ... we would need to ... assess the strength of the legal case in the light of circumstances at the time if there were a failure to obtain the second resolution ...”<sup>229</sup>

**587. Mr Straw, Mr Hoon, Dr John Reid, Minister without Portfolio, and the Chiefs of Staff had all seen Lord Goldsmith’s advice of 7 March before the No.10 meeting on 11 March, but it is not clear how and when it reached them.**

**588. Other Ministers whose responsibilities were directly engaged, including Mr Gordon Brown, the Chancellor of the Exchequer, and Ms Short, the International Development Secretary, and their senior officials, did not see the advice.**

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<sup>227</sup> [Minute Wood to PS \[FCO\], 15 October 2002, ‘Iraq’.](#)

<sup>228</sup> Minute Goldsmith to Prime Minister, 7 March 2003, ‘Iraq: Resolution 1441’.

<sup>229</sup> Public hearing, 27 January 2010, pages 175-176.

## Media coverage during the weekend of 8 and 9 March

**589.** An article in the *Financial Times* on Saturday 8 March referred to an interview with Lord Archer, Solicitor General from 1974 to 1979, that was to be broadcast the following day on *GMTV's Sunday* programme.<sup>230</sup> The article stated that Lord Archer would reject the position “that resolution 1441 provided sufficient legal authority” for military action. It also stated that civil servants were understood to be putting pressure on Sir Andrew Turnbull to show them the Attorney General’s advice.

**590.** On 9 March, an article in the *Sunday Times* warned that there would be “a rebellion” of up to 200 Labour MPs if Mr Blair proceeded to military action without a second UN resolution authorising military action.<sup>231</sup>

**591.** The article stated:

“Conservatives urged the Government to say whether Lord Goldsmith, the Attorney General, had given legal approval for military action to be taken under any circumstances.”

**592.** In an interview broadcast in the late evening of 9 March as part of the *BBC Radio 4 Westminster Hour* programme, Ms Short was asked if she would resign if there was no mandate from the UN for war.<sup>232</sup> She said:

“Absolutely. There’s no question about that.

“If there is not UN authority for military action or if there is not UN authority for the reconstruction of the country, I will not uphold a breach of international law or this undermining of the UN and I will resign from the Government.”

**593.** Ms Short’s comments were widely reported in the media on 10 March.

## Government reaction to Lord Goldsmith’s advice of 7 March

### Mr Straw’s statement, 10 March 2003

**594.** Mr Straw made a statement to the House of Commons on 10 March 2003.

**595.** On 10 March, in an oral statement to the House of Commons, Mr Straw reported on his attendance at the ministerial meeting in the Security Council on 7 March (see Sections 3.7 and 3.8).<sup>233</sup>

**596.** In response to a question from Mr Michael Ancram, Deputy Leader of the Opposition and Shadow Secretary of State for Foreign and Commonwealth Affairs, as

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<sup>230</sup> *Financial Times*, 8 March 2003, *Warning over ‘unlawful’ war*.

<sup>231</sup> *Sunday Times*, 9 March 2003, *200 Labour MPs revolt over war*.

<sup>232</sup> *The Independent*, 10 March 2003, *Short will quit if Britain goes to war without UN resolution*.

<sup>233</sup> House of Commons, *Official Report*, 10 March 2003, columns 22-24.

to what the Government's position would be in the event that three Permanent Members of the Security Council vetoed a second resolution, Mr Straw replied:

"We have made it clear throughout that we want a second resolution for political reasons, because a consensus is required, if we can achieve it, for any military action. On the legal basis for that, it should be pointed out that resolution 1441 does not require a second resolution."<sup>234</sup>

**597.** Asked by Mr Simon Thomas (Plaid Cymru) to remind the House "exactly of which part of resolution 1441 authorises war", Mr Straw said:

"I am delighted to do so. We start with paragraph 1, which says that the Security Council 'Decides that Iraq has been and remains in material breach of its obligations under relevant resolutions, including resolution 687 ... in particular through Iraq's failure to cooperate with United Nations inspectors and the IAEA, and to complete the actions required under paragraph 8 to 13 of resolution 687'.

"We then go to paragraph 4, in which the Security Council 'Decides that false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure by Iraq at any time to comply with, and co-operate fully in the implementation of, this resolution shall constitute a further material breach of Iraq's obligations' – Obligations of which it is now in breach. We turn to operative paragraph 13, in which the Security Council 'Recalls, in that context, that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations'."<sup>235</sup>

### Mr Blair's meeting with Lord Goldsmith, 11 March 2003

**598.** Mr Blair discussed the legal basis for the use of military force, and the need to avoid a detailed discussion in Cabinet, in a bilateral meeting with Lord Goldsmith on 11 March.<sup>236</sup>

**599.** There is no record of that discussion in either the No.10 or Attorney General's papers sent to the Inquiry.

**600.** In his statement for the Inquiry, Lord Goldsmith confirmed that the meeting had taken place at 0930 but he could not recall the detail of the discussion. He added that it "would have been my first meeting" with Mr Blair since he had submitted his advice of 7 March: "I expect that I would have gone over the main points of my advice with him."<sup>237</sup>

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<sup>234</sup> House of Commons, *Official Report*, 10 March 2003, column 24.

<sup>235</sup> House of Commons, *Official Report*, 10 March 2003, column 34.

<sup>236</sup> Minute Rycroft to Prime Minister, 11 March 2003, 'Iraq Military: 1300 Meeting'.

<sup>237</sup> Statement, 4 January 2011, pages 13-14.

**601.** Asked about the conclusions of the meeting with Lord Goldsmith, Mr Blair wrote:

“I did see him briefly, I think, on 11 March 2003 before the meeting with the other Cabinet members. I cannot recall the specific content of the discussion but most likely it would have been about his coming to Cabinet to explain his decision.”<sup>238</sup>

**602.** In the edition of his diaries published in 2012, Mr Campbell wrote that Lord Goldsmith:

“... had done a long legal opinion and said he did not want TB to present it too positively. He wanted to make it clear he felt there was a reasonable case for war under 1441. There was also a case to be made the other way and a lot would depend on what actually happened. TB also made clear that he did not particularly want Goldsmith to launch a detailed discussion at Cabinet, though it would have to happen at some time, and Ministers would want to cross-examine. With the mood as it was, and with Robin [Cook] and Clare [Short] operating as they were, he knew that if there was any nuance at all, they would be straight out saying the advice was that it was not legal, that the AG was casting doubt on the legal basis for war. Peter Goldsmith was clear that though a lot depended on what happened, he was casting doubt in some circumstances and if Cabinet had to approve the policy of going to war, he had to be able to put the reality to them. Sally [Morgan] said it was for TB to speak to Cabinet, and act on the AG’s advice. He would simply say the advice said there was a reasonable case. The detailed discussion would follow.

“... Peter G[oldsmith] told TB he had been thinking of nothing else for three weeks, that he wished he could be clearer in his advice, but in reality it was nuanced.”<sup>239</sup>

### **Mr Blair’s meeting, 11 March 2003**

**603.** On 11 March, Ministers discussed legal issues, including holding back for a few days the response to a US request for the use of UK bases.

**604.** They also discussed the viability of the military plan.

**605.** Mr Blair held a meeting on 11 March with Mr Prescott, Mr Hoon, Lord Goldsmith and Admiral Boyce. Mr Straw attended part of the meeting.<sup>240</sup> Sir Andrew Turnbull, Mr Powell, Mr Campbell, Baroness Morgan, Sir David Manning and Mr Rycroft were also present.

**606.** Prior to the meeting, Mr Straw’s Private Office wrote to No.10 on 11 March reporting that the US was pressing for a response “as soon as possible” to a letter to Mr Straw delivered by the US Ambassador on 5 March. It had formally requested the UK

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<sup>238</sup> Statement, 14 January 2011, page 11.

<sup>239</sup> Campbell A & Hagerty B. *The Alastair Campbell Diaries. Volume 4. The Burden of Power: Countdown to Iraq*. Hutchinson, 2012.

<sup>240</sup> [Letter Rycroft to McDonald, 11 March 2003, ‘Iraq: Legal and Military Aspects’](#).

Government's agreement to the use of RAF Fairford, Diego Garcia and, possibly, other UK bases for military operations against Iraq.<sup>241</sup>

**607.** In the letter the FCO advised that “under international law, the UK would be responsible for any US action in breach of international law in which the UK knowingly assisted”. The draft response was “premised on a decision that UNSCR 1441 and other relevant resolutions” provided “the authority for action”.

**608.** Mr Desmond Bowen, Deputy Head of the Overseas and Defence Secretariat in the Cabinet Office, advised Sir David Manning in a minute that the request was to be discussed at Mr Blair's meeting with Lord Goldsmith, Mr Straw and Mr Hoon on 11 March. He understood that Mr Straw and Mr Hoon had copies of Lord Goldsmith's advice of 7 March.<sup>242</sup>

**609.** Ms Adams advised Lord Goldsmith that she understood “the principal purpose of the meeting to be to discuss the ad bellum issue”.<sup>243</sup>

**610.** An hour before the meeting took place, MOD Legal Advisers provided questions for Mr Hoon to raise at the meeting, explaining:

“... some in the FCO – whether having read the AG's letter or not, I don't know – are beginning to believe that the legal base is already OK. It seems to us – and I have discussed this with Martin Hemming – that the position is not yet so clear.”<sup>244</sup>

**611.** The document provided for Mr Hoon stated:

“Questions for the Attorney General

“If no 2nd resolution is adopted (for whatever reason), and the PM decides that sufficient evidence exists that Iraq has failed to take the final opportunity to comply offered by 1441, is he satisfied that the currently proposed use of force would be lawful under international law?

“Comment: The AG's minute to the PM is equivocal: he says ‘a reasonable case can be made’ [for the revival argument] but also says that his view is that ‘different considerations apply in different circumstances’ [meaning the nature of the Security Council discussions under OP12]. He ends his summary thus: ‘If we fail to achieve the adoption of a second resolution we would need to consider urgently at that stage the strength of our legal case in the light of circumstances at the time’.

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<sup>241</sup> Letter Sinclair to Rycroft, 11 March 2003, ‘US Request to use Diego Garcia and RAF Fairford for Possible Operations Against Iraq’.

<sup>242</sup> Minute Bowen to Manning, 11 March 2003, ‘US Use of British Bases’.

<sup>243</sup> Minute Adams to Attorney General, 11 March 2003, ‘Iraq: Meeting at No.10, 1PM’.

<sup>244</sup> [Email DG OpPol-S to SofS-Private Office-S\[MOD\], 11 March 2003, ‘Urgent for Peter Watkins’ attaching Paper ‘Questions for the Attorney General’.](#)

“If the answer is yes to the above, can it be assumed that the Attorney will be able to confirm formally at the time that CDS’s order to implement the planned operation would be a lawful order (anybody subject to military law commits an offence if he disobeys any lawful command).

“Comment: Notwithstanding the current uncertainties, when it comes to the crunch, CDS will need to be assured that his orders are lawful. As the Attorney points out in his letter, ‘on previous occasions when military action was taken on the basis of a reasonably arguable case, the degree of public and Parliamentary scrutiny of the legal issue was nothing like as great as it is today’.”

**612.** A minute from Mr Rycroft to Mr Blair described confirmation of the viability of the overall military plan as the “main purpose of the meeting”.<sup>245</sup>

**613.** The record of the meeting on 11 March stated that Mr Blair had started by addressing the legal basis for military action. He stated that Lord Goldsmith’s “advice made it clear that a reasonable case could be made” that resolution 1441 was “capable of reviving” the authorisation of resolution 678 (1990), “although of course a second resolution would be preferable”.<sup>246</sup>

**614.** Other points recorded by Mr Rycroft included:

- Admiral Boyce said he “would need to put a short paragraph in his directive to members of the Armed Forces”.
- The paragraph “should be cleared with the Attorney General”.
- The UK would send the US a positive reply on its request to use Diego Garcia and RAF Fairford “in a day or two, with the usual conditions attached”.
- Mr Hoon and Adm Boyce advised that “once we had given our approval, the US might give very little notice before the start of the campaign”.
- Sir Andrew Turnbull asked whether a legal basis for military action was required for civil servants, as well as for members of the Armed Forces.
- Mr Hoon asked whether the Attorney General’s legal advice was ever disclosed.
- Mr Blair asked for a quick study into the precedents for that.
- Adm Boyce told the meeting that he was “confident that the battle plan would work”.
- Mr Blair stated that “we must concentrate on averting unintended consequences of military action. On targeting, we must minimise the risks to civilians.”

**615.** A letter, formally confirming the UK’s agreement to US use of Diego Garcia and RAF Fairford for operations to enforce Iraqi compliance with the obligations on WMD

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<sup>245</sup> Minute Rycroft to Prime Minister, 11 March 2003, ‘Iraq Military: 1300 Meeting’.

<sup>246</sup> [Letter Rycroft to McDonald, 11 March 2003, ‘Iraq: Legal and Military Aspects’](#).

laid down in resolution 1441 and previous relevant resolutions, was sent to Dr Rice on 18 March.<sup>247</sup>

**616.** Mr Campbell wrote in his diaries that:

- Mr Hoon had “said he would be happier with a clearer green light from the AG”.
- Mr Blair had been “really irritated” when Sir Andrew Turnbull had “said he would need something to put round the Civil Service that what they were engaged in was legal”. Mr Blair was “clear we would do nothing that wasn’t legal”.
- Lord Goldsmith had provided “a version of the arguments he had put to TB, on the one hand, on the other, reasonable case”.
- Mr Hoon had advised that the response to the “US request for the use of Diego Garcia and [RAF] Fairford” should be that it was “not ... automatic but had to go round the system”. Mr Blair had said he “did not want to send a signal that we would not do it”.
- Mr Hoon and Mr Straw were telling Mr Blair that the US could act as early as that weekend, and “some of our forces would have to be in before”.<sup>248</sup>

### **Mr Straw’s minute to Mr Blair, 11 March 2003**

**617.** Mr Straw advised Mr Blair that the UK and US should not push the second resolution to a vote if it could not secure nine votes and be certain of avoiding any vetoes.

**618.** Mr Straw suggested the UK should adopt a “strategy” based on the argument that Iraq had failed to take the final opportunity offered by resolution 1441, and that the last three meetings of the Security Council met the requirement for Security Council consideration of reports of non-compliance.

**619.** Mr Straw wrote to Mr Blair on 11 March setting out his firm conclusion that:

“If we cannot gain nine votes and be sure of no veto, we should not push our second resolution to a vote. The political and diplomatic consequences for the UK would be significantly worse to have our ... resolution defeated (even by just a French veto alone) than if we camp on 1441. [UN Secretary-General] Kofi Annan’s comments last evening have strengthened my already strong view on this. Getting Parliamentary approval for UK military action will be difficult if there is no second resolution: but in my view marginally easier by the strategy I propose.”<sup>249</sup>

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<sup>247</sup> Letter Manning to Rice, 18 March 2003, [untitled].

<sup>248</sup> Campbell A & Hagerty B. *The Alastair Campbell Diaries. Volume 4. The Burden of Power: Countdown to Iraq*. Hutchinson, 2012.

<sup>249</sup> [Minute Straw to Prime Minister, 11 March 2003, ‘Iraq: What if We Cannot Win the Second Resolution?’](#).

**620.** Mr Straw set out his reasoning in some detail, making clear that it was predicated on a veto only by France. That was “in practice less likely than two or even three vetoes. The points made included:

- The upsides of defying “the” veto had been “well aired”. It would “show at least we had a ‘moral majority’ with us”.
- In public comments he and Mr Blair had kept their “options open on what we should do in the event that the resolution does not carry within the terms of the [UN] Charter”. That had “been the correct thing to do”. “In private we have speculated on what to do if we are likely to get nine votes, but be vetoed” by one or more of the P5.
- Although in earlier discussion he had “warmed to the idea” that it was worth pushing the issue to a vote “if we had nine votes and faced only a French veto”, the more he “thought about this, the worse an idea it becomes”.
- The intensive debate over Iraq in the last five months had shown how much faith people had in the UN as an institution; and that “far from having the ‘moral majority’ with us ... we will lose the moral high ground if we are seen to defy the very rules and Charter of the UN on which we have lectured others and from which the UK has disproportionately benefitted”.
- The “best, least risky way to gain a moral majority” was “by the ‘Kosovo route’ – essentially what I am recommending. The key to our moral legitimacy then was the matter never went to a vote – but everyone knew the reason for this was that Russia would have vetoed. (Then, we had no resolution to fall back on, just customary international law on humanitarianism; here we can fall back on 1441.)”
- The veto had been included in the UN Charter “for a purpose – to achieve a consensus”. The UK could not “sustain an argument (politically, leave aside legally) that a distinction can be made between a ‘reasonable’ and an ‘unreasonable’ veto”. That was a completely subjective matter.
- The “three recent meetings of the Council more than fulfil the requirement for immediate consideration of reports of non-compliance. So we can say convincingly that the process set out in 1441 is complete. If we push a second resolution to a veto, then the last word on the Security Council record is a formal rejection of a proposal that Iraq has failed to take its final opportunity.”

**621.** Mr Straw advised that it would be “more compelling in Parliament and with public opinion to take our stand on the basis of 1441, and the overwhelming evidence that Iraq has not used the four months since then to co-operate ‘immediately, unconditionally and actively’”; and that the UNMOVIC [clusters] document would be “a material help in making that case”.

