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2. Michael Wood -

From: Michael Wood
Legal Adviser

Date: 15 August 2002

cc:

PS
PS/PUS
Peter Ricketts
William Ehrman
Edward Chaplin
Charles Gray

Thank you. I work on the premise that if a question of military action arises, the Attorney-General's opinion will be sought, in the light of the facts of the case at the time. I can see no other basis for comment.

Stephen Wright
IRAQ: LEGALITY OF USE OF FORCE

1. While I appreciate that no decision has been taken either by the US Government or by HMG with regard to military action there appears to be an assumption that if military action were taken by the US, we would not only support but participate. The Government line is that any UK military action has to be in conformity with international law. The Prime Minister, in speaking to the House, has stated more than once that whatever action we take must be legally justified (most recently, Hansard, 24 July, Oral Answers, col. 979).

2. While it is, of course, ultimately for the Attorney General to advise HMG on matters of this importance, it may be helpful if I restate briefly the position as I see it.

3. The use of force would be lawful if it had been authorised by the United Nations Security Council, or if it were an exercise of the inherent right of individual or collective self-defence (or, exceptionally, if it were carried out to avert an overwhelming humanitarian catastrophe). This summary statement of the law is contained in our Memorandum to the Foreign Affairs Committee of April 2002. A more detailed account is set out in the "Legal Background" paper prepared in March, and sent to No.10.

4. I am not, at present, aware of facts which would provide a respectable legal basis for military action, though further action by the Security Council could provide such a basis. On the information available to me, the conditions for self-defence are not, at present, met. And there is no suggestion of a humanitarian catastrophe basis.

5. I have seen references by certain Americans to some new doctrine of "pre-emption" (above and beyond anticipatory self-defence, for which international law lays down strict

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conditions). Such a doctrine has no basis in international law. Nor, of course, is "regime change" of itself a lawful objective. If State practice were to develop in the direction of a doctrine of "pre-emption", or if "regime change" became accepted as a proper objective, it would be open season for all States to attack those whom they perceive as threatening them (eg India and Pakistan).

6. It is important that HMG act in accordance with international law, and not only because this is required by the Ministerial Code. Compliance with international law matters for its own sake. The rule of law is as important internationally as it is at home. To act in flagrant disregard of the law would do lasting damage to the United Kingdom's international reputation (cf Suez). Acting in conformity with international law is essential for political support, both international and domestic.

7. In addition, there is an ever-increasing likelihood of action in the courts, both national and international, both civil and criminal. To act without a credible legal basis lays the United Kingdom open to claims for compensation, invoking our international responsibility. ~~And, unless the Attorney General agrees that there is a proper legal basis for military action, individual members of the Armed Forces and civilian officials (at all levels) would also be potentially liable to charges of murder.~~ To advocate the use of force without a proper legal basis is to advocate the commission of the crime of aggression, one of the most serious offences under international law.

AG has
asked
about this

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