I am grateful for the opportunity afforded by the Iraq Inquiry to offer my views on the legal basis for the UK's military intervention in Iraq in 2003,in particular on the legal arguments relied upon by the UK government as set out in the Attorney General's advice of 7 March 2003; his written answer to a question in the House of Lords on 17 March 2003; and the FCO Memorandum "Iraq; Legal Basis for the Use of Force" of the same date.

I am of the view that the Attorney General's advice was seriously flawed from a legal point of view and that regrettably the conclusions he reached appear to have been motivated more by political considerations than a proper regard for international law.

The invasion of Iraq in March 2003 was an illegal act in terms of the Charter of the United Nations and international law. It damaged the UK's standing in the international community, undermined the Charter of the United Nations and severely damaged the credibility of the Security Council as the organ with primary responsibility for the maintenance of international peace sand security.

Before briefly summarizing the reasons why I believe that the Attorney General's analysis of Security Council resolution 1441 was wrong and could not support the argument that 1441 met the conditions necessary for a revival of the initial authorization to use force in Security Council resolution 678, I should like to make one prefatory point.

Even assuming that 1441 could be said to have provided grounds for a revival of the authorization in 678, the conclusion that it did so surely required more than a "reasonable case" argument. Given the gravity of the decision and the cost in terms of human suffering, one would have thought that the government's chief law officer would have relied on a higher standard of analysis and interpretation. Furthermore, in reaching a conclusion which was questionable at best, the Attorney General compounded his error by failing to address adequately the important issue of proportionality in the use of force. A finding that 1441 met the conditions for the revival of 678 could not in the circumstances prevailing at the time namely, a failure by Iraq to meet some of its obligations under the disarmament provisions of 687, a resolution adopted by the Security Council in 1991, justify a use of force that amounted to a full-scale invasion and occupation of Iraq. Force on such a scale was out of all proportion to the alleged material breaches of Iraq's obligations.

The starting point of the legal analysis of the Attorney General should have been the Charter of the United Nations and its provisions regarding the use of force. There is no need to expound on these well-known and universally accepted provisions. Since the Attorney General could not rely on the argument that the UK was acting in the exercise of its inherent right of individual or collective self-defence, he had to rely on an argument that 1441 authorized the use of force through the revival of 678.

It is not in dispute that 687 did not either expressly or impliedly terminate the 678 authorization to use force. That authorization was a continuing one and it was well understood that a sufficiently serious violation by Iraq of its obligations under the cease-fire resolution could lead to the withdrawal of the basis for the cease-fire and a renewal of the use of force. The essential question in 1991 as it was in 2002-3 was how and it what form such a revival of the use of force authorization could be achieved. There were two components to any revival of the use of force: there had to be a determination that there had been a breach of its obligations by Iraq of a sufficiently serious nature as to void the basis for the cease-fire agreed in 687; and there had to be a clear and unequivocal determination that such a breach warranted the use of force.

Since the original authorization had emanated from the Security Council acting under the powers vested in it by the Charter, both logic and the law dictated that the precondition for any renewed use of force through the revival doctrine required an institutional finding of the Security Council acting as the collective organ of the United Nations with primary responsibility for the maintenance of international peace and security. I use the phrase "institutional finding" rather than decision or resolution because in my view the procedures and the practice of the Security

Council made it possible for the Council to agree on a revival of 678 without requiring the adoption of a new resolution. The instrument through which this could be achieved is and was the Presidential Statement. It is generally accepted that the Presidential Statements of 8 and 11 January 1993 which were agreed following two serious violations by Iraq of its obligations in implementing 687 were the basis for the revival of the use of force through large- scale air and missile strikes carried out on 13,17 and 18 January of that year.

What was clear from 1991 onwards was that a revival of the use of force authorization could not be automatic nor could it be left to the unilateral interpretations of individual member states which would have been tantamount to a usurpation of the powers of the Security Council.

In examining 1441 in 2002-3 the question for the Attorney General was whether that resolution met the conditions for the renewal of the use of force as outlined above or whether indeed a further resolution or decision was needed.

In reaching the conclusion that 1441 did indeed meet the conditions necessary for the revival of 678, the Attorney General chose to ignore the fundamental nature of the Charter provisions on the use of force, the central role of the Security Council in the peace and security system established by the Charter and the practice that had been developed by the Security Council over the preceding 11 years in regard to material breaches by Iraq of its obligations. It is abundantly clear from the documents made available by the Inquiry that the Attorney General harboured grave doubts as to the credibility of his arguments. Those arguments relied on an extremely convoluted almost Jesuitical interpretation of the operative paragraphs of 1441 buttressed by explanatory information offered by the UK Permanent Representative of the meaning or understandings of certain provisions of 1441 that were developed through the negotiating process of 1441, information which by definition was subjective in nature.

The result of this analysis was that the Attorney General arrived at a conclusion which could not be supported by the ordinary meaning of the language of 1441.

Operative paragraph 1 of 1441 did indeed decide that Iraq “has been and remains in material breach of its obligations under relevant resolutions, including resolution 687…” but in operative paragraph 2 the Council decided to afford Iraq a final opportunity to comply with its obligations and it set up what it termed an enhanced inspection regime with aim of bringing to full and verified completion the 687 disarmament process. These words must have a meaning. Taking operative paragraphs 1 and 2 together the ordinary meaning clearly is that the reference to material breach in paragraph 1 could not be interpreted as providing an automatic trigger for the revival of the use of force since it would be for the Council to determine whether Iraq had discharged its obligations under the new regime of enhanced inspections.

Similarly, no automaticity could be derived from the language of operative paragraph 4 since the referenced material breaches (false statements, omissions, failure to comply and cooperate) if they occurred required the convening of the Security Council for assessment of the situation. The conclusion that neither paragraph1 nor paragraph 4 could be interpreted as creating an automatic trigger not only follows from the ordinary meaning of the words but appeared to have been supported at the time by the statements made by the representatives of the P5 following the adoption of the resolution.

It has been suggested that while 1441 contained no element of automaticity at the time of its adoption in November 2002, the underlying understanding among those who were engaged in negotiating the text of that resolution was that it contained a delayed trigger that could be activated at a later date. This argument, however, fails in the light of the construction and the language of 1441.

1441 established a clear sequence of actions before the revival of the use of force authorization could be triggered. It was not possible in my view to proceed directly from operative paragraph 1

to operative paragraph 13 without passing through operative paragraphs 2, 4 11 and 12. Much has been made by the Attorney General in his advice of the argument that operative paragraph 12 did not explicitly provide that a further decision of the Security Council would be required, that it merely required the Council to 'consider" the situation. With respect this argument is self-serving and had the effect of stripping the Council of its most important function, namely determining whether or not the actions of Iraq constituted a material breach of its obligations under 1441. As we know, in the event the Council never had an opportunity even to consider the matter let alone reach a decision.

It is regrettable that the Attorney General did not maintain his initial views of the matter (as reflected in his draft of 12 February 2003) in which he was aligned with the views of the international lawyers in the FCO. In reaching the conclusion set out in his 7 March 2003 advice, in my view he failed to strike the appropriate balance between the underlying political concerns of the government and respect for the rule of law in the international community. There is some consolation in the fact that the international lawyers in the FCO endeavoured to persevere with their strongly held views to the very end in the face of the strong opposition of their own Minister and ultimately the Attorney General.

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