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cc: Sir D Manning, No.10
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Private Secretary

IRAQ: RESOLUTIONS: THE "KOSOVO OPTION"

1. As a mind-clearing exercise, it might be worth recapping the position on authorisation as I understand it. If the Security Council adopts a Resolution with our new version of OP10, expressing a "readiness to authorise all means necessary", we have conceded the principle that a second Resolution is required. If we do not for some reason get it, it must be very likely that the Attorney would conclude that did not have a legal base for military action.
2. I do not think the "Kosovo option" helps in these circumstances. In the build-up to Kosovo, there were a series of Resolutions. One (1199) was in Chapter VII; referred to a threat to regional peace and security, and decided to "consider further action and additional measures to maintain or restore peace and stability". But we did not then seek another Chapter VII Resolution, and went into military action without one. We did not at any stage seek a UNSCR authorising use of force (the Russians warned us in advance that they would veto).
3. We did not rely on 1199 in justifying our action. We had an alternative legal base, i.e. that action was necessary to prevent an overwhelming humanitarian catastrophe (by analogy with the 1991 action in Northern Iraq to help the Kurds). That would not be credible as grounds for action this time. So, as far as I can see, failure to get a second Resolution would leave us with no plausible legal basis.
4. All of which underlines the need to pin down the French and Russians in advance that they would vote for a second Resolution if the Iraqis failed to comply.

Peter Ricketts

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