**622.** Mr Straw advised Mr Blair that he interpreted Mr Annan's "important" statement on 10 March:

"... essentially as a gypsies' warning not to try and then fail with a second resolution. If the last current act of the Security Council on Iraq is 1441, we can genuinely claim that we have met Kofi's call for unity and for acting within (our interpretation of) the authority of the Security Council."

**623.** There was no reference in the minute to President Chirac's remarks the previous evening.

**624.** Mr Straw advised Mr Blair that it would not be possible to decide what the Parliamentary Labour Party (PLP) and the House of Commons would agree until deliberations in the Security Council had concluded. If a second resolution was agreed it would be "fine", but that was "unlikely". He added:

"I sensed yesterday that sentiment might be shifting our way; but we would need to be very clear of the result before putting down a resolution approving military action. We could not possibly countenance the risk of a defeat ...

"But it need not be a disaster for you, the Government, and even more important for our troops, if we cannot take an active part in the initial invasion, provided we get on the front foot with our strategy.

"I am aware of all the difficulties of the UK standing aside from invasion operations, not least given the level of integration of our forces with those of the US. But I understand that the US could if necessary adjust their plan rapidly to cope without us ... [W]e could nevertheless offer them a major UK contribution to the overall campaign. In addition to staunch political support, this would include:

- intelligence co-operation;
- use of Diego Garcia, Fairford and Cyprus, subject to the usual consultation on targeting;
- as soon as combat operations are over, full UK participation in the military and civilian tasks, including taking responsibility for a sector and for humanitarian and reconstruction work. We could also take the lead in the UN on securing the ... resolution to authorise the reconstruction effort and the UN role in it which the US now agree is necessary."

**625.** Mr Straw concluded:

"We will obviously need to discuss all this, but I thought it best to put it in your mind as event[s] could move fast. And what I propose is a great deal better than the alternatives. When Bush graciously accepted your offer to be with him all the way, he wanted you alive not dead!"

**626.** Mr Straw's minute was not sent to Lord Goldsmith or Mr Hoon.

**627.** Mr Straw’s Private Office had separately replied on 11 March to a request from Sir David Manning for advice on the implications of the argument that a French veto would be unreasonable.<sup>250</sup>

**628.** In the reply, the FCO advised that there was “no recognised concept of an ‘unreasonable veto’”; and warned that: “In describing a French veto as ‘unreasonable’ we would therefore be inviting others to describe any future vetoes as ‘unreasonable’ too.” That could have implications in other areas “such as the Middle East”. In addition, “describing the veto as unreasonable would make no difference to the legal position”. There was “no implied condition” in the UN Charter that a veto was valid “only” if it was reasonable. There was “already pressure at the UN to abolish veto rights”. And pressure could be expected to increase “if the argument that certain vetoes were ‘unreasonable’ – and could therefore be ignored – gained ground”.

**629.** The UK was “on record as saying that the veto should only be used with restraint and in a manner consistent with the principles of the Charter”.

### **Prime Minister’s Questions, 12 March 2003**

**630.** During Prime Minister’s Questions on 12 March, Mr Blair stated that the UK would not do anything which did not have a proper legal basis.

**631.** In PMQs on 12 March Mr Blair focused on efforts to secure a second resolution and the importance for the UN of being seen to act in response to Saddam Hussein’s failure to co-operate as required by resolution 1441 and of achieving unity in the international community.<sup>251</sup>

**632.** Mr Charles Kennedy, Leader of the Liberal Democrats, asked if the Attorney General had advised that a war in Iraq would be legal in the absence of a second resolution authorising force; Mr Richard Shepherd (Conservative) asked why a UN resolution was required; and Mr John Randall (Conservative) asked if Mr Blair would publish the legal advice.

**633.** In response, the points made by Mr Blair included:

- As he had “said on many occasions ... we ... would not do anything that did not have a proper legal basis”.
- Resolution 1441 provided the legal basis and the second resolution was “highly desirable to demonstrate the will of the international community”.
- It was not the convention to publish legal advice but it was “the convention to state clearly that we have a legal base for whatever action we take, and ... we must have such a base”.

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<sup>250</sup> [Letter Owen to Manning, 11 March 2003, ‘Iraq: Security Council: Use of vetoes’.](#)

<sup>251</sup> House of Commons, *Official Report*, 12 March 2003, columns 280-290.

**634.** In response to a question from Mr Kennedy about whether Mr Annan had said that action without a second resolution would breach the UN Charter, Mr Blair stated that Mr Annan had said that it was “important that the UN comes together”. Mr Blair added that it was:

“... complicated to get that agreement ... when one nation is saying that whatever the circumstances it will veto a resolution.”

**635.** Mr Kennedy wrote to Mr Blair later that day repeating his request that Mr Blair should publish Lord Goldsmith’s advice.<sup>252</sup> A copy of the letter was sent to Lord Goldsmith.

### **Sir Jeremy Greenstock’s discussions in New York, 12 March 2003**

**636. A UK proposal for a side statement setting out possible tests for Iraq attracted little support amongst Security Council members.**

**637.** Sir Jeremy Greenstock suggested early on the afternoon of 12 March that in the Security Council that day the UK should:

- table a revised draft resolution explaining that the UK was “setting aside the ultimatum concept” in operative paragraph 3 of the draft of 7 March “because it had not attracted Council support”;
- distribute a side statement with tests for Saddam Hussein, “explaining that the text was a national position to which the UK wanted as many Council Members as possible to adhere to maintain the pressure on Saddam”; and
- state that the deadline of the 17 March by which it had been proposed that Iraq should demonstrate full, immediate and active co-operation in accordance with resolution 1441 was “being reviewed”.<sup>253</sup>

**638.** Sir Jeremy favoured using the open debate in the Security Council later that day to explain the UK move, adding: “At no point will I signal, in public or in private, that there is any UK fallback from putting this new text to a vote within 24-36 hours.”

**639.** Sir Jeremy reported that he had explained the gist of the plan to Ambassador Negroponte who was briefing Secretary Powell for a conversation with President Bush.

**640.** Sir Jeremy had spoken to Mr Annan and had explained the UK concept of a side statement and tests which Saddam Hussein could meet “within the tight deadline we would offer (ideally 10 days)” if he “was serious about disarming”. Council members “should be able to agree the concept we were offering as a way out of the current impasse”.<sup>254</sup>

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<sup>252</sup> Letter Kennedy to Prime Minister, 12 July 2003, [untitled].

<sup>253</sup> [Telegram 419 UKMIS New York to FCO London, 12 March 2003, ‘Iraq: Second Resolution’.](#)

<sup>254</sup> [Telegram 427 UKMIS New York to FCO London, 13 March 2003, ‘Iraq: Call on the Secretary-General, 12 March’.](#)

**641.** Sir Jeremy reported that he had stressed that the UK's objective "was the disarmament of Iraq by peaceful means if possible". The "aim was to keep a united Security Council at the centre of attempts to disarm Iraq", but calls for a "grace period for Iraq" of 45 days or longer were "out of the question". The UK would not amend the draft resolution tabled on 7 March:

"... until it was clear that the new concept had a chance of succeeding. If the Council was interested, we might be able to move forward in the next day or so; if not, we would be back on the 7 March text and my instructions were to take a vote soon."

**642.** Sir Jeremy and Mr Annan had also discussed press reporting of Mr Annan's comments (on 10 March), "to the effect that military action without a Council authorisation would violate the UN Charter". Mr Annan said that he had been:

"... misquoted: he had not been attempting an interpretation of 1441 but merely offering, in answer to a specific question, obvious thoughts about the basic structure of the Charter. Nevertheless the Council was seized of the Iraq problem and working actively on it. It had not yet reached a decision to authorise force; how ... could it be right for some Member States to take the right to use force into their own hands?"

**643.** Sir Jeremy reported that he had "remonstrated that the Council was in paralysis: at least one Permanent Member had threatened to veto 'in any circumstances'. The Council was not shouldering its responsibilities."

**644.** Asked what the UK would do if it failed to get even nine votes, Sir Jeremy said:

"... we would have to consider the next steps; but we believed we had a basis for the use of force in existing resolutions (based on the revival of the 678 authorisation by the material breach finding in OP1 of 1441, coupled with Iraq's manifest failure to take the final opportunity offered to it in that resolution) ... OP12 ... did not in terms require another decision. This was not an accidental oversight: it had been the basis of the compromise that led to the adoption of the resolution."

**645.** Sir Jeremy reported that he had "urged" Mr Annan "to be cautious about allowing his name to be associated too closely with one legal view of a complicated and difficult issue".

**646.** At Mr Annan's suggestion, Sir Jeremy subsequently gave the UN Office of Legal Affairs a copy of Professor Greenwood's memorandum to the FAC of October 2002 and Mr Straw's evidence to the FAC on 4 March 2003.

**647.** Mr Straw's evidence to the FAC is referred to in more detail in Section 3.7.

**648.** Sir Jeremy reported that Mr Annan had said "several times" that he "understood" what Mr Straw and Mr Blair "were trying to do, and expressed sympathy for the tough situation you found yourselves in". Sir Jeremy reported that Mr José Maria Aznar, the Spanish Prime Minister, was "in a similar predicament". The "US did not

always realise how comments intended by US politicians for US domestic audiences seriously damaged the position of their friends in other countries". In a conversation with President Chirac on 12 March, Mr Annan had "found him 'tough but not closed' to possible compromises".

**649.** On the same day Mr Straw informed Mr Igor Ivanov, the Russian Foreign Minister, that the UK was about to table a revised resolution, omitting the paragraph from the 7 March draft which contained the deadline of 17 March for Iraq to demonstrate that it had taken the final opportunity offered in resolution 1441 to comply with its obligations.<sup>255</sup>

### **Mr Blair's conversation with President Bush, 12 March 2003**

**650.** In a telephone call with President Bush on 12 March Mr Blair proposed only that the US and UK should continue to seek a compromise in the UN, while confirming that he knew it would not happen. He would say publicly that France had prevented a resolution.

**651.** Much of the discussion focused on managing UK politics.

**652.** Mr Blair recognised that it would not be possible to agree a compromise in the Security Council before 17 March and that the US would not extend the deadline.

**653.** Mr Blair sought President Bush's help in handling the debate in the House of Commons planned for Tuesday 18 March, where he would face a major challenge to win a vote supporting military action.

**654.** Mr Blair wanted:

- to avoid a gap between the end of the negotiating process and the Parliamentary vote in which France or another member of the Security Council might table a resolution that attracted a Council majority; and
- US statements on the publication of a Road Map on the Middle East Peace Process and the need for a further resolution on a post-conflict Iraq.

**655.** On the afternoon of 12 March Mr Blair and President Bush discussed the latest position and discussions with Chile and Mexico.<sup>256</sup>

**656.** The conversation and discussions between Mr Straw and Secretary Powell about US concerns about UK diplomatic activity are addressed in more detail in Section 3.8.

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<sup>255</sup> Telegram 46 FCO London to Moscow, 12 March 2003, 'Iraq: Foreign Secretary's Conversation with Russian Foreign Minister, 12 March'.

<sup>256</sup> Letter Rycroft to McDonald, 12 March 2003, 'Iraq: Prime Minister's Telephone Conversation with President Bush, 12 March'.

**657.** The UK subsequently circulated a draft side statement setting out the six tests to a meeting of Security Council members in New York on the evening of 12 March.<sup>257</sup> The draft omitted an identified date for a deadline and included the addition of a final clause stating:

“The United Kingdom reserves its position if Iraq fails to take the steps required of it.”

**658.** Sir Jeremy Greenstock commented that the initiative had resulted in:

- genuine expressions of warmth from the [undecided 6] for taking them seriously;
- recognition that the UK had made a real effort to find a way through for the Council;
- discomfiture of the negative forces, who sounded plaintive and inflexible in their questioning;
- finally, a bit of time. I can keep this going at least until the weekend.”<sup>258</sup>

**659.** But:

- The UK had not achieved “any kind of breakthrough. The French, Germans and Russians will undoubtedly home in on the preambular section of the draft resolution and on the whiff of ultimatum in the side statement”.
- There were “serious questions about the available time”, which the US would “not help us to satisfy”.

### **Cabinet, 13 March 2003**

**660.** Mr Blair told Cabinet on 13 March that work continued in the UN to obtain a second resolution and, following the French decision to veto, the outcome remained open.

**661.** Mr Blair indicated that difficult decisions might be required and promised a further meeting at which Lord Goldsmith would be present.

**662.** Mr Straw told Cabinet that Iraq continued to be in material breach of resolution 1441 and set out his view of the legal position.

**663.** Mr Straw told Cabinet that there was “good progress” in gaining support in the Security Council.

**664.** Mr Blair told Cabinet on 13 March that work continued in the UN to obtain a second resolution. The UK had presented proposals for six “tests”, “endorsed by Dr Blix”, to judge whether Saddam Hussein had decided to commit himself to disarmament. Satisfying those tests would not mean that disarmament was complete, but that the

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<sup>257</sup> [Telegram 429 UKMIS New York to FCO London, 13 March 2003, 'Iraq: UK Side-Statement'](#).

<sup>258</sup> [Telegram 428 UKMIS New York to FCO London, 13 March 2003, 'Iraq: UK Circulates Side-Statement: Part 2'](#).

first steps had been taken. The non-permanent members of the Security Council were uncomfortable with a situation where, “following the French decision to veto”, the Permanent Members were “not shouldering their responsibilities properly”. The “outcome in the Security Council remained open”. If the United Nations process broke down, difficult decisions would be required and there would be another Cabinet meeting at which the Attorney General would be present.<sup>259</sup>

**665.** Mr Straw said that, although there were differences between members of the Security Council, “none was saying that Iraq was complying with its international obligations”; and that it “followed that Iraq continued to be in material breach” of those obligations.

**666.** On the legal basis for military action, Mr Straw said that he “was already on record setting out the position to the Foreign Affairs Committee”. Mr Straw rehearsed the negotiating history of the resolution 1441, stating that:

- “the French and Russians had wanted a definition of what would constitute a material breach, but had settled for the facts being presented to the Security Council”;
- “they had also wanted a statement that explicit authorisation was required for military action and instead had settled for further consideration by the Security Council ...”; and
- failure by Iraq to comply with resolution 1441 “revived the authorisations existing” in resolutions 678 (1990) and 687 (1991).

**667.** Mr Straw noted that the Government’s supporters had “a clear preference” for a second resolution but it “had not been seen as an absolute necessity”. There had been “good progress” in New York in “gaining the support of uncertain non-permanent members of the Security Council, including Mexico and Chile”.

**668.** Quoting from her diary, Ms Short wrote that she had asked for “a special Cabinet with the Attorney General present” and this had been agreed. She also reported saying, “if we have UN mandate, possible progress on Palestine/Israel and try with the second resolution process, it would make a big difference”. She was “hopeful of progress”.<sup>260</sup>

**669.** Ms Short had been advised by Mr Suma Chakrabarti, the DFID Permanent Secretary, that she should focus her intervention in Cabinet on the need for “a proper decision-making process”, which would be “important both in substance and ... for the politics”. In his view, there were two key points to make:

“Cabinet needs to discuss now the legal opinion of the Attorney General and how to make it public. This is vital for Ministers, our Armed Services and the Civil Service.

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<sup>259</sup> [Cabinet Conclusions, 13 March 2003.](#)

<sup>260</sup> Short C. *An Honourable Deception: New Labour, Iraq and the Misuse of Power.* The Free Press, 2004.

“As soon as we are clear on the second resolution (whether it fails to get the necessary votes or is not put to a vote), Cabinet should meet again for a discussion on the politics and to put a proposition to Parliament for immediate debate.”<sup>261</sup>

**670.** Mr Campbell wrote in his diaries that Lord Williams of Mostyn, the Leader of the House of Lords, had “said there would be a debate [in Cabinet] on the legality” and Ms Short had said Lord Goldsmith should be present. Mr Blair had “said of course he would”.<sup>262</sup>

## The continuing public debate

### Media reports, 13 March 2003

**671.** On 13 March, several newspapers commented on the exchanges which had taken place in the House of Commons the previous day.

**672.** A leading article in *The Guardian* exhorted Mr Blair to “re-engage with Mr Chirac” and stated that he should:

“... come clean about the legal advice that has been given to the Government by the Attorney General. Either the Attorney has advised that to wage war in defiance of a vetoed UN resolution is acceptable under international law, or he has advised that it is not. The difference is very important and the public has a right to know what has been advised. To say nothing is merely to sow suspicion. In the Commons yesterday, Mr Blair said that Britain was determined to act ‘on a proper legal basis’. That has all the sound of a weasel formulation”.<sup>263</sup>

**673.** In the same edition, the political editor referred to the exchanges in Parliament and to a radio interview in which Mr Kenneth Clarke (Conservative) had stated that the advice of the Law Officers had been made available on previous occasions.<sup>264</sup>

**674.** Articles in the *Financial Times* and *The Times* referred to the questions asked by Mr Kennedy and to the request that Lord Goldsmith’s advice should be published.<sup>265</sup>

### Parliamentary calls for a statement

**675.** In Parliament on 13 March, several MPs called for a statement on the Attorney General’s advice regarding the legal basis for military action.

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<sup>261</sup> [Minute Chakrabarti to Secretary of State \[DFID\], 12 March 2003, ‘Cabinet’ 13 March 2003: Iraq](#).

<sup>262</sup> Campbell A & Hagerty B. *The Alastair Campbell Diaries. Volume 4. The Burden of Power: Countdown to Iraq*. Hutchinson, 2012.

<sup>263</sup> *The Guardian*, 13 March 2003, *The need to get real: Blair is in denial about Iraq options*.

