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ATTORNEY GENERAL

cc. Mr Brummell o/r

IRAQ

1. We spoke on 8 March further to my submission to you of 7 March. As requested, I telephoned Tom McKane at the Cabinet Office. The conversation was friendly and constructive.
2. I explained that you had seen references to future discussions on Iraq in the minutes of the previous week's Cabinet meeting. You wanted to be in a position to engage constructively with this issue. This meant keeping you in the loop from a very early stage, as policy was being formulated, so that your advice could be factored into the development of different options. It would not be helpful for you, or Ministerial colleagues, if you were presented at the last moment with a request for a "yes or no" answer. You always available to discuss these matters with Ministerial colleagues.
3. You had not of course expressed a view on the legality of any proposed use of force - this would depend, in any event, on the circumstances. You had however noted the advisability of Ministers fully exploring the scope for obtaining Security Council authorisation. I recalled (and Mr McKane agreed) that the legal basis for the use of force in 1998 had been very difficult and contentious. Any proposed recourse to the inherent right of self-defence would also be far from straightforward.
4. Mr McKane thanked me for these points which he found very useful and would of course pass them on. In terms of handling, he asked whether the message he should convey was that you were available to discuss this matter informally with Ministerial colleagues in advance of being asked to advise formally. I replied that this was certainly the case. Equally importantly, you needed to be kept closely informed throughout of the policy and factual developments so that you were able to provide informed advice at the appropriate time. In addition, any formal request for your advice should be at a sufficiently early stage in the process to allow Ministers to take account of your views in deciding on policy; any request should of course factor in the views of FCO/MOD and their Legal Advisers. Mr McKane agreed.

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5. Mr McKane went on to explain that consideration of this matter was at an early stage – that had been no decisions as to what should happen. He indicated that President Bush and the Prime Minister were due to meet just before Easter and that no proposals were likely to emerge before then. He noted that there had been discussion of this issue at the previous day's Cabinet (minutes submitted to you separately) and the record of the Prime Minister's summing up had deliberately included a statement that any action should be in accordance with international law. I agreed that this was very helpful.
6. I also spoke, as you suggested, to Michael Wood at the FCO. Mr Wood told me that a policy paper had already been put up to No 10 (but not copied more widely) including an annex on the legal issues prepared by FCO Legal Advisers. Mr Wood was unable to send me a copy of the policy paper itself but was able send me the annex (attached). He noted however that the policy paper had flagged up both the significant legal difficulties which were likely to be presented by any proposal to use force against Iraq and the importance of consulting the Law Officers.
7. As you will see, the attached legal annex reviews the various bases for the use of force. Mr Wood indicated that references had in fact been made to possible reliance on the "revival" argument mentioned in paragraph 4 of my submission of 7 March. However paragraph 4 of the annex underlines the significant difficulties in seeking to rely on that argument now.
8. I underlined to Mr Wood the importance of ensuring that LSLO was fully kept in on the loop – in relation to the development of policy as well as any comments on the legal issues - and asked him to copy us in on any relevant material.

Paul Berman

PAUL BERMAN

11 March 2002

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