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The Rt. Hon. Sir John Chilcot GCB
Chairman
The Iraq Inquiry

25 June 2010

Dear Sir John,

DECLASSIFICATION OF DRAFT LEGAL ADVICE

The Cabinet Office has today notified you of the Government's decision to declassify documents, at your request, constituting the draft legal advice of the Attorney General to the Prime Minister concerning the legality of war. I appreciate you have waited some time for this decision, although the Inquiry itself has had access to these documents from an early stage. It has not been a simple one to reach. I think it important to set out to you the considerations that led to this decision.

It is a long-standing convention, referenced in section 2.13 of the Ministerial Code, that neither the advice of the Law Officers nor the fact that they have been consulted is disclosed outside Government. This is long-standing and important aspect of the more general concept of legal professional privilege (LPP), under which the advice provided to a client by a legal professional remains confidential unless the client chooses to disclose the advice. The Butler Inquiry set out these principles in section 5.7 of its report.

It is my view that the documents the Inquiry requested be declassified are covered by LPP. As you know, the Protocol agreed between the Government and the Inquiry identifies LPP as a basis for the Government declining to declassify a document. The question I have therefore asked is whether or not, in this instance, the Government's entitlement to receive confidential professional legal advice and the convention on Law Officers' advice should be waived.

There is a sound and important basis for these two principles to be upheld. In their absence, the ability of the Law Officers to provide, and Government to request, full, frank and candid advice would be compromised. There is a serious risk that, in the event of these principles being eroded, the incentives for Government to seek such advice would be reduced, with a highly damaging impact on the conduct of good government.

The legal basis for military action may be considered to hold a unique status. The Government's actions with respect to the decision to use military force in Iraq have, in part, contributed to a widely-held view that the public and Parliament are entitled to some explanation for the legal basis of that decision. The final advice provided by the Attorney General (of 7 March 2003) was published by the Government on 28 April 2005. This



followed the statement on the legal position provided on 17 March by the Attorney General in the House of Lords, and by the Foreign Secretary in a letter to both Houses of Parliament.

However, the request of the Inquiry was that the Government declassify the *draft* advice of the Attorney General. I do not consider that the draft advice is a document that provides evidence of the sort provided by the documents mentioned in the preceding paragraph.

Nonetheless, the Iraq Inquiry was established with the purpose of learning lessons from how decisions were made and which actions were taken in the run-up to conflict, during the conflict and in its aftermath. The question of the legal base for military action and how the advice that led to the Government's view on this developed is consequently a central part of the Inquiry's work. In this light, I have noted the extent to which the former Attorney General covered these issues in detail during his evidence to the Inquiry on 27 January.

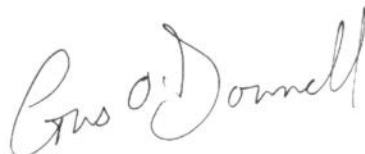
I have considered the matter carefully, and believe that given the very exceptional nature of the Iraq Inquiry, this particular material can be declassified without prejudice to the general principles of LPP and the convention in relation to the Law Officers' Advice. I am also persuaded that the exceptional and unusual circumstances of the Inquiry mean that declassification can take place without any significant detrimental impact on the ability of the Law Officers to perform their duties.

Taking these factors into consideration, in this particular instance and without prejudice to the general principles, I have decided that it is appropriate to permit declassification of these specific documents.

I should be clear though that we believe the publication of the legal advice in this instance to be an exceptional case. The Government's position remains that there is a strong public interest in protecting both the convention that neither the advice of the Law Officers nor the fact that they have been consulted is disclosed outside Government, and the principle of LPP.

In light of the exceptional nature of this decision, I should be grateful if, at the point at which you decide to make public this material, you would publish this correspondence on your website in order to clarify publicly the grounds on which the decision was taken.

In this context, I wish to reiterate that the Government is and will continue to cooperate fully with the Inquiry and to provide you with the material and information you request.



Gus O'Donnell