<sup>264</sup> *The Guardian*, 13 March 2003, *Threat of war: Publish advice on legality of war, opponents urge No. 10*.

<sup>265</sup> *Financial Times*, 13 March 2003, *Iraq Crisis Blair Under Pressure*; *The Times*, 13 March 2003, *Resolute Blair insists that he will stay the course*.

**676.** MPs raised the issue of the Attorney General’s advice later that day when Mr Robin Cook, Leader of the House of Commons, described the business of the House in the week to follow.

**677.** Mr Eric Forth (Conservative) asked:

“Given that there is an increasing belief that the Attorney General’s advice may well be against military action by this country, certainly if that takes place without United Nations cover, may we please have a statement in the House by the Solicitor General ... as to the position with regard to the advice being given to the Prime Minister and the Government by the Attorney General on the legality of military action in Iraq?”<sup>266</sup>

**678.** Welcoming Conservative support for Mr Kennedy’s request for access to the Attorney General’s advice, Mr Paul Tyler (Liberal Democrat) stated:

“... is it not right that the Law Officers are answerable to Parliament, not to the Government of the day. Surely it must be an exceptional circumstance when very important issues of international law are being challenged in the way implied by the Secretary-General of the United Nations? Should there not be a second Security Council resolution, is it not absolutely essential that the Law Officers make a statement prior to any debate in this House?”<sup>267</sup>

**679.** Several MPs made reference to the authoritative work *Parliamentary Practice* by Erskine May (see Box below).

### Erskine May

Thomas Erskine May’s *Parliamentary Practice* is an authoritative source of information and guidance on Parliamentary practice and procedure and British constitutional law.

The 22nd edition, current in 2001, contained the following paragraph entitled “Law officer’s opinions”:

“The opinions of the law officers of the Crown, being confidential, are not usually laid before Parliament, cited in debate or provided in evidence before a select committee, and their production has frequently been refused; but if a Minister deems it expedient that such opinions should be made known for the information of the House, he is entitled to cite them in the debate.”<sup>268</sup>

**680.** Mr Andrew Mackay (Conservative) asked:

“... is it not very important indeed that the Prime Minister should let us see this legal advice, ahead of the debate next week?”<sup>269</sup>

<sup>266</sup> House of Commons, *Official Report*, 13 March 2003, column 430.

<sup>267</sup> House of Commons, *Official Report*, 13 March 2003, column 430.

<sup>268</sup> Erskine May T. *Parliamentary Practice, 22nd Edition*. Butterworths, 1977.

<sup>269</sup> House of Commons, *Official Report*, 13 March 2003, column 437.

**681.** Referring to the fact there were precedents for the disclosure of the Law Officers' advice, Mrs Alice Mahon (Labour) said: "In these circumstances – these exceptional circumstances – it is absolutely vital that we get that advice."

**682.** Mr Andrew Mitchell (Conservative) said that the Prime Minister "should bring into the public domain the advice that has been given by the Attorney General".<sup>270</sup>

**683.** Mr Robert Wareing (Labour) asked:

"Is it not imperative that we have a statement about the advice given by the Attorney General? Members of Parliament who vote for an aggressive war launched by America and its collaborators and may be culpable and may be committing an offence if the Attorney General's advice were that Britain was going against international law."<sup>271</sup>

**684.** Further calls for a statement were made during points of order by Mr William Cash, the Shadow Attorney General, Mr John Burnett (Liberal Democrat), Mr Mark Francois (Conservative) and Ms Lynne Jones (Labour).<sup>272</sup>

## The legal basis for military action

### Lord Goldsmith's change of view, 13 March 2003

**685.** Lord Goldsmith informed his officials on 13 March that, after further reflection, he had concluded earlier that week that on balance the "better view" was that there was a legal basis for the use of force without a further resolution.

**686.** Lord Goldsmith reached this view after he had been asked by both Admiral Boyce and Ms Juliet Wheldon, the Treasury Solicitor, to give a clear-cut answer on whether the "reasonable case" was lawful rather than unlawful.

**687.** This view was the basis on which military action was taken.

**688.** Mr Martin Hemming had written to Mr Brummell on 12 March stating:

"It is clear that legal controversy will undoubtedly surround the announcement of any decision by the Government to proceed to military action in the absence of the adoption of a further resolution by the UN Security Council. The CDS is naturally concerned to be assured that his order to commit UK Armed Forces to the conflict in such circumstances would be a lawful order by him. I have informed the CDS that if the Attorney General has advised that he is satisfied that the proposed military action by the UK would be in accordance with national and international law, he [CDS] can properly give his order committing UK forces.

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<sup>270</sup> House of Commons, *Official Report*, 13 March 2003, column 438.

<sup>271</sup> House of Commons, *Official Report*, 13 March 2003, column 440.

<sup>272</sup> House of Commons, *Official Report*, 13 March 2003, columns 444 and 446.

“In view of the rapidly developing situation, I thought that the Attorney would wish to know what I have said on this question.”<sup>273</sup>

**689.** Lord Goldsmith met Mr Brummell and Ms Adams at 1300 on 13 March.<sup>274</sup>

**690.** In a minute approved by Lord Goldsmith, Mr Brummell wrote that Lord Goldsmith had told him that:

“... he had been giving further careful consideration to his view of the legal basis for the use of force against Iraq ... It was clear ... that there was a sound basis for the revival argument in principle ...

“The question was whether the conditions for the operation of the revival doctrine applied in this case. The Attorney confirmed that, after further reflection, he had come to the clear view that on balance the better view was that the conditions for the operation of the revival argument were met in this case, i.e. there was a lawful basis for the use of force without a further resolution beyond resolution 1441.”<sup>275</sup>

**691.** Addressing the key provisions of resolution 1441, Mr Brummell reported that Lord Goldsmith had stated:

“... the crucial point ... was that OP12 did not stipulate that there should be a further decision of the SC before military action was taken, but simply provided for reports of any further breaches by Iraq to be considered by the SC. In the absence of a further decision by the SC, the Attorney General thought that the better view was that resolution 1441 itself revived resolution 678 and provided the legal basis for use of force. (It was, moreover plain that Iraq had failed to take the final opportunity afforded to it and continued to be in material breach: not a single member of the SC considered that Iraq had complied.)”

**692.** Lord Goldsmith had:

“... fully taken into account the contrary arguments. In coming to his concluded view ... he had been greatly assisted by the background material he had seen on the history of the negotiation of resolution 1441 and his discussions with both Sir Jeremy Greenstock and the US lawyers ...”

**693.** Lord Goldsmith’s view was:

“It was apparent from this background material that members of the Council were well aware that a finding of material breach by the SC was tantamount to authorising the use of force (through the operation of the revival doctrine). It was for this very reason that the French had been keen to avoid the finding of a material breach

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<sup>273</sup> [Letter Hemming to Brummell, 12 March 2003, ‘Iraq – Position of the CDS’.](#)

<sup>274</sup> [Diary extract Attorney General, 13 March 2003.](#)

<sup>275</sup> [Minute Brummell, 13 March 2003, ‘Iraq: Legal Basis for Use of Force – Note of Discussion with Attorney General Thursday, 13 March 2003’.](#)

and had argued for the fire-break provision in OP2, so as to prevent automaticité. And in relation to OP12 it was evident that the French, who had pressed hard for a reference to a ‘decision’ (as a pre-condition to use of force), appreciated that, as the final text provided only for the SC to ‘consider’ Iraq’s further breaches, the way was left open for the operation of the revival argument in the event that the SC did not come to any decision.”

**694.** Lord Goldsmith had:

“... explained that in his minute of 7 March he had wanted to make sure that the Prime Minister was fully aware of the competing arguments. He was clear in his own mind, however, that the better view was that there was a legal basis without a second resolution. He had come to this concluded view earlier in the week.”

**695.** Lord Goldsmith and Mr Brummell agreed that:

- It would be proper for Mr Brummell to confirm to Mr Hemming that the proposed military action would be in accordance with national and international law.
- It would be necessary to prepare a statement setting out the Attorney’s view of the legal position which could be deployed at Cabinet and in Parliament the following week.

**696.** Mr Brummell wrote to Mr Hemming on 14 March to “confirm” that Lord Goldsmith was “satisfied that the proposed military action by the UK would be in accordance with national and international law”.<sup>276</sup>

**697.** Copies of the letter were sent to the Private Offices of Mr Hoon, Admiral Boyce and Sir Kevin Tebbit, as well as to Mr Desmond Bowen (Cabinet Office) and Ms Wheldon.

**698.** Gen Jackson told the Inquiry that the Chiefs of Staff had seen Lord Goldsmith’s advice of 7 March.<sup>277</sup>

**699.** In his memoir, Gen Jackson wrote that the Chiefs of Staff had discussed the issue of the legal basis for military action and “collectively agreed that we needed to be sure of the ground”.<sup>278</sup> Adm Boyce had “on behalf of us all, sought the Attorney General’s assurances on the legality of the planned action” and the Chiefs had accepted his advice.

**700.** Gen Jackson told the Inquiry that a similar assurance had been sought and received in relation to military action in Kosovo in 1999.<sup>279</sup>

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<sup>276</sup> [Letter Brummell to Hemming, 14 March 2003, ‘Iraq – Position of the CDS’.](#)

<sup>277</sup> Public hearing, 28 July 2010, page 36.

<sup>278</sup> Jackson M. *Soldier: The autobiography of General Sir Mike Jackson*, Bantam Press, 2007.

<sup>279</sup> Public hearing, 28 July 2010, page 38.

**701.** Lord Goldsmith told the Inquiry that he had reached his “better view” after he had received a letter from the Ministry of Defence stating that Adm Boyce needed “a yes or no answer” on whether military action would be lawful and, as requested by Sir Andrew Turnbull, a visit from Ms Wheldon asking the same question on behalf of the Civil Service.<sup>280</sup>

**702.** Lord Boyce told the Inquiry:

“... the propriety and/or the legality of what we were about to do was obviously a concern of mine, not least of it, since, somewhat against my better instincts, we had signed up to the ICC [International Criminal Court]. I always made it perfectly clear to the Prime Minister face-to-face, and, indeed, to the Cabinet, that if we were invited to go into Iraq, we had to have a good legal basis for doing so, which obviously a second resolution would have completely nailed.”<sup>281</sup>

**703.** Lord Boyce added:

“... that wasn’t new, it was something which I had told the Prime Minister that I would need at the end of the day, long before March. This is back in January when we started to commit our forces out there, and, as you say, I received that assurance. This was an important issue, particularly because of the speculation in the press about the legality or otherwise and, as far as I was concerned particularly for my constituency, in other words, soldiers, sailors and airmen and their families had to be told that what they were doing was legal. So it formed the first line of my Operational Directive which I signed on 20 March, and it was important for me just to have a one-liner, because that was what was required, as far as I was concerned, from the Government Law Officer, which, as you say, I received.”<sup>282</sup>

**704.** Lord Goldsmith told the Inquiry:

“... there were a number of things which happened after 7 March. It was becoming clear, though it hadn’t yet become definitive, that the second resolution was going to be very difficult to obtain.

“... But most importantly ... I had been presented with a letter which had come from the Ministry of Defence, which reflected the view of CDS, and which was ... calling for this clear view, a yes or no answer, as I think he has put it.

“At about the same time, I also received a visit from Juliet Wheldon ... the Treasury Solicitor. I understood her to be speaking on behalf of the Civil Service, and, indeed, from what I now know, I suspect, believe, she would at least have been encouraged to do that by the Cabinet Secretary on behalf of the Civil Service.

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<sup>280</sup> Public hearing, 27 January 2010, pages 184-5.

<sup>281</sup> Public hearing, 3 December 2009, page 82.

<sup>282</sup> Public hearing, 3 December 2009, pages 88-89.

“Both of them in a sense were saying the same thing. They were saying, ‘We are potentially at risk personally if we participate’, or, in the case of the Civil Service, ‘assist in war, if it turns out to be unlawful, and therefore, we want to know whether the Attorney’s view is yes or no, lawful’.

“That seemed to me to be actually a very reasonable approach for them to take ...”<sup>283</sup>

**705.** Lord Goldsmith told the Inquiry that he:

“... very quickly saw that actually this wasn’t satisfactory from their point of view. They deserved more ... than my saying there was a reasonable case.

“So, therefore it was important for me to come down clearly on one side of the argument or the other, which is what I proceeded to do.”<sup>284</sup>

**706.** Lord Goldsmith added:

“... until the Civil Service and the ... Services said they wanted this clear view, I was working ... I take full responsibility for this, but it was with the approval of my office on the basis that saying there was a reasonable case was a green light. It was sufficient for the Government, and if the Cabinet and, as it turns out, the House of Commons, took the view that it was the right thing to do, then we had done enough to explain what the legal basis was and to justify it.

“But when they came with their request, I then saw that actually that wasn’t fair on them.”

**707.** Asked how the case had suddenly become stronger, Lord Goldsmith replied:

“It is the decision you make about it. You make a judgment. You say ‘I’m asked to advise whether there is a reasonable case’, and you examine all the evidence and you say, ‘Yes there is a reasonable case’. You don’t need to go any further, and in that respect, I can see with hindsight, that I was being overly cautious.

“Then somebody says to you, ‘Actually, I don’t want to know whether you say there is a reasonable case, I want to know whether or not you consider that it will be lawful.’

“Well, I regard that as a different question and you then have to answer it.”<sup>285</sup>

**708.** Asked why he was able to give the Armed Forces a more certain answer without providing more legal arguments, Lord Goldsmith replied:

“Well, not on the basis of more legal argument, but on the basis of asking a different question. This is, in a sense, why I’m saying ‘with hindsight’. I would have liked to

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<sup>283</sup> Public hearing, 27 January 2010, pages 183-184.

<sup>284</sup> Public hearing, 27 January 2010, page 171.

<sup>285</sup> Public hearing, 27 January 2010, page 172.

have known before the following week that what the Armed Services and the Civil Service expect was not what had been the precedent given in the past that they wanted more, they wanted an unequivocal answer. Had I known that, then I would have approached the question differently, and I'm simply saying that I was cautious in not going further than I needed to do on 7 March."<sup>286</sup>

**709.** Asked whether the difficulties in the Security Council had made it more important to know if there was a sufficient legal basis for military action, Lord Goldsmith replied: "Yes."<sup>287</sup>

**710.** Asked whether Mr Blair had asked him to come up with a definitive position, Lord Goldsmith told the Inquiry:

"I don't recall it that way. The way it may have been seen by others or interpreted by others or recollected by others, I don't know, but I don't recall the Prime Minister asking for that, no, definitely not."<sup>288</sup>

**711.** Asked whether the huge pressure on the Government, including Mr Blair's personal future, had weighed on him, Lord Goldsmith said:

"The consequences for the Government did not ... What did matter to me, of course, was the United Kingdom as a country and the people that we would have been asking to take part in this with a potential personal responsibility, and I did believe it was right to respond to the request from the head of the Armed Services ... That weighed with me."<sup>289</sup>

**712.** Asked whether the possibility of troops who had been deployed to the area being withdrawn as a consequence of his advice weighed upon him Lord Goldsmith said:

"No. Those sorts of consequences are not what the lawyer has to take into account. What the lawyer has to do is to weigh up the arguments and evidence carefully and reach what he believes is the correct legal view, whatever the consequences may be."<sup>290</sup>

**713.** The Inquiry asked Mr Blair what discussions he or others under his instruction had with Lord Goldsmith between 7 March, when he had received Lord Goldsmith's formal advice, and 13 March. Mr Blair said:

"I can't recall any specific discussions that I had. I don't know whether others would have had with him before 13 March, but essentially what happened was this: he gave legal advice, he gave an opinion saying, 'Look, there is this argument against it, there is this argument for it. I think a reasonable case can be made' and obviously

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<sup>286</sup> Public hearing, 27 January 2010, page 173.

<sup>287</sup> Public hearing, 27 January 2010, page 187.

<sup>288</sup> Public hearing, 27 January 2010, page 189.

<sup>289</sup> Public hearing, 27 January 2010, pages 190-191.

<sup>290</sup> Public hearing, 27 January 2010, page 191.

we then had to have a definitive decision, and that decision is: yes, it is lawful to do this or not.”<sup>291</sup>

**714.** Asked if it had been of considerable relief to him when Lord Goldsmith came to the better view that resolution 1441 authorised the use of force without a further resolution, Mr Blair replied:

“Yes, and the reason why he had done that was really very obvious, which was that the Blix reports indicated quite clearly that Saddam had not taken the final opportunity.”<sup>292</sup>

## Preparing the legal case

**715.** Lord Goldsmith had several meetings on the afternoon of 13 March.

**716.** The primary purpose of the meetings appears to have been discussion of the arrangements for preparing statements on the legal basis for action for Cabinet and Parliament.

**717.** A team was established to help Lord Goldsmith to explain in public the legal basis “as strongly and unambiguously as possible”.

**718.** By the afternoon of 13 March, the UK and the US were discussing announcing the withdrawal of the draft resolution in the Security Council on 17 March and a planned debate in the House of Commons on 18 March.

**719.** Mr Brummell recorded that Lord Goldsmith had agreed on 13 March to explore whether Professor Greenwood:

“... could be instructed now, for the purpose of assisting in the development of the legal arguments in support of the view that there was a sound legal basis for the use of force without a second resolution. This would be useful both in terms of preparing the public statement of the legal position and in terms of being ready to meet any legal challenge at short notice.”<sup>293</sup>

**720.** A postscript to Mr Brummell’s note indicated that Lord Goldsmith had spoken to Professor Greenwood “later that morning”, who confirmed that he shared Lord Goldsmith’s analysis of the legal position and that “he also considered that the better view was that a second resolution was not legally necessary”.

**721.** Ms Adams wrote to Professor Greenwood “following” his “conversation with the Attorney General this morning”, requesting his “assistance in drawing up a paper setting out the legal arguments which may be made in support of the view that military action

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<sup>291</sup> Public hearing, 29 January 2010, page 156.

<sup>292</sup> Public hearing, 29 January 2010, page 158.

<sup>293</sup> [Minute Brummell, 13 March 2003, ‘Iraq: Legal Basis for Use of Force – Note of Discussion with Attorney General Thursday, 13 March 2003’.](#)

may be taken against Iraq to enforce the terms of the UNSCR in the absence of a further resolution of the Security Council”.<sup>294</sup>

**722.** Ms Adams stated that there were two issues to consider:

- “Is the revival argument valid?”; and
- “Is resolution 1441 sufficient?”

A “conference” with Lord Goldsmith had been arranged for 1630 that afternoon.

**723.** Lord Goldsmith met Lord Mayhew, the Conservative Attorney General from 1987 to 1992, late on the afternoon of 13 March.<sup>295</sup>

**724.** Lord Goldsmith told the Inquiry that Lord Mayhew had asked for the meeting because he had wanted, and been given, Lord Goldsmith’s view; and that in the debate on the legality of the use of force in Iraq in the House of Lords on 17 March, Lord Mayhew had professed himself in agreement with Lord Goldsmith’s view.<sup>296</sup>

**725.** Lord Goldsmith’s meeting with Lord Mayhew was followed by one with Mr Straw, which Mr Brummell also attended.<sup>297</sup>

**726.** In what was described as a “lengthy meeting”, Lord Goldsmith was reported to have said that “having decided to come down on one side (1441 is sufficient), he had also decided that in public he needed to explain his case as strongly and unambiguously as possible”.<sup>298</sup> A legal team under Professor Greenwood was “now working” on that. Mr Straw arranged for Mr Macleod and Mr Patrick Davies, one of his former Private Secretaries, to join the team.

**727.** Mr Straw’s request that the team should produce a draft letter explaining the legal position for him to send to the Chairman of the Foreign Affairs Committee (FAC) had been agreed. Mr Straw’s Private Office also recorded that Lord Goldsmith had said “he thought he might need to tell Cabinet when it met on 17 March that the legal issues were finely balanced”.

**728.** The record stated that Mr Straw had responded by saying that Lord Goldsmith:

“... needed to be aware of the problem of leaks from ... Cabinet. It would be better, surely, if the Attorney General distributed the draft letter from the Foreign Secretary to the FAC as the basic standard text of his position and then made a few comments. The Attorney General agreed.”

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<sup>294</sup> Letter Adams to Greenwood, 13 March 2003, ‘Iraq: Resolution 1441’.

<sup>295</sup> [Diary extract Attorney General, 13 March 2003.](#)

<sup>296</sup> Public hearing, 27 January 2011, page 197.

<sup>297</sup> [Diary extract Attorney General, 13 March 2003.](#)

<sup>298</sup> [Minute McDonald, 17 March 2003, ‘Iraq: Meeting with the Attorney General’.](#)

**729.** Lord Goldsmith told the Inquiry that the main thrust of the meeting with Mr Straw on 13 March was planning for what was going to happen.<sup>299</sup>

**730.** Asked if the record of the meeting on 13 March made by Mr Straw's Private Office reflected his recollection of the decision on how to present his legal advice to Cabinet, Lord Goldsmith replied:

“It isn't actually. There wasn't any question of distributing the longer FAC document as my opinion. That wasn't at all what I was going to do.”<sup>300</sup>

**731.** A note on the Attorney General's file listed the “further material to be assembled”, as discussed by Lord Goldsmith and Mr Straw, as “evidence showing” that Iraq was “in further material breach”, as:

- Any examples of false statements/omissions and (significant) non-co-operation reported to Security Council pursuant to OP4 of SCR 1441.
- Any examples of Iraqi interference reported by Blix or EIBaradei [Dr Mohamed EIBaradei, the Director General of the IAEA] to the Council pursuant to OP11.
- For these purposes, we need to trawl through statements from the draft Command Paper on Iraqi non-compliance which is to be published.
- See attached FCO paper Iraqi non-compliance with UNSCR 1441 of 13 March 2003.<sup>301</sup>

### **Lord Goldsmith's meeting with Lord Falconer and Baroness Morgan, 13 March 2003**

**732.** The last meeting in Lord Goldsmith's diary on 13 March was with Lord Falconer, who in March 2003 was the Minister of State in the Home Office responsible for Criminal Justice, and Baroness Morgan.

**733.** Lord Goldsmith informed Lord Falconer and Baroness Morgan of his clear view that it was lawful under resolution 1441 to use force without a further UN resolution.<sup>302</sup>

**734.** Asked to comment on press allegations to the effect that he had been “more or less pinned to the wall at a Downing Street showdown with Lord Falconer and Baroness Morgan who allegedly had performed a pincer movement” on him, Lord Goldsmith told the Inquiry that that was:

“... absolute complete and utter nonsense. I had not spoken to Lord Falconer about this issue before. When I saw them [on 13 March] I, of course, had reached my

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<sup>299</sup> Public hearing, 27 January 2010, page 198.

<sup>300</sup> Public hearing, 27 January 2010, page 213.

<sup>301</sup> [File note \[on Attorney General's files\], \[undated\], 'Iraq Further Material to be Assembled \(as discussed by the Attorney General and Foreign Secretary on 13 March 2003\)'](#).

<sup>302</sup> *Review of Intelligence on Weapons of Mass Destruction* [“The Butler Report”], 14 July 2004, HC 898, paragraph 381.

opinion, I communicated it to my officials, to the Foreign Secretary and as it happens to Lord Mayhew as well. There was no question of them performing a pincer movement.”<sup>303</sup>

**735.** Lord Goldsmith told the Inquiry:

“I told them the conclusion that I had reached, and I think briefly why, and I think we then went on to discuss – I think by that stage it was known that there was going to be a debate the following Monday in the House of Lords, and I think we discussed something about how that debate would be dealt with, the debate on the legality issue, I think a Liberal Democrat Peer put down a motion.”<sup>304</sup>

**736.** Asked for a statement about the purpose of her involvement in a number of meetings with Lord Goldsmith throughout the period before 18 March 2003, Baroness Morgan wrote that the purpose of the meetings was to share information.<sup>305</sup> Her role was to explain her perception of the Parliamentary and political mood. She was aware of claims that she had somehow exerted pressure on the Attorney General to alter his advice to provide a legal justification for military action, but wished to state without equivocation that such allegations were untrue:

“... at no point during any discussion at which I was present did I witness any effort to engage with Lord Goldsmith as to the correctness of his legal analysis. I am certain there was never any attempt by me, or by anyone else present, at any of the four meetings to challenge the Attorney’s legal analysis **or otherwise to influence the Attorney’s legal opinion.**”

**737.** On 15 March, Baroness Morgan informed Mr Campbell by email that the Attorney General would “make clear during the course of the week that there [was] a sound legal basis for action should that prove necessary”.<sup>306</sup>

### **Mr Blair’s conversation with President Bush, 13 March 2003**

**738.** On 13 March, Mr Blair and President Bush discussed withdrawing the draft resolution on 17 March followed by a US ultimatum to Saddam Hussein to leave within 48 hours. There would be no US military action until after the vote in the House of Commons on 18 March.

**739.** Mr Blair and President Bush discussed the prospects for a vote in the House of Commons and a ‘Road Map’ for the Middle East on 13 March.<sup>307</sup>

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<sup>303</sup> Public hearing, 27 January 2010, page 201.

<sup>304</sup> Public hearing, 27 January 2010, page 202.

<sup>305</sup> Statement, 5 August 2011, pages 2-4.

<sup>306</sup> [Email Morgan to Campbell, 15 March 2003, ‘AG’.](#)

<sup>307</sup> Letter Cannon to McDonald, 13 March 2003, ‘Iraq and MEPP: Prime Minister’s Conversation with Bush, 13 March’.

**740.** On the UN draft resolution, Mr Blair commented that the “haggling over texts in New York was frustrating and muddied the waters. But it was buying the vital time we needed this weekend.”

**741.** A discussion on the military timetable was reported separately.<sup>308</sup> It was envisaged that the withdrawal of the resolution on 17 March would be followed by a speech from President Bush which would give Saddam Hussein an ultimatum to leave within 48 hours. President Bush would call for freedom for the Iraqi people and outline the legal basis for military action.

**742.** There would be no military action before a vote in the UK Parliament on 18 March. President Bush would announce the following day that military action had begun. The plan was for the main air campaign to begin on 22 March.

## Confirmation of Mr Blair’s view

### The exchange of letters on 14 and 15 March 2003

**743.** On 14 March, Lord Goldsmith asked for confirmation of Mr Blair’s view that Iraq had “committed further material breaches as specified in [operative] paragraph 4 of resolution 1441”.

**744.** Mr Brummell wrote to Mr Rycroft on 14 March:

“It is an essential part of the legal basis for military action without a further resolution of the Security Council that there is strong evidence that Iraq has failed to comply with and co-operate fully in the implementation of resolution 1441 and has thus failed to take the final opportunity offered by the Security Council in that resolution. The Attorney General understands that it is unequivocally the Prime Minister’s view that Iraq has committed further material breaches as specified in [operative] paragraph 4 of resolution 1441, but as this is a judgement for the Prime Minister, the Attorney would be grateful for confirmation that this is the case.”<sup>309</sup>

**745.** In his response on 15 March, Mr Rycroft recorded that it was Mr Blair’s “unequivocal view that Iraq is in further material breach of its obligations, as in OP4 of UNSCR 1441”.

**746.** Mr Rycroft replied to Mr Brummell on 15 March:

“This is to confirm that it is indeed the Prime Minister’s unequivocal view that Iraq is in further material breach of its obligations, as in OP4 of UNSCR 1441, because of ‘false statements or omissions in the declarations submitted by Iraq pursuant

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<sup>308</sup> Letter Cannon to McDonald, 13 March 2003, ‘Iraq: Military Timetable’.

<sup>309</sup> [Letter Brummell to Rycroft, 14 March 2003, ‘Iraq’](#).

to this resolution and failure to comply with, and co-operate fully in the implementation of, this resolution’.”<sup>310</sup>

**747. Lord Goldsmith gave evidence to the Inquiry about the purpose of this exchange of letters.**

**748.** Lord Goldsmith told the Inquiry:

“... if this ever came to court ... we would have to persuade a court of our interpretation of 1441, but they would also say, ‘What’s the evidence that they [Iraq] did actually fail?’, and I was saying, at that stage, there needs to be strong factual evidence of failure.”<sup>311</sup>

**749.** Lord Goldsmith described a briefing from Mr John Scarlett focused on the question of Iraqi compliance:

“... the clear intelligence, the clear advice I was being given by him was that Saddam Hussein in Iraq had not complied with the resolution, not just that there were specific elements of ... serious non-co-operation, including, for example, intimidation of potential interviewees ...”<sup>312</sup>

**750.** Asked what his opinion was on the weight of the intelligence, Lord Goldsmith replied:

“At the end of the day ... like any lawyer who is dependent upon the facts from his client - I was dependent upon the assessment by the Government which had all the resources it had ... and that was why I particularly wanted to be sure ... the week before the events, that the Prime Minister, who did have access to all that information, was of the view that there had been a failure.”<sup>313</sup>

**751.** Lord Goldsmith stated that the UK Government did not have to decide whether there had been a material breach, because:

“... the pre-determination had been made [by the Security Council in resolution 1441] that if there was a failure, it would be a material breach ... we had to decide whether there was a failure but, if there was a failure, then the Security Council’s pre-determination would come in and clothe that with the character of material breach.”<sup>314</sup>

**752.** Addressing the purpose of seeking Mr Blair’s views, Lord Goldsmith stated:

“First of all, because it did depend upon the failure, it was important to point out you need to be satisfied about that and secondly, I wanted the Prime Minister,

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<sup>310</sup> [Letter Rycroft to Brummell, 15 March 2003, ‘Iraq’.](#)

<sup>311</sup> Public hearing, 27 January 2010, pages 162-163.

<sup>312</sup> Public hearing, 27 January 2010, page 163.

<sup>313</sup> Public hearing, 27 January 2010, page 164.

<sup>314</sup> Public hearing, 27 January 2010, page 167.

consciously and deliberately to focus on that question. I wanted it to be a question that he would really apply his mind to. Forgive me for even suggesting that he wouldn't have done. That wasn't the point. That he should have focused his mind on whether there was, in fact, a failure, and that was the purpose of saying, 'I want this in writing', it was so there was a really conscious consideration of that."<sup>315</sup>

**753.** Lord Goldsmith later stated:

"I think I'm saying two things. First of all, I wasn't actually saying there needed to be a declaration by him [Mr Blair]. I was saying 'You need to be satisfied. You need to judge that there really is a failure to take the final opportunity. You need to judge that on the basis of the resources, the intelligence and the information that you have got' ... This was going to be a very controversial decision, whichever way it went. There would be a lot of scrutiny. We had had sort of legal actions bubbling up already. So, 'whereas in the past a reasonable case was sufficient, you can expect a degree of scrutiny on this occasion'."<sup>316</sup>

**754.** Lord Goldsmith told the Inquiry that he had received Mr Blair's view orally, but thought it was important to have it in writing.<sup>317</sup>

**755.** In his statement, Lord Goldsmith wrote:

"I was asking the Prime Minister to confirm that Iraq had submitted false statements or omissions in its declarations submitted pursuant to the resolution and had failed to comply with and co-operate fully in the implementation of resolution [1441] so that the authority to use force under resolution 687 revived."<sup>318</sup>

**756.** In response to the question whether Mr Blair could decide if Iraq was in further material breach of resolution 1441, Lord Goldsmith wrote: "No."<sup>319</sup>

**757.** Lord Goldsmith added:

"Only the Security Council could decide whether or not a particular failure or set of failures by Iraq to meet an obligation imposed by the Security Council resolution had the quality of being a 'material breach' of resolution 687."<sup>320</sup>

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<sup>315</sup> Public hearing, 27 January 2010, page 168.

<sup>316</sup> Public hearing, 27 January 2010, page 175.

<sup>317</sup> Public hearing, 27 January 2010, pages 210-211.

<sup>318</sup> Statement, 4 January 2011, paragraph 5.1.

<sup>319</sup> Statement, 4 January 2011, paragraph 5.2.

<sup>320</sup> Statement, 4 January 2011, paragraph 5.3.

**758.** Lord Goldsmith's view that resolution 1441 authorised the use of force relied on the conclusion that OP4:

"... constituted a determination in advance that if the particular set of circumstances specified in it arose, so that Iraq failed to take the final opportunity it had been given, that would constitute a further material breach.

"The resolution therefore constituted authority for the use of force provided that such a factual situation had occurred, namely that Iraq had failed to comply with and co-operate fully in the implementation of the resolution. In that event a Council discussion would need to take place.

"I had concluded that in any such Council discussion the assessment contemplated by OP4 was not an assessment of the quality of the breaches, since the Council had already resolved that any failure on Iraq's part would constitute a material breach, but rather an assessment of the situation as a result of those breaches having occurred ... Accordingly, the Council did not need to conclude that breaches had taken place (though I believe that at the discussion no member of the Security Council took the view that they had not occurred).

"Nonetheless the authorisation in resolution 678 could not revive unless in fact breaches had occurred. We needed therefore to be satisfied that this factual situation existed, and to be in a position if necessary to justify that to a court. That was why I said ... that there would have to be strong factual grounds for concluding that Iraq had failed to take the final opportunity."<sup>321</sup>

**759.** Lord Goldsmith wrote:

"As I explained giving my oral evidence, this was an issue on which I wanted the Prime Minister consciously and deliberately to focus, hence my request for written confirmation that he had reached this view."<sup>322</sup>

## Mr Blair's view

**760.** *The Review of Intelligence on Weapons of Mass Destruction* ('The Butler Report') records it was:

"... told that, in coming to his view that Iraq was in further material breach, the Prime Minister took account both of the overall intelligence picture and of information from a wide range of other sources, including especially UNMOVIC information."<sup>323</sup>

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<sup>321</sup> Statement, 4 January 2011, paragraphs 5.6-5.7.

<sup>322</sup> Statement, 4 January 2011, paragraph 5.7.

<sup>323</sup> *Review of Intelligence on Weapons of Mass Destruction* ["The Butler Report"], 14 July 2004, HC 898, paragraph 385.

**761.** Mr Blair told the Liaison Committee on 21 January 2003 that, if the reported breach was a pattern of behaviour rather than conclusive proof would require “more considered judgement”.<sup>324</sup>

**762.** As the Inquiry indicates in Sections 3.7 and 3.8, Mr Blair and his advisers in No.10 had been very closely involved, particularly since the beginning of March, in examining the reports of the UN weapons inspectors and had access to advice from the JIC on the activities of the Iraqi regime.

**763.** In his 7 March advice Lord Goldsmith had advised that Mr Blair “would have to consider extremely carefully whether the evidence of non-co-operation and non-compliance by Iraq [was] sufficiently compelling to justify the conclusion that Iraq had failed to take its final opportunity”.

**764.** But Mr Blair did not seek and did not receive considered advice from across government specifically examining whether the evidence was “sufficiently compelling” to provide the basis for a judgement of this magnitude and seriousness.

**765.** In mid-March, UNMOVIC was reporting increased co-operation, and the IAEA had confirmed that Iraq had no nuclear weapons or nuclear weapons programmes.

**766.** The Inquiry has not seen any evidence of consideration of whether the reports by UNMOVIC and the IAEA to the Security Council during January to March 2003 constituted reports to the Council under OP11 of resolution 1441; or whether the subsequent Security Council discussions constituted “consideration” as required by OP12.

**767.** There was clearly no majority support in the Security Council for a conclusion that the process set in hand by resolution 1441 had reached the end of the road.

**768.** Asked if he had been working from the definition of material breach set out by Mr Straw in November 2002, Mr Blair told the Inquiry:

“Yes, absolutely.”<sup>325</sup>

**769.** Asked about the process that he had followed before giving the determination requested by Lord Goldsmith, Mr Blair told the Inquiry:

“We went back over the Blix reports and it was very obvious to me, particularly on the subject of interviews, that they weren’t co-operating. They were co-operating more, as you rightly say. They started to give out a little bit more, but there was

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<sup>324</sup> Minutes, Liaison Committee (House of Commons), 21 January 2003 [Minutes of Evidence], Q&A 24.

<sup>325</sup> Public hearing, 21 January 2011, page 111.

absolutely nothing to suggest that this co-operation was full, immediate and unconditional. It was actually not full, not immediate. In fact, even Blix himself said it wasn't immediate even on 7 March and was not unconditional.

"In addition to that I had I think JIC Assessments as well ... where it was clear that Saddam was putting heavy pressure internally on people not to co-operate ..."<sup>326</sup>

**770.** The Inquiry asked Mr Blair whether the process had involved only No.10 or if he had consulted more widely, Mr Blair stated:

"I am sure I would have spoken to Jack [Straw] particularly at the time ... I don't recollect ... This literally was the whole time a conversation ... [O]ur view was that he [Saddam Hussein] was not co-operating in the terms of 1441, and that ... remains my view today that he wasn't, and that he ... never had any intention of doing that.

"Now it is correct ... that he was offering up more, but ... even in February he wasn't offering up what they were asking him."<sup>327</sup>

**771.** Asked whether he was comfortable with the situation whereby the Prime Minister confirmed the existence of a further material breach at a time when the head of the IAEA had reported there was no nuclear programme and the head of UNMOVIC was reporting improved co-operation. Mr Straw replied:

"Yes ... and if I had not been I wouldn't have stayed in the Cabinet ..."<sup>328</sup>

**772.** Mr Straw added that the two tests in OP4 were "conjunctive" not "disjunctive", and that:

"What OP4 talks about is false statements or omissions in the declarations. Well, the declaration was incomplete. There was no question about that. And ...

"... They did fail to comply fully. The obligation on them was not to comply a bit ... The obligation on Iraq was to comply fully. It is a positive obligation on them, not a negative one, not to disregard the whole of the resolution, and they had failed to do that."<sup>329</sup>

**773.** The Government motion tabled for the debate on 18 March included provisions asking the House of Commons to:

- note that in the 130 days since resolution 1441 was adopted Iraq had not co-operated actively, unconditionally and immediately with the weapons inspectors, and had rejected the final opportunity to comply and is in further

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<sup>326</sup> Public hearing, 21 January 2011, pages 111-112.

<sup>327</sup> Public hearing, 21 January 2011, pages 112-113.

<sup>328</sup> Public hearing, 2 February 2011, page 86.

<sup>329</sup> Public hearing, 2 February 2011, page 87.

material breach of its obligations under successive mandatory UN Security Council resolutions; and

- note the opinion of the Attorney General that, Iraq having failed to comply and Iraq being at the time of resolution 1441 and continuing to be in material breach, the authority to use force under resolution 678 has revived and so continued that day.<sup>330</sup>

**774.** In his speech Mr Blair did not address the events that had taken place since the declaration “as the House is familiar with them”. He stated that “all members” of the Security Council “accepted” the Iraq declaration was false. He added:

“That in itself, incidentally, is a material breach. Iraq has taken some steps in co-operation but, no one disputes that it is not fully co-operating.”<sup>331</sup>

**775.** Mr Blair did not address how, in the absence of a consideration in the Security Council, the UK Government had reached the judgement that Iraq had failed to take its final opportunity.

**776.** The debate in the House of Commons and the details of Mr Blair’s speech are described in Section 3.8.

### Mr Blair’s conversation with President Bush, 15 March 2003

**777.** In his discussion with President Bush on 15 March, Mr Blair proposed that the main message from the Azores Summit should be that this was the final chance for Saddam Hussein to demonstrate that he had taken the strategic decision to avert war; and that members of the Security Council should be able to sanction the use of force as Iraq was in material breach of its obligations.

**778.** When Mr Blair spoke to President Bush on 15 March, he said that the “main message” for the Azores Summit “should be that this was a final chance for the UN to deliver, and that countries should be able to sanction the use of force as Iraq was in material breach”.<sup>332</sup>

**779.** Mr Blair spoke to Mrs Margaret Beckett, Secretary of State for the Environment, Food and Rural Affairs, before her appearance on the *BBC’s The World at One* on 16 March.<sup>333</sup>

**780.** Asked why he was not putting the second resolution to the vote, Mr Blair explained that losing a vote “... might cause legal difficulties”. Mr Annan was “very keen to avoid

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<sup>330</sup> House of Commons, *Official Report*, 18 March 2003, column 760.

<sup>331</sup> House of Commons, *Official Report*, 18 March 2003, column 762.

<sup>332</sup> Letter Rycroft to McDonald, 15 March 2003, ‘Iraq and Middle East: Prime Minister’s Telephone Conversation with President Bush, 15 March’.

<sup>333</sup> Minute No.10 [junior official] to Matthews, 17 March 2003, ‘Note for File’.

that outcome since he believed it would make it harder for the UN to move forward after the conflict”.

**781.** Mr Blair told Mrs Beckett that Lord Goldsmith would make it clear that “existing UN resolutions provided a legal base for military action”, in Cabinet, “which would probably be on Monday afternoon”.

## The presentation of the Government’s position

### FCO paper, ‘Iraqi Non-Compliance with UNSCR 1441’, 15 March 2003

**782.** The FCO finalised a paper providing examples of Iraq’s failure to comply with the obligations in resolution 1441 on 15 March.

**783.** The FCO paper, produced by officials in the FCO but drawn largely from official reports and statements by UN inspectors, examined the extent of Iraq’s non-compliance with the obligations placed upon it by the United Nations Security Council in resolution 1441.<sup>334</sup>

**784.** In a note of a conversation on 14 March with Ms Kara Owen, an official in Mr Straw’s Private Office, Mr Brummell recorded that he had made the following points on Lord Goldsmith’s behalf regarding the FCO paper being prepared:

- “Demonstration of breaches of UNSCR 1441 are critical to our legal case. Therefore we must be scrupulously careful to ensure that the best examples of non-compliance are referred to.”
- “It would be distinctly unhelpful to our legal case if the examples of non-compliance ... were weak or inadequate; and it would be difficult – indeed it would be too late – to seek to add further (better) examples ‘after the event’.”
- The FCO needed to check the document they were preparing “very carefully” and subject it to “the tightest scrutiny”.
- The document should include “a caveat ... acknowledging that the examples of non-compliance ... were not exhaustive but illustrative”.
- The submission to Mr Straw should reflect those points.<sup>335</sup>

**785.** Mr Brummell’s record of his conversation with Ms Owen on 14 March also stated that he had been informed that the FCO paper would be sent out with a letter from Mr Blair to Ministerial colleagues on 17 March, “after Cabinet”. Mr Blair’s letter would also contain a “one page” summary of the legal position, which was “news” to Mr Brummell. A subsequent conversation with Mr Rycroft had “confirmed that it would be helpful if” Lord Goldsmith’s staff would draft that summary.

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<sup>334</sup> Paper FCO, 15 March 2003, ‘Iraqi Non-Compliance with UNSCR 1441’.

<sup>335</sup> [Minute Brummell, 14 March 2003, ‘Iraqi Non-Compliance with UNSCR 1441: Note of Telephone Conversation with Kara Owen’](#).

**786.** The FCO paper, 'Iraqi Non-Compliance with UNSCR 1441', was finalised on 15 March and published on 17 March (see Section 3.8).<sup>336</sup>

### **Sir Jeremy Greenstock's discussions in New York, 16 March 2003**

**787.** Sir Jeremy Greenstock consulted colleagues in New York on 16 March to consider whether the Security Council could agree an ultimatum to Saddam Hussein.

**788.** Sir Jeremy reported that he had agreed with his US and Spanish colleagues to tell the press during the following "late morning" that there was no prospect of putting the resolution to a vote, and blaming France.

**789.** After the Azores Summit on 16 March, Sir David Manning spoke to Sir Jeremy Greenstock to ask him to phone his Security Council colleagues that evening to establish whether there had been any change in their positions on the draft resolution.<sup>337</sup>

**790.** Reporting developments in New York on 16 March, Sir Jeremy Greenstock wrote that, following the conclusion of the Azores Summit, the UK Mission in New York had spoken to all Security Council colleagues with the message that:

"... there was now a short time left to consider whether the Council could agree at last on an ultimatum to Saddam which, if he did not fulfil it, would result in serious consequences. If their respective governments were in a position to engage in such a discussion, I would need to hear it as early as possible on 17 March. When asked (as the majority did), I said that I had no (no) instructions as to whether to put the text ... to a vote ..."<sup>338</sup>

**791.** Sir Jeremy commented that the French and Russians did not like the message. Mr Jean-Marc de La Sablière, French Permanent Representative to the UN, had claimed that the French had moved significantly over the last two days as President Chirac's interview would show. The "undecided 6" were "only slightly more positive".

**792.** Sir Jeremy also reported that he had agreed with his US and Spanish counterparts to tell the press during the "late morning" of 17 March that there was "no prospect of putting our resolution to the vote, casting heavy blame on the French". The key elements of the statement should be:

"(a) the Azores summit had called for a last effort to see if the Council could unite around an ultimatum;

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<sup>336</sup> Paper FCO, 15 March 2003, 'Iraqi Non-Compliance with UNSCR 1441'.

<sup>337</sup> Letter Manning to McDonald, 16 March 2003, 'Iraq: Summit Meeting in the Azores: 16 March'.

<sup>338</sup> [Telegram 452 UKMIS New York to FCO London, 17 March 2003, 'Iraq: Developments on 16 March'](#).

- (b) having contacted every member it was clear that Council consensus was not possible within the terms of 1441, given the determination of one country in particular to block any ultimatum;
- (c) we would therefore not be pursuing a vote;
- (d) the Azores communiqué had made clear the positions of our governments on the way forward.”

**793.** Sir Jeremy had informed Mr Annan and Dr Blix that he would be receiving final instructions “eg on whether to stop pursuing the resolution on the morning [Eastern Standard Time] of 17 March”.

**794.** Sir Jeremy asked for instructions and comments on a draft statement, writing: “I have assumed you will want to be fairly strong on the French.”

### Preparing the legal argument

**795.** A team of lawyers assembled in Lord Goldsmith’s chambers over the weekend of 15/16 March to prepare arguments and documents to deploy in support of the Government’s position.

**796.** Mr Macleod told the Inquiry that Lord Goldsmith and Ms Harriet Harman (the Solicitor General), Professor Greenwood, Mr Brummell, Ms Adams, Mr Wood, Mr Grainger, Mr Davies and himself were present.<sup>339</sup>

**797.** Sir Michael Wood explained the team’s role to the Inquiry:

“Firstly there was the drafting of the Parliamentary answer. Secondly there was the drafting of the longer note that the Foreign Secretary sent to members of Parliament, the so-called Foreign Office note, but it was drafted at the Attorney’s ...

“I think I was more or less on the sidelines, because my views were known, but I probably did read through the drafts and no doubt in my usual way made editorial suggestions and the like, but I don’t think I had a major part in the preparation of those questions of ... the Parliamentary Question and the longer FCO note ... I should stress that by that stage, as I saw it, we were in the advocacy mode as opposed to the advisory decision-making mode. This was a matter of presentation: how is this to be presented in public?”<sup>340</sup>

**798.** Mr Macleod told the Inquiry that the team had produced:

“... essentially a collection of documents to help the Attorney and the Ministers with a difficult explanation in Parliament. Technically difficult rather than politically difficult.”<sup>341</sup>

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<sup>339</sup> Public hearing, 30 June 2010, page 63.

<sup>340</sup> Public hearing, 26 January 2010, pages 59-60.

<sup>341</sup> Public hearing, 30 June 2010, page 64.

**799.** Asked if he agreed with Sir Michael's description that the team was in an advocacy mode, Mr Macleod replied:

"Yes ... The decision had already been made in the sense that we knew what the Attorney's view was. The question was how to help present it in a way that would be easy to present, easy to understand, because ... the full advice of 7 March is a fairly complex, dense legal document and you needed something else which brought out the key points which could be used in Parliament and in other places."<sup>342</sup>

**800.** Ms Adams told the Inquiry:

"I think the understanding of everybody sitting round the table on 16 March was not that the Attorney General was giving legal advice to Parliament through that statement but he was setting out a view of the legal position .... coming back to the difference between the earlier cases, where there had been legal advice from Law Officers saying there is a reasonable case, what had happened on those occasions was not that the Attorney General had gone to Parliament and said 'This is lawful because there is an overwhelming humanitarian catastrophe', or 'Because there is a revival', it had been the Government Minister in the Foreign Office or the Ministry of Defence."<sup>343</sup>

**801.** On the morning of Monday 17 March, preparations for Cabinet later that day and Parliamentary debates the following day were put in place.

**802.** Lord Goldsmith set out his view of the legal basis for military action in a Written Answer on 17 March 2003.

**803.** In parallel, Mr Straw wrote to the Chairman of the Foreign Affairs Committee with a copy of Lord Goldsmith's Answer and an FCO paper which addressed the legal background.

**804.** Mr Straw also wrote to Parliamentary colleagues drawing their attention to the documents being published and the statements issued at the Azores Summit the previous day.

### **Lord Goldsmith's Written Answer, 17 March 2003**

**805.** Lord Goldsmith replied on the morning of Monday 17 March to a Written Question tabled by Baroness Ramsey of Cartvale (Labour):

"To ask Her Majesty's Government what is the Attorney General's view of the legal basis for the use of force against Iraq."<sup>344</sup>

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<sup>342</sup> Public hearing, 30 June 2010, page 65.

<sup>343</sup> Public hearing, 30 June 2010, pages 51-52.

<sup>344</sup> House of Lords, *Official Report*, 17 March 2003, column 2WA.

**806.** The text of Lord Goldsmith's response is set out in the Box below.

### **Text of Lord Goldsmith's Written Answer of 17 March 2003**

"Authority to use force against Iraq exists from the combined effect of resolutions 678, 687 and 1441. All of these resolutions were adopted under Chapter VII of the UN Charter which allows the use of force for the express purpose of restoring international peace and security:

1. In resolution 678 the Security Council authorised force against Iraq, to eject it [Iraq] from Kuwait and to restore peace and security in the area.
2. In resolution 687, which set out the cease-fire conditions ... the Security Council imposed continuing obligations on Iraq to eliminate its weapons of mass destruction in order to restore international peace and security in the area. Resolution 687 suspended but did not terminate the authority to use force under resolution 678.
3. A material breach of resolution 687 revives the authority to use force under resolution 678.
4. In resolution 1441 the Security Council determined that Iraq has been and remains in material breach of resolution 687, because it has not fully complied with its obligations to disarm under that resolution.
5. The Security Council in resolution 1441 gave Iraq 'a final opportunity to comply with its disarmament obligations' and warned Iraq of the 'serious consequences' if it did not.
6. The Security Council also decided in resolution 1441 that, if Iraq failed at any time to comply with and co-operate fully in the implementation of resolution 1441, that would constitute a further material breach.
7. It is plain that Iraq has failed so to comply and therefore Iraq was at the time of resolution 1441 and continues to be in material breach.
8. Thus the authority to use force under resolution 678 has revived and so continues today.

Resolution 1441 would in terms have provided that a further decision of the Security Council to sanction force was required if that had been intended. Thus, all that resolution 1441 requires is reporting to and discussion by the Security Council of Iraq's failures, but not an express further decision to use force."<sup>345</sup>

**807.** Ms Harman repeated Lord Goldsmith's Written Answer in the House of Commons as a pursuant answer to Mr Blair's response on 14 March to a Question from Mr Cash, asking Mr Blair if he would "make a statement on the legal basis for military intervention against Iraq".<sup>346</sup>

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<sup>345</sup> House of Commons, *Official Report*, 17 March 2002, column WA2.

<sup>346</sup> House of Commons, *Official Report*, 17 March 2002, columns 515-516W.

**808.** Mr Blair had replied on 14 March:

“There is a longstanding convention, followed by successive Governments and reflected in the Ministerial Code, that legal advice to the Government remains confidential. This enables the Government to obtain frank and full legal advice in confidence, as everyone else can.

“We always act in accordance with international law. At the appropriate time the Government would of course explain the legal basis for any military action that may be necessary.”<sup>347</sup>

**809.** Mr Straw sent a copy of Lord Goldsmith’s Written Answer to Mr Anderson, the Chairman of the Foreign Affairs Committee, on the morning of 17 March, together with an FCO paper giving “the legal background in more detail”.<sup>348</sup>

**810.** The Inquiry asked Ms Adams whether she agreed that the Attorney General was not giving a Law Officer’s advice on 17 March. Ms Adams replied:

“He was essentially asserting the Government’s view of the legal position, which was based on his advice ... I think that [using the Attorney General to make the public statement on the legal position] may have been a mistake.”<sup>349</sup>

**811.** Mr Macleod had expressed a similar view:

“There is a question whether it was right to place on the Attorney General the onus of explaining the legal position publicly, so that he became perceived as the arbiter of whether the war should take place or not. The general practice on other legal issues is that the Attorney does not present the Government’s legal position: that is left to the Minister with policy responsibility for the issue under discussion. That is what was done in relation to Kosovo or Iraq in 1998.”<sup>350</sup>

**812.** Sir Michael Wood explicitly endorsed Mr Macleod’s view.<sup>351</sup>

**813.** Lord Goldsmith told the Inquiry:

“... there was a huge interest in what my view was in relation to the legality of war, and I had had, for example, almost weekly calls from the Shadow Attorney General [Mr Cash], who had both been telling me what his view was, which was that it was lawful, and saying ‘You will have to tell Parliament what your view is in relation to this’.

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<sup>347</sup> House of Commons, *Official Report*, 14 March 2002, column 482W.

<sup>348</sup> [Letter Straw to Anderson, 17 March 2003, ‘Iraq: Legal Position Concerning the Use of Force’ attaching PQ and Paper FCO, 17 March 2003, ‘Iraq: Legal Basis for the Use of Force’.](#)

<sup>349</sup> Public hearing, 30 June 2010, page 52.

<sup>350</sup> Statement, 24 June 2010, paragraph 33.

<sup>351</sup> Statement, 15 March 2011, page 25.

“Normally, a Law Officer’s opinion is not disclosed. It was in fact, impossible in these circumstances not to disclose what my conclusion was, because the clamour to know ... would have been frankly impossible to avoid. So I knew that I would have to make some sort of statement as to what my position was. So that is the point about the Parliamentary answer.”<sup>352</sup>

**814.** Parliamentary Questions and Parliamentary Committees after 2003 sought to probe whether Lord Goldsmith’s Written Answer to Baroness Ramsey on 17 March constituted the Attorney General’s advice, and by implication, whether the Government had waived, in the case of the legal advice on the basis of military action in Iraq, the convention that neither the fact that the Attorney General had advised nor the content of that advice were disclosed.<sup>353</sup>

**815.** In his responses, Lord Goldsmith was always very careful to point out that Baroness Ramsey had asked for, and he had provided, his view of the legal basis for the use of force, not his advice.<sup>354</sup>

**816.** The FCO paper, ‘Iraq: Legal Basis for the Use of Force’, stated that the legal basis for the use of force in Iraq was the revival of the authorisation in resolution 678.<sup>355</sup>

**817.** Specifically, the paper stated that in resolution 1441:

“... the Security Council has determined –

- (1) that Iraq’s possession of weapons of mass destruction (WMD) constitutes a threat to international peace and security;
- (2) that Iraq has failed – in clear violation of its legal obligations – to disarm; and
- (3) that, in consequence, Iraq is in material breach of the conditions for the ceasefire laid down by the Council in SCR 687 at the end of hostilities in 1991, thus reviving the authorisation in SCR 678.”

**818.** Referring to the Security Council’s power under Chapter VII of the Charter to authorise States to take military action, the paper set out the occasions during the 1990s when action had been taken on the basis that Iraq’s non-compliance had broken the conditions of the cease-fire in resolution 687 and the authority to use force in resolution 678 had been “revived”, as the “legal background” to resolution 1441.

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<sup>352</sup> Public hearing, 27 January 2010, pages 198-199.

<sup>353</sup> House of Lords, *Official Report*, 6 November 2003, column 129WA; House of Lords, *Official Report*, 28 February 2005, column 1WA; House of Lords, Constitution Committee, *Minutes of Evidence*, 22 March 2006, Q41; House of Lords, Constitution Committee, *Minutes of Evidence*, 22 March 2006, Q41, Q241.

<sup>354</sup> House of Lords, *Official Report*, 6 November 2003, column 129WA; House of Lords, *Official Report*, 28 February 2005, column 1WA; House of Lords, Constitution Committee, *Minutes of Evidence*, 22 March 2006, Q41; House of Lords, Constitution Committee, *Minutes of Evidence*, 22 March 2006, Q41, Q241.

<sup>355</sup> Paper FCO, 17 March 2003, ‘Iraq: Legal Basis for the Use of Force’.

**819.** The FCO paper stated that the preambular paragraphs of resolution 1441:

- confirmed “once more” by the reference to resolution 678 “that that resolution was still in force”;
- “recognised the threat which Iraq’s non-compliance ... posed to international peace and security”; and
- “recalled” that resolution 687 “imposed obligations on Iraq as a necessary step for the achievement of its objective of restoring international peace and security”.<sup>356</sup>

**820.** The paper stated that operative paragraph one (OP1) of resolution 1441 decided that “Iraq ‘has been and remains in material breach’ of its obligations” and, paraphrasing the resolution, added:

“The use of the term ‘material breach’ is of the utmost importance because the practice of the Security Council during the 1990s shows that it was just such a finding of material breach by Iraq which served to revive the authorisation of force ...

“On this occasion, however, the Council decided (paragraph two) to offer Iraq a ‘final opportunity to comply with its disarmament obligations’. Iraq was required to produce an accurate, full and complete declaration of all aspects of its prohibited programmes (paragraph three), and to provide immediate and unrestricted access to UNMOVIC and IAEA (paragraph five). Failure by Iraq to comply with the requirements of SCR 1441 was declared to be a further material breach of Iraq’s obligations (paragraph four), in addition to the continuing breach identified in paragraph one. In the event of a further breach (paragraph four), or interference by Iraq with the inspectors or failure to comply with any of the disarmament obligations under any of the relevant resolutions (paragraph 11), the matter was to be reported to the Security Council. The Council was then to convene ‘to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security’ (paragraph 12). The Council warned Iraq (paragraph 13) that ‘it will face serious consequences as a result of its continued violations of its obligations’.”

**821.** The paper stressed that the authority to use force did not revive immediately and there had been “no ‘automaticity’”. The provision “for any failure by Iraq to be ‘considered’ by the Security Council” did not:

“... mean that no further action can be taken without a new resolution. Had that been the intention, it would have provided that the Council would decide what needed to be done ... not that it would consider the matter. The choice of words was deliberate; a proposal that there should be a requirement for a decision by the Council ... was

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<sup>356</sup> Paper FCO, 17 March 2003, ‘Iraq: Legal Basis for the Use of Force’.

not adopted. Instead the members of the Council opted for the formula that the Council must consider the matter before action is taken.

“That consideration has taken place regularly since the adoption of resolution 1441. It is plain, including from UNMOVIC’s statement to the Security Council, its Twelfth Quarterly Report and the so-called ‘Clusters Document’, that Iraq has not complied as required ... Whatever other differences there may have been in the Security Council, no member of the Council questioned this conclusion. It therefore follows that Iraq has not taken the final opportunity offered to it and remains in material breach of the disarmament obligations which, for twelve years, the Council has insisted are essential for the restoration of peace and security. In these circumstances, the authorisation to use force contained in resolution 678 revives.”

**822.** On 17 March, Mr Straw wrote to all Parliamentary colleagues with a copy of the FCO paper on Iraq’s non-compliance, a copy of his letter to the Chairman of the Foreign Affairs Committee, and copies of the statements made at the Azores Summit the previous day.<sup>357</sup>

**823.** Mr Straw wrote that the FCO paper on non-compliance stated that Iraq had “failed to comply fully with 14 previous UN resolutions related to WMD” and assessed Iraq’s “progress in complying with relevant provisions of UNSCR 1441 with illustrative examples”.

**824.** To supplement the Command Paper of UN documents published in February (CM 5769) Mr Straw also published a further Command Paper (CM 5785) with UN documents from early March.<sup>358</sup>

### **Cabinet, 17 March 2003**

**825.** A specially convened Cabinet at 1600 on 17 March 2003 endorsed the decision to give Saddam Hussein an ultimatum to leave Iraq and to ask the House of Commons to endorse the use of military action against Iraq to enforce compliance, if necessary.

**826.** Mr Blair told his colleagues that he had called a meeting of Cabinet because “an impasse” had been reached at the United Nations.<sup>359</sup>

**827.** The Government had tried its “utmost”, and had “tabled a draft ... resolution, amended it, and then been prepared to apply tests against which Iraq’s co-operation ... could be judged”. Although the UK had been “gathering increasing support from members of the Security Council”, the French statement “that they would veto a

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<sup>357</sup> Letter Straw to Parliamentary Colleagues, 17 March 2003, [untitled] attaching Statement, [16 March 2003, ‘A Vision for Iraq and the Iraqi People’](#); [Statement](#), 16 March 2003, ‘Commitment to Transatlantic Solidarity’; Paper FCO, 15 March 2003, ‘Iraqi-Non Compliance with UNSCR 1441’.

<sup>358</sup> Command Paper (CM 5785), 17 March 2003, ‘Iraq – UN Documents of early March 2003’.

<sup>359</sup> [Cabinet Conclusions, 17 March 2003](#).

resolution in all circumstances had made it impossible to achieve a new ... resolution". France, with Russia in support, "were not prepared to accept" that if Saddam Hussein "did not comply with the United Nations obligations, military action should follow". The UK was in a situation it had "striven to avoid": "There would be no second resolution and military action was likely to be necessary ... to enforce compliance by Saddam Hussein with Iraq's obligations."

**828.** Mr Blair stated that the US "had now undertaken to produce a 'Road Map' for the Middle East Peace Process, once the new Palestinian Prime Minister's appointment had been confirmed". That would "open the way to a full and final settlement within three years". The US "had also confirmed" that it "would seek a UN mandate for the post-conflict reconstruction of Iraq", and that: "Oil revenues would be administered under the UN's authority."

**829.** Mr Blair stated:

"A lot of work was needed to repair the strains which had arisen internationally over the past few weeks. He regretted that the international community had sent mixed messages to Saddam Hussein, whose regime could have been disarmed peacefully if confronted by international solidarity. The blockage we had encountered in the United Nations impeded any progress."

**830.** Mr Straw said that Mr Blair:

"... had persuaded President Bush ... to go down the United Nations route in order to achieve the maximum authority for the disarmament of Iraq, but the diplomatic process was now at an end."

**831.** Mr Straw added:

"Progress had been made towards forging a consensus before the French and Russians had indicated their intention to veto any Security Council resolution proposed which indicated that military action would follow Saddam Hussein's failure to comply. His assessment was that President Chirac of France had decided to open up a strategic divide between France and the United Kingdom; the row in Brussels in late 2002 had been manufactured. Effectively, one member of the Security Council had torpedoed the whole process."

**832.** Mr Straw concluded:

"... the one chance now remaining to Saddam Hussein was to seek exile. If that course failed, the Government would seek the support of the House of Commons for military action against Iraq. There would be a substantive motion in a debate now scheduled for Tuesday [18 March]."

**833.** Lord Goldsmith told Cabinet that he had answered a Parliamentary Question in the House of Lords that day "on the authority for the use of force against Iraq"; and

that Mr Straw had also sent a document “on the legal basis” to the Foreign Affairs Committee.

**834.** The minutes record that Lord Goldsmith informed Cabinet that:

“Authority existed from the combined effect of United Nations Security Council resolutions 678, 687 and 1441, all of which were adopted under Chapter VII of the United Nations Charter. The latter allowed the use of force for the express purpose of restoring international peace and security ... resolution 1441 determined that Iraq had been and remained in material breach of ... resolution 687 and gave Iraq a final opportunity to comply with its disarmament obligations, warning of serious consequences if it did not do so. It was plain that Iraq had failed so to comply and therefore continued to be in material breach. The authority to use force under ... resolution 678 was revived as a result ... [R]esolution 1441 did not contain a requirement for a further ... resolution to authorise the use of force.”

**835.** The points made during discussion included:

- The attitude of France “had undermined the mechanism of the United Nations to enforce the will of the international community”.
- The Government’s supporters “needed a comprehensive statement to explain the position”: a second resolution “had been politically desirable but not legally essential”.
- “It was important to focus on Saddam’s failure to comply, and to avoid the impression that the failure to gain a further ... resolution was the issue”.

**836.** Mr Prescott stated that Mr Blair:

“... had played a major role in upholding the credibility of the United Nations. French intransigence had thwarted success in taking the United Nations process to its logical conclusion. Nevertheless, the use of force against Iraq was authorised by existing ... resolutions.”

**837.** Mr Blair concluded:

“... the diplomatic process was now at an end. Saddam Hussein would be given an ultimatum to leave Iraq; and the House of Commons would be asked to endorse the use of military action against Iraq to enforce compliance, if necessary.”

**838.** Cabinet “Took note.”

**839.** Mr Cook’s decision to resign from the Government was announced during Cabinet, which he did not attend.<sup>360</sup>

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<sup>360</sup> Campbell A & Hagerty B. *The Alastair Campbell Diaries. Volume 4. The Burden of Power: Countdown to Iraq*. Hutchinson, 2012.

**840.** Lord Goldsmith told the Inquiry that he had attended Cabinet:

“... ready to answer any questions which were put to me and to explain my advice. Certainly the view I took was that producing my answer to Parliament would be a good framework for explaining to them what the legal advice was, and I would have been happy to answer the questions which were put to me. I was ready, fully briefed, ready to debate all these issues.

“What actually happened was that I started to go through the PQ [Parliamentary Question], which had been handed out as this framework. Somebody, I can't remember who it was, said 'You don't need to do that. We can read it.' I was actually trying to use it as a sort of framework for explaining the position, and there was a question that was then put. I do recall telling Cabinet, 'Well there is another point of view, but this is the conclusion that I have reached', and then the discussion on the legality simply stopped, and Cabinet then went on to discuss all the other issues, the effect on international relations, domestic policy, and all the rest of it.

“So the way it took place was that I was ready to answer questions and to deal with them and in the event that debate did not take place.”<sup>361</sup>

**841.** Lord Turnbull told the Inquiry that there was:

“... a kind of tradition which says you rely on the Attorney General to produce definitive advice. Once he has done it, you don't say, 'I don't think much of that'. His job is to produce the version we can all work on.”<sup>362</sup>

**842.** Mr Blair told the Inquiry:

“The whole purpose of having the Attorney there ... was so that he could answer anybody's questions ...”<sup>363</sup>

**843.** Ms Short told the Inquiry that she thought that Lord Goldsmith had:

“... misled the Cabinet. He certainly misled me, but people let it through ... I think now we know everything we know about his doubts and his changes of opinion and what the Foreign Office Legal Advisers were saying and that he had got this private side deal that Tony Blair said there was a material breach when Blix was saying he needed more time. I think for the Attorney General to come and say there is an unequivocal legal authority to go to war was misleading.”<sup>364</sup>

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<sup>361</sup> Public hearing, 27 January 2010, pages 214-215.

<sup>362</sup> Public hearing, 13 January 2010, page 69.

<sup>363</sup> Public hearing, 29 January 2010, page 233.

<sup>364</sup> Public hearing, 2 February 2010, page 24.

**844.** Addressing the evidence given to the Inquiry by Lord Goldsmith and Mr Blair, Ms Short stated:

“I see that both Tony Blair and he [Lord Goldsmith] said the Cabinet were given the chance to ask questions. That is untrue.”<sup>365</sup>

**845.** Asked what she was trying to discuss and why she was not able to do so, Ms Short told the Inquiry that she had asked for a meeting with Lord Goldsmith but:

“There was a piece of paper round the table. We normally didn’t have any papers, apart from the agenda. It was the PQ answer, which we didn’t know was a PQ answer then, and he started reading it out, so everyone said ‘We can read’ ... and then ... everyone said, ‘That’s it’. I said, ‘That’s extraordinary. Why is it so late? Did you change your mind?’ And they all said ‘Clare!’

“Everything was very fraught by then and they didn’t want me arguing, and I was kind of jeered at to be quiet. That’s what happened.”<sup>366</sup>

**846.** Asked if she then went quiet, Ms Short replied:

“If he won’t answer and the Prime Minister is saying, that’s it, no discussion, there is only so much you can do ... the Attorney, to be fair to him, says he was ready to answer questions, but none was allowed.”<sup>367</sup>

**847.** Ms Short added that she had later asked Lord Goldsmith, “How come it was so late?”, and that he had replied, “Oh, it takes me a long time to make my mind up.”<sup>368</sup>

**848.** Mr Campbell wrote that Ms Short had asked Lord Goldsmith “if he had any doubts”. Lord Goldsmith had replied that “lawyers all over the world have doubts but he was confident in the position”.<sup>369</sup>

**849.** Dr Reid told the Inquiry: “everyone was allowed to speak at these [Cabinet] meetings. I don’t recognise some descriptions of some of the least quiescent of my colleagues claiming to have been rendered quiescent ...”<sup>370</sup>

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<sup>365</sup> Public hearing, 2 February 2010, page 28.

<sup>366</sup> Public hearing, 2 February 2010, pages 28-29.

<sup>367</sup> Public hearing, 2 February 2010, page 29.

<sup>368</sup> Public hearing, 2 February 2010, pages 29-30.

<sup>369</sup> Campbell A & Hagerty B. *The Alastair Campbell Diaries. Volume 4. The Burden of Power: Countdown to Iraq*. Hutchinson, 2012.

<sup>370</sup> Public hearing, 3 February 2010, page 75.

**850.** Addressing Ms Short's evidence that she had been "kind of jeered at", Mr Straw told the Inquiry:

"... that's not my recollection. Obviously if that's what she felt ... but this was a very serious Cabinet meeting. People weren't, as I recall ... going off with that kind of behaviour. We all understood the gravity of the situation."<sup>371</sup>

**851.** Asked if he recognised Ms Short's description of events, Lord Boateng, who was Chief Secretary to the Treasury from 2002 to 2005, told the Inquiry that he did not.<sup>372</sup>

**852.** Ms Short sent a letter to colleagues in the Parliamentary Labour Party the following morning, explaining her reasons for deciding to support the Government.<sup>373</sup> She wrote that there had been "a number of important developments over the last week", including:

"Firstly, the Attorney General has made clear that military action would be legal under international law. Other lawyers have expressed contrary opinions. But for the UK Government, the Civil Service and the military, it is the view of the Attorney General that matters and this is unequivocal."

**853.** Asked at what point he had initiated the process of working out what he was going to tell the Cabinet, and how much, Lord Goldsmith told the Inquiry:

"So far as Cabinet is concerned, I can't remember at what stage I was told the Cabinet was going to meet and I was going to be asked to come to Cabinet on that occasion. I think it would have been the second occasion ever that I had attended Cabinet."<sup>374</sup>

**854.** Asked how it was decided that he would present the advice to Cabinet in the way he did, and whether that decision was taken in discussion with Mr Blair or with Mr Straw, Lord Goldsmith told the Inquiry that it was his decision:

"... the point for me was to determine how to express my view to Parliament, and the Parliamentary answer then seemed to be a convenient way, as a framework really, for what I would then say to Cabinet about my view on legality."<sup>375</sup>

**855.** Asked if anyone asked him to restrict what he said to Cabinet, Lord Goldsmith replied: "No."<sup>376</sup>

**856.** Asked why, given the concerns of the Armed Forces and the Civil Service, Cabinet had not taken the opportunity to discuss the finely balanced legal arguments,

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<sup>371</sup> Public hearing, 8 February 2010, page 61.

<sup>372</sup> Public hearing, 14 July 2010, page 7.

<sup>373</sup> Short C. *An Honourable Deception: New Labour, Iraq and the Misuse of Power*. The Free Press, 2004.

<sup>374</sup> Public hearing, 27 January 2010, page 199.

<sup>375</sup> Public hearing, 27 January 2010, page 200.

<sup>376</sup> Public hearing, 27 January 2010, page 200.

Lord Goldsmith stated that a number of the Cabinet Ministers present had seen his 7 March advice, although things had moved on since then.

**857.** Lord Goldsmith added that the issues were well known in Parliament, but Cabinet did not want to debate them:

“... thinking about it afterwards, I could sort of understand that ... for this reason: that actually debating the legal question with the Attorney General was a slightly sterile exercise ... because they could have put to me, ‘What about this and what about that?’ and I would have answered them, but what mattered, I thought, was that they needed to know whether or not this had the certificate, if you like, of the Attorney General. Was it lawful? That was a necessary condition. Then they would need to consider whether it was the right thing to do ... So they were looking at the much bigger question of ‘Is it right?’ not just ‘Is it lawful?’.”<sup>377</sup>

**858.** Asked for his view on the proposition that there was never a full discussion in Cabinet about his opinion which was “caveated and was finely balanced”, Lord Goldsmith replied that his advice was:

“... caveated in one respect ... It takes the central issue of the interpretation of 1441 and identifies that there are two points of view, and then I have come down in favour of one of them.

“The Cabinet, I’m sure knew that there were two points of view because that had been well-travelled in the press. The caveat was you need to be satisfied that there really has been a failure to take the final opportunity. That, of course, was something which was right in the forefront of Cabinet’s mind, I have no doubt, and I’m sure was mentioned by the Prime Minister and the Foreign Secretary and others in the course of the debate. I would expect so.”<sup>378</sup>

**859.** Asked whether Cabinet should have had a discussion of Lord Goldsmith’s fuller opinion before they came to a decision Lord Turnbull stated: “I think what they needed was “yes” or “no”, and that’s what they got.”<sup>379</sup>

**860.** Asked if he thought that his Cabinet colleagues would have wished to have a discussion of the considerations in Lord Goldsmith’s full advice, Mr Hoon replied:

“I’m not sure that it would be appropriate for Cabinet to have that kind of discussion, because, in the end, what you would be inviting people to do was to speculate on the legal judgment that the Attorney General had reached, and it is not the same as having a political discussion about options or policies.

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<sup>377</sup> Public hearing, 27 January 2010, pages 216-217.

<sup>378</sup> Public hearing, 27 January 2010, pages 218-219.

<sup>379</sup> Public hearing, 13 January 2010, page 69.

“This is someone whose decision is that this was lawful, and I can’t see how Cabinet could look behind that and have the kind of discussion that you are suggesting. This was not policy advice. This was not, ‘On the one hand ... and on the other hand, we might take this course of action’. What he was saying is that this was lawful in his judgment, and I can’t see how we could have had a sensible discussion going beyond that.”<sup>380</sup>

**861.** Mrs Beckett told the Inquiry:

“Peter Goldsmith came to Cabinet. He made it clear what was his view. It was open to people to ask questions ... I was never the slightest bit surprised to learn that in earlier iterations he had drawn attention to, ‘On the one hand ... on the other hand’ ... that’s what lawyers do.”<sup>381</sup>

**862.** Mr Straw was asked whether it would have been better if Cabinet had had Lord Goldsmith’s full opinion, whether he had persuaded Lord Goldsmith to present only the (PQ) answer, whether it was incumbent on Cabinet to satisfy itself that it was be aware of the arguments, and why Lord Goldsmith had reached his conclusion. He told the Inquiry:

“I did that, partly for the reasons I have explained ... but also, because we were concerned about leaks, and ... what the military wanted to know wasn’t the process by which a decision had been arrived at.”<sup>382</sup>

**863.** Asked whether he had been given the opportunity to look at the full legal opinion of 7 March, Dr Reid told the Inquiry:

“I was given the opportunity, but I didn’t particularly want to look at some long ‘balancing’ legal opinion, I wanted to know ‘is what we are about to do lawful, or is it illegal?’ ... [A]s far as I was aware, the constitutional convention and legality in Great Britain for the Cabinet is dependent on the judgment of the Attorney General.”<sup>383</sup>

**864.** In a statement he sent the Inquiry before his second hearing on 8 February 2010, Mr Straw wrote that, in the absence of the ability to secure an authoritative determination of the law from the courts, “a great weight of responsibility” rested on the shoulders of the Attorney General, and that his role was to determine whether the UK Government could consider the merits of taking military action.<sup>384</sup>

**865.** Mr Straw was asked whether Cabinet could meet its responsibilities to address the key moral as well as political issues, as stated by Mr Straw in his ‘Supplementary

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<sup>380</sup> Public hearing, 19 January 2010, page 70.

<sup>381</sup> Public hearing, 26 January 2010, pages 53-55.

<sup>382</sup> Public hearing, 8 February 2010, pages 62-63.

<sup>383</sup> Public hearing, 3 February 2010, page 76.

<sup>384</sup> Statement, February 2010, ‘Supplementary Memorandum by the Rt Hon Jack Straw MP’, page 5.

Memorandum' for the Inquiry, without being fully alive to the fact that the legal issues were finely balanced. Mr Straw replied:

"The Cabinet were fully aware that the arguments were finely balanced. It was impossible to open a newspaper without being fully aware of the arguments."<sup>385</sup>

**866.** In response to the point that newspaper articles were not legal advice, Mr Straw added:

"With great respect, we had lawyers from both sides arguing the case in the public print. So it was very clear ... that there were two arguments going on. One was about the ... moral and political justification, and that, in many ways, in the public print, elided with arguments about whether it was lawful ... no one in the Cabinet was unaware of the fact that there had been and was a continuing and intense legal debate about the interpretation of 1441 ... But the issue for the Cabinet was: was it lawful or otherwise?

"... [W]hat was required ... at that stage was essentially a yes/no decision from the Attorney General, yes/no for the Cabinet, yes/no for the military forces. It was open to members of the Cabinet to question the Attorney General ... it wasn't necessary to go into the process by which Peter Goldsmith had come to his view. What they wanted to know was what the answer was."<sup>386</sup>

**867.** Mr Straw told the Inquiry:

"... any member of the Cabinet could easily have asked about the finely balanced nature [of the legal arguments] ... [T]he finely balanced arguments are part of the process by which he came to that decision.

"... He was going through all the arguments ...

"But there is nothing unusual about legal decisions being finely balanced ... [W]hat Cabinet wanted ... and needed to know ... was what was the decision.

"Nobody was preventing anybody from asking the Attorney ... what the position was. In the event they chose not to. A number of lawyers were around the table. The legal issues had been extremely well aired in public, the press, and people were briefed anyway."<sup>387</sup>

**868.** Asked for an assurance that Cabinet was sufficiently informed, separately and collectively, to share responsibility for the risks a decision to invade Iraq entailed, "including risks, individual and collective, to Crown Servants, and ... themselves", Mr Straw replied: "yes".<sup>388</sup>

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<sup>385</sup> Public hearing, 8 February 2010, page 59.

<sup>386</sup> Public hearing, 8 February 2010, pages 59-60.

<sup>387</sup> Public hearing, 8 February 2010, pages 62-63.

<sup>388</sup> Public hearing, 8 February 2010, page 64.

**869.** Mr Straw added:

“... we were being publicly bombarded with the arguments, and arguments about the consequences. We received detailed legal advice, for example, from CND saying why it was unlawful and what the personal consequences would be.

“So everybody understood what the issues were and the level of responsibility, personal and individual ...”<sup>389</sup>

**870.** Mr Straw also stated that Cabinet “was more involved in this decision” because members of Cabinet had to “explain themselves in the House of Commons as well as publicly and to their constituency parties”.

**871.** Asked if he was fully satisfied with the advice that was given to Cabinet about the legality of the conflict, Mr Brown told the Inquiry that Lord Goldsmith’s role was to give Cabinet advice, and that “he was certain about the advice he gave” but it was Cabinet’s job to “make our decisions on the basis, not simply of the legal advice, but the moral, political and other case for taking action”.<sup>390</sup>

**872.** Asked if he had been aware that Lord Goldsmith had earlier taken a different view, Mr Brown replied that he was not aware of the details and that he had not been involved in previous discussions with Lord Goldsmith. Mr Brown added:

“We had this straightforward issue. We were sitting down as a Cabinet, to discuss the merits of taking action once the diplomatic avenues had been exhausted, unfortunately, and we had to have straightforward advice from the Attorney General: was it lawful or was it not? His advice in the Cabinet meeting was unequivocal.”<sup>391</sup>

**873.** Asked if he had seen Lord Goldsmith’s advice of 7 March, Mr Brown replied:

“As I understand it, the constitutional position is very clear, that before a decision of such magnitude is made, the Attorney General has to say whether he thinks it is lawful or not. That was the straightforward question that we had to answer. If he had answered equivocally ... then of course there would have been questions, but he was very straightforward in his recommendation.

“To me, that was a necessary part of the discussion about the decision of war, but it wasn’t sufficient, because we had to look at the political and other case that had to be examined in the light of the period of diplomacy at the United Nations.”<sup>392</sup>

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<sup>389</sup> Public hearing, 8 February 2010, page 66.

<sup>390</sup> Public hearing, 5 March 2010, page 50.

<sup>391</sup> Public hearing, 5 March 2010, page 51.

<sup>392</sup> Public hearing, 5 March 2010, pages 51-52.

**874.** After further questioning, Mr Brown told the Inquiry:

“I think in retrospect, people, as historians ... will look at it very carefully ... and what was said between different people at different times and what were the first ... second ... and the third drafts. But the issue for us was very clear ... Did the Attorney General, who is our legal officer who is responsible for giving us legal advice ... have a position ... that was unequivocal? And his position on this was unequivocal.

“... [I]t laid the basis on which we could take a decision, but it wasn't the reason that we made the decisions. He gave us the necessary means ... but it wasn't sufficient in itself.”<sup>393</sup>

**875.** Asked if his view would have changed if he had known that 10 days before the Cabinet discussion Lord Goldsmith's position had been equivocal, Mr Brown stated:

“I don't think it would have changed my view, because unless he was prepared to say that his unequivocal advice was that this was not lawful, then the other arguments that I thought were important ... the obligations to the international community, the failure to honour them, the failure to disclose, the failure to discharge the spirit and letter of the resolutions, particularly 1441 ... But it seemed to me the Attorney General's advice was quite unequivocal.”<sup>394</sup>

**876.** Asked whether Cabinet was able to take a genuinely collective decision or if it was being asked to endorse an approach at a time when the die had effectively been cast, Mr Brown replied:

“I have got to be very clear. I believed we were making the right decisions for the right cause. I believed I had sufficient information before me to make a judgement ... I wasn't trying to do the job of the Foreign Secretary or trying to second guess something that had happened at other meetings. I was looking at the issue on its merits and ... I was convinced of the merits of our case.”<sup>395</sup>

**877.** Asked if he thought he should have seen the full legal advice, Lord Boateng said:

“On reflection, I think it would have been helpful if we had seen it. I think we would have had a fuller debate and discussion and I think that we ought to have been trusted with it, frankly. But be that as it may, we weren't, and we therefore acted upon the best legal advice we had. I don't think, if we had seen the full opinion, we would necessarily have come to a different conclusion. I think it would have been helpful if we had seen it. We didn't.”<sup>396</sup>

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<sup>393</sup> Public hearing, 5 March 2010, pages 53-54.

<sup>394</sup> Public hearing, 5 March 2010, page 54.

<sup>395</sup> Public hearing, 5 March 2010, pages 55-56.

<sup>396</sup> Public hearing, 14 July 2010, page 11.

**878.** Mr Blair told the Inquiry that, in respect of Lord Goldsmith’s legal opinion:

“... the key thing really was ... Cabinet weren’t interested in becoming part of the legal debate, they just wanted to know, ‘Is the Attorney General saying it is lawful or not?’”<sup>397</sup>

**879.** Mr Blair stated that the legal issues were “one aspect” of the Cabinet discussion, but Cabinet was “really focused on the politics”.<sup>398</sup>

**880.** Asked whether Cabinet should have weighed up the legal risk, Mr Blair replied:

“I think they were weighing the risks up for the country, but ... in respect of the law ... I don’t think members of the Cabinet wanted to have a debate ... Peter was there and could have answered any questions they had, but their basic question to him was: is there a proper legal basis for this or not and his answer was, ‘Yes.’

“... the reason why we had Peter there ... he was the lawyer there to talk about it.”<sup>399</sup>

**881.** In a letter written to Lord Goldsmith in March 2005, Ms Short stated that the way the legal advice had been presented to Cabinet was a breach of the Ministerial Code.<sup>400</sup>

**882.** In 2003, the relevant provision of the Ministerial Code stated:

“When advice from the Law Officers is included in correspondence between Ministers, or in papers for the Cabinet or Ministerial Committees, the conclusions may if necessary be summarised but, if this is done, the complete text of the advice should be attached.”<sup>401</sup>

**883.** Lord Goldsmith told the Inquiry:

“... the Ministerial Code, which talks about providing the full text of the Attorney General’s opinion, is actually dealing with a quite different circumstance. That’s dealing with the circumstance where a Minister comes to Cabinet and says ‘I have got clearance from the Attorney General. He says this is all right, or she says this is all right’. In those circumstances, the Ministerial Code requires that the full text should be there rather than just the summary. You can summarise it but you need to produce the full text as well.

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<sup>397</sup> Public hearing 21, January 2011, page 232.

<sup>398</sup> Public hearing 21, January 2011, page 233.

<sup>399</sup> Public hearing 21, January 2011, page 234.

<sup>400</sup> Letter Short to Goldsmith, March 2005. Previously available on the website of Clare Short MP and referred to the public hearing of Clare Short, 2 February 2010, at page 41, and discussed during the Select Committee on Public Administration, 10 March 2005, Q240 *et sequitur*.

<sup>401</sup> Cabinet Office. *Ministerial Code: A code of conduct and guidance on procedures for Ministers*, 2001.

“I was there. I was therefore in a position to answer all questions. I was in a position to say that my opinion was that this was lawful. I did manage to say – I did say that there was another point of view, but they knew that very well in any event.”<sup>402</sup>

**884.** Lord Turnbull confirmed that in his view the requirements of the Ministerial Code had not been breached because Lord Goldsmith was present in person, rather than another Minister reporting his advice.<sup>403</sup>

**885.** Asked about the fact that Lord Goldsmith’s advice of 7 March had raised the issue of the exposure of Ministers and Crown servants, both military and civil, to risk, Mr Brown told the Inquiry:

“I knew ... that the Permanent Secretary to the Civil Service [sic] and the military Chiefs [of Staff] had required, as they should, clear guidance ... So I knew that they were satisfied that they had got the legal assurances that were necessary.”<sup>404</sup>

### **Mr Straw’s statement to the House of Commons, 17 March 2003**

**886.** In his Statement to the House of Commons on the evening of 17 March, Mr Straw stated that the Government had reluctantly concluded that France’s actions had put a consensus in the Security Council on a further resolution “beyond reach”.

**887.** As a result of Saddam Hussein’s persistent refusal to meet the UN’s demands, Cabinet had decided to ask the House of Commons to support the UK’s participation in military operations should they be necessary to achieve the disarmament of Iraq “and thereby the maintenance of the authority of the United Nations”.

**888.** Mr Straw stated that Lord Goldsmith’s Written Answer “set out the legal basis for the use of force”.

**889.** Mr Straw drew attention to the significance of the fact that no-one “in all the discussions in the Security Council and outside” had claimed that Iraq was in full compliance with its obligations.

**890.** Mr Straw made a statement to the House of Commons at 8.24pm.<sup>405</sup>

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<sup>402</sup> Public hearing 21 January 2011, pages 217-218.

<sup>403</sup> Public hearing, 13 January 2010, page 68.

<sup>404</sup> Public hearing, 5 March 2010, pages 65-66.

<sup>405</sup> House of Commons, *Official Report*, 17 March 2003, columns 703-705.

**891.** Referring to the statement issued at the Azores Summit calling on all members of the Security Council to adopt a resolution challenging Saddam Hussein to take a strategic decision to disarm, Mr Straw told the House of Commons:

“Such a resolution has never been needed legally, but we have long had a preference for it politically.”

**892.** Mr Straw stated that there had been “intense diplomatic activity to secure that end over many months, culminating in the last 24 hours”. Despite “final efforts” by Sir Jeremy Greenstock the previous evening and his own conversations with his “Spanish, American, Russian and Chinese counterparts that morning”, the Government had:

“... reluctantly concluded that a Security Council consensus on a new resolution would not be possible. On my instructions, Sir Jeremy Greenstock made a public announcement to that effect at the United Nations at about 3.15 pm UK time today.”

**893.** Mr Straw continued that, since the adoption of resolution 1441 in November 2002, he, Mr Blair and Sir Jeremy Greenstock had “strained every nerve” in search of a consensus “which could finally persuade Iraq by peaceful means, to provide the full and immediate co-operation demanded by the Security Council”.

**894.** Mr Straw stated that it was significant that “in all the discussions in the Security Council and outside” no-one had claimed that Iraq was “in full compliance with the obligations placed on it” and:

“Given that, it was my belief, up to about a week ago, that we were close to achieving a consensus that we sought on the further resolution. Sadly, one country then ensured that the Security Council could not act. President Chirac’s unequivocal announcement last Monday that France would veto a second resolution containing that or any ultimatum ‘whatever the circumstances’ inevitably created a sense of paralysis in our negotiations. I deeply regret that France has thereby put a Security Council consensus beyond reach.”<sup>406</sup>

**895.** Mr Straw told the House of Commons that the proposals submitted by France, Germany and Russia for “more time and more inspections” sought to “rewrite” resolution 1441. They “would have allowed Saddam to continue stringing out inspections indefinitely, and he would rightly have drawn the lesson that the Security Council was simply not prepared to enforce the ultimatum ... at the heart of resolution 1441”.

**896.** Mr Straw pointed out that “in the event of non-compliance” Iraq should, as OP13 spelt out, expect “serious consequences”. Mr Straw stated:

“As a result of Saddam Hussein’s persistent refusal to meet the UN’s demands, and the inability of the Security Council to adopt a further resolution, the Cabinet has decided to ask the House to support the United Kingdom’s participation in

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<sup>406</sup> House of Commons, *Official Report*, 17 March 2003, columns 703-705.

military operations, should they be necessary, with the objective of ensuring the disarmament of Iraq's weapons of mass destruction, and thereby the maintenance of the authority of the United Nations.”

**897.** Mr Straw confirmed that Parliament “would have an opportunity to debate our involvement in military action prior to hostilities” the following day; and that the debate would be on a substantive motion “proposed by the Prime Minister and Cabinet colleagues”. He also drew the attention of the House to Lord Goldsmith's Written Answer, which “set out the legal basis for the use of force against Iraq”, and the documents provided earlier that day.

**898.** Mr Straw concluded:

“Some say that Iraq can be disarmed without an ultimatum, without the threat or the use of force, but simply by more time and more inspections. That approach is defied by all our experience over 12 weary years. It cannot produce the disarmament of Iraq; it cannot rid the world of the danger of the Iraq regime. It can only bring comfort to tyrants and emasculate the authority of the United Nations ...”

**899.** Mr Straw's statement was repeated in the House of Lords that day by Baroness Symons during a debate on the legality of the use of armed force in Iraq initiated by Lord Goodhart (see Section 3.8).<sup>407</sup>

**900.** In answer to the responses from Lord Howell of Guildford and Lord Wallace of Saltaire, Baroness Symons stated that she believed:

“... the legality of the position is indeed settled. I do not think we have ever had such a clear statement from the Attorney General at a juncture like this ... I believe that this Government have gone further than any other Government to put that advice into the public arena, and the Law Officer with his principal responsibility has given a clear statement of his opinion ...

“... [W]e have already put into the public arena a full history of the United Nations Security Council resolutions ... That is in Command Paper 5769. We have also published a full statement on the legal basis – a fuller statement than that which my noble and learned friend gave in answer to ... Baroness ... Ramsey ...”<sup>408</sup>

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<sup>407</sup> House of Lords, *Official Report*, 17 March 2003, columns 97-103.

<sup>408</sup> House of Lords, *Official Report*, 17 March 2003, columns 101-102.

**901.** Responding to points made in the debate by Lord Goodhart and Lord Howell about the absence of Lord Goldsmith, Baroness Symons stated in her speech closing the debate:

“The Attorney General has been more open-handed than any of his predecessors in publishing his advice in the way that he has. Furthermore ... the Foreign Secretary has also tried to help ... by circulating a further paper.”<sup>409</sup>

**902.** Baroness Symons added that, “In recognition of the enormous importance of this issue”, Lord Goldsmith had “decided to disclose his view of the legal basis for the use of force”. That was:

“... almost unprecedented. The last time a Law Officer’s views were disclosed concerned the Maastricht Treaty in 1992. It is right that what has happened today remains the exception rather than the rule.”

## Conclusions

### The timing of Lord Goldsmith’s advice on the interpretation of resolution 1441

**903.** Following the adoption of resolution 1441, a decision was taken to delay the receipt of formal advice from Lord Goldsmith.

**904.** On 11 November Mr Powell told Lord Goldsmith that there should be a meeting some time before Christmas to discuss the legal position.

**905.** On 9 December, formal “instructions” to provide advice were sent to Lord Goldsmith. They were sent by the FCO on behalf of the FCO and the MOD as well as No.10.

**906.** The instructions made it clear that Lord Goldsmith should not provide an immediate response.

**907.** When Lord Goldsmith met Mr Powell, Sir David Manning and Baroness Morgan on 19 December, he was told that he was not, at that stage, being asked for his advice; and that, when he was, it would be helpful for him to discuss a draft with Mr Blair in the first instance.

**908.** Until 7 March 2003, Mr Blair and Mr Powell asked that Lord Goldsmith’s views on the legal effect of resolution 1441 should be tightly held and not shared with Ministerial colleagues without No.10’s permission.

**909.** Lord Goldsmith agreed that approach.

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<sup>409</sup> House of Lords, *Official Report*, 17 March 2003, columns 117-118.

**910.** Lord Goldsmith provided draft advice to Mr Blair on 14 January 2003. As instructed he did not, at that time, provide a copy of his advice to Mr Straw or to Mr Hoon.

**911.** Although Lord Goldsmith was invited to attend Cabinet on 16 January, there was no discussion of Lord Goldsmith's views.

**912.** Mr Straw was aware, in general terms, of Lord Goldsmith's position but he was not provided with a copy of Lord Goldsmith's draft advice before Cabinet on 16 January. He did not read it until at least two weeks later.

**913.** The draft advice of 14 January should have been provided to Mr Straw, Mr Hoon and the Cabinet Secretary, all of whose responsibilities were directly engaged.

**914.** Lord Goldsmith provided Mr Blair with further advice on 30 January. It was not seen by anyone outside No.10.

**915.** Lord Goldsmith discussed the negotiating history of resolution 1441 with Mr Straw, Sir Jeremy Greenstock, with White House officials and the State Department's Legal Advisers. They argued that resolution 1441 could be interpreted as not requiring a second resolution. The US Government's position was that it would not have agreed to resolution 1441 had its terms required one.

**916.** When Lord Goldsmith met No.10 officials on 27 February, he told them that he had reached the view that a "reasonable case" could be made that resolution 1441 was capable of reviving the authorisation to use force in resolution 678 (1990) without a further resolution, if there were strong factual grounds for concluding that Iraq had failed to take the final opportunity offered by resolution 1441.

**917.** Until that time, No.10 could not have been sure that Lord Goldsmith would advise that there was a basis on which military action against Iraq could be taken in the absence of a further decision of the Security Council.

**918.** In the absence of Lord Goldsmith's formal advice, uncertainties about the circumstances in which the UK would be able to participate in military action continued, although the possibility of a second resolution remained.

**919.** Lord Goldsmith provided formal written advice on 7 March.

### **Lord Goldsmith's advice of 7 March 2003**

**920.** Lord Goldsmith's formal advice of 7 March set out alternative interpretations of the legal effect of resolution 1441. He concluded that the safer route would be to seek a second resolution, and he set out the ways in which, in the absence of a second resolution, the matter might be brought before a court. Lord Goldsmith

identified a key question to be whether or not there was a need for an assessment of whether Iraq's conduct constituted a failure to take the final opportunity or a failure fully to co-operate within the meaning of OP4, such that the basis of the cease-fire was destroyed.

**921.** Lord Goldsmith wrote (paragraph 26): “A narrow textual reading of the resolution suggested no such assessment was needed because the Security Council had pre-determined the issue. Public statements, on the other hand, say otherwise.”

**922.** While Lord Goldsmith remained “of the opinion that the safest legal course would be to secure a second resolution”, he concluded (paragraph 28) that “a reasonable case can be made that resolution 1441 was capable of reviving the authorisation in resolution 678 without a further resolution”.

**923.** Lord Goldsmith wrote that a reasonable case did not mean that if the matter ever came to court, he would be confident that the court would agree with this view. He judged a court might well conclude that OPs 4 and 12 required a further Security Council decision in order to revive the authorisation in resolution 678.

**924.** Lord Goldsmith noted that on a number of previous occasions, including in relation to Operation Desert Fox in Iraq in 1998 and Kosovo in 1999, UK forces had participated in military action on the basis of advice from previous Attorneys General that (paragraph 30) “the legality of the action under international law was no more than reasonably arguable”.

**925.** Lord Goldsmith warned Mr Blair (paragraph 29):

“... the argument that resolution 1441 alone has revived the authorisation to use force in resolution 678 will only be sustainable if there are strong factual grounds for concluding that Iraq failed to take the final opportunity. In other words, we would need to be able to demonstrate hard evidence of non-compliance and non-cooperation ... the views of UNMOVIC and the IAEA will be highly significant in this respect.”

**926.** Lord Goldsmith added:

“In the light of the latest reporting by UNMOVIC, you will need to consider extremely carefully whether the evidence of non-cooperation and non-compliance by Iraq is sufficiently compelling to justify the conclusion that Iraq has failed to take its final opportunity.”

**927.** Mr Straw, Mr Hoon, Dr Reid and the Chiefs of Staff had all seen Lord Goldsmith's advice of 7 March before the No.10 meeting on 11 March, but it is not clear how and when it reached them.

**928.** Other Ministers whose responsibilities were directly engaged, including Mr Brown and Ms Short, and their senior officials, did not see the advice.

### **Lord Goldsmith's arrival at a "better view"**

**929.** At the meeting on 11 March, Mr Blair stated that Lord Goldsmith's "advice made it clear that a reasonable case could be made" that resolution 1441 was "capable of reviving" the authorisation of resolution 678, "although of course a second resolution would be preferable". There was concern, however, that the advice did not offer a clear indication that military action would be lawful.

**930.** Lord Goldsmith was asked, after the meeting, by Adm Boyce on behalf of the Armed Forces, and by the Treasury Solicitor, Ms Juliet Wheldon, in respect of the Civil Service, to give a clear-cut answer on whether military action would be lawful rather than unlawful.

**931.** On 12 March, Mr Blair and Mr Straw reached the view that there was no chance of securing a majority in the Security Council in support of the draft resolution of 7 March and there was a risk of one or more vetoes if the resolution was put to a vote.

**932.** There is no evidence to indicate that Lord Goldsmith was informed of their conclusion.

**933.** Lord Goldsmith concluded on 13 March that, on balance, the "better view" was that the conditions for the operation of the revival argument were met in this case, meaning that there was a lawful basis for the use of force without a further resolution beyond resolution 1441.

### **The exchange of letters on 14 and 15 March 2003**

**934.** Mr Brummell wrote to Mr Rycroft on 14 March:

"It is an essential part of the legal basis for military action without a further resolution of the Security Council that there is strong evidence that Iraq has failed to comply with and co-operate fully in the implementation of resolution 1441 and has thus failed to take the final opportunity offered by the Security Council in that resolution. The Attorney General understands that it is unequivocally the Prime Minister's view that Iraq has committed further material breaches as specified in [operative] paragraph 4 of resolution 1441, but as this is a judgment for the Prime Minister, the Attorney would be grateful for confirmation that this is the case."

**935.** Mr Rycroft replied to Mr Brummell on 15 March:

"This is to confirm that it is indeed the Prime Minister's unequivocal view that Iraq is in further material breach of its obligations, as in OP4 of UNSCR 1441,

because of ‘false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure to comply with, and co-operate fully in the interpretation of, this resolution’.”

**936.** It is unclear what specific grounds Mr Blair relied upon in reaching his view.

**937.** In his advice of 7 March, Lord Goldsmith had said that the views of UNMOVIC and the IAEA would be highly significant in demonstrating hard evidence of non-compliance and non-co-operation. In the exchange of letters on 14 and 15 March between Mr Brummell and No.10, there is no reference to their views; the only view referred to was that of Mr Blair.

**938.** Following receipt of Mr Brummell’s letter of 14 March, Mr Blair neither requested nor received considered advice addressing the evidence on which he expressed his “unequivocal view” that Iraq was “in further material breach of its obligations”.

**939.** Senior Ministers should have considered the question posed in Mr Brummell’s letter of 14 March, either in the Defence and Overseas Policy Committee or a “War Cabinet”, on the basis of formal advice. Such a Committee should then have reported its conclusions to Cabinet before its members were asked to endorse the Government’s policy.

### **Lord Goldsmith’s Written Answer of 17 March 2003**

**940.** In Parliament during the second week of March, and in the media, there were calls on the Government to make a statement about its legal position.

**941.** When Lord Goldsmith spoke to Mr Brummell on 13 March, they agreed that a statement should be prepared “setting out the Attorney’s view of the legal position which could be deployed at Cabinet and in Parliament the following week”.

**942.** The message was conveyed to No.10 during the morning of 15 March that Lord Goldsmith “would make clear during the course of the week that there is a sound legal basis for action should that prove necessary”.

**943.** The decision that Lord Goldsmith would take the lead in explaining the Government’s legal position to Parliament, rather than the Prime Minister or responsible Secretary of State providing that explanation, was unusual.

**944.** The normal practice was, and is, that the Minister responsible for the policy, in this case Mr Blair or Mr Straw, would have made such a statement.

## **Cabinet, 17 March 2003**

**945.** Cabinet was provided with the text of Lord Goldsmith's Written Answer to Baroness Ramsey setting out the legal basis for military action.

**946.** That document represented a statement of the Government's legal position – it did not explain the legal basis of the conclusion that Iraq had failed to take “the final opportunity” to comply with its disarmament obligations offered by resolution 1441.

**947.** Lord Goldsmith told Cabinet that it was “plain” that Iraq had failed to comply with its obligations and continued to be in “material breach” of the relevant Security Council resolutions. The authority to use force under resolution 678 was, “as a result”, revived. Lord Goldsmith said that there was no need for a further resolution.

**948.** Cabinet was not provided with written advice which set out, as the advice of 7 March had done, the conflicting arguments regarding the legal effect of resolution 1441 and whether, in particular, it authorised military action without a further resolution of the Security Council.

**949.** Cabinet was not provided with, or informed of, Mr Brummell's letter to Mr Rycroft of 14 March; or Mr Rycroft's response of 15 March. Cabinet was not told how Mr Blair had reached the view recorded in Mr Rycroft's letter.

**950.** The majority of Cabinet members who gave evidence to the Inquiry took the position that the role of the Attorney General on 17 March was, simply, to tell Cabinet whether or not there was a legal basis for military action.

**951.** None of those Ministers who had read Lord Goldsmith's 7 March advice asked for an explanation as to why his legal view of resolution 1441 had changed.

**952.** There was little appetite to question Lord Goldsmith about his advice, and no substantive discussion of the legal issues was recorded.

**953.** Cabinet was not misled on 17 March and the exchange of letters between the Attorney General's office and No.10 on 14 and 15 March did not constitute, as suggested to the Inquiry by Ms Short, a “side deal”.

**954.** Cabinet was, however, being asked to confirm the decision that the diplomatic process was at an end and that the House of Commons should be asked to endorse the use of military action to enforce Iraq's compliance. Given the gravity of this decision, Cabinet should have been made aware of the legal uncertainties.

**955.** Lord Goldsmith should have been asked to provide written advice which fully reflected the position on 17 March, explained the legal basis on which the UK could take military action and set out the risks of legal challenge.

**956.** The advice should have addressed the significance of the exchange of letters of 14 and 15 March and how, in the absence of agreement from the majority of members of the Security Council, the point had been reached that Iraq had failed to take the final opportunity offered by resolution 1441.

**957.** The advice should have been provided to Ministers and senior officials whose responsibilities were directly engaged and should have been made available to Cabinet.