

DECLASSIFIED

146334/02 (34)



The Rt Hon the Lord Goldsmith QC

9 BUCKINGHAM GATE
LONDON S

Rt Hon Geoffrey Hoon MP
Secretary of State for Defence
Ministry of Defence
Main Building
Whitehall
London SW1A 2HB

In Geoff

28 March 2002

I write to you following your interview with Jonathan Dimbleby on Sunday in which you made reference to the legal positioning relation to possible military action in retaliation to Iraq. I have now seen the transcript and I have noted that you made a clear statement that we would be perfectly entitled to use force without a specific United Nations resolution and that there is no legal necessity to go back to the United Nations.

As you are aware, the Law Officers' opinion has not been sought on the legality of possible action and I have not therefore offered any views on the legal position. The clarity of your statement and the apparently authoritative way it was produced puts me however in a difficult position.

I would not want to be definitive until I have had the benefit of full submissions from your department as well as FCO and have seen the underlying relevant intelligence and other material, as well as the military and political assessments of senior Ministers and Defence staff. Nonetheless I think you should know that I see considerable difficulties in being satisfied that military action would be justified on the basis of self-defence. In particular I am not aware of the existence of material indicating the existence of an imminent threat from Iraq of the sort which would justify military action without support of a Security Council Chapter VII authorisation.

DECLASSIFIED

NPJ081/001/02	
RECEIVED IN REGISTRY	
16 APR 2002	
DESK OFFICER	DEPT
INDEX	

DECLASSIFIED



I am aware that another potential argument is that the breaches of Security Council Resolutions by Iraq would revive the authorization to use force in Security Council Resolution 678 (1990). I would welcome detailed submissions on that argument, should it be intended to be relied upon, but, in the absence of further action by the Security Council, there could be considerable difficulties in justifying reliance on the original authorization to use force.

In that connection, I note, for example, the advice of 14 November 1997 to the Prime Minister by the then Law Officers (John Morris and Charlie Falconer) who said, in relation to the situation at that time, that:

"Charlie and I remain of the view that, in the circumstances presently prevailing, an essential precondition of the renewed use of force to compel compliance with the ceasefire conditions is that the Security Council has, in whatever language - whether expressly or impliedly - stated that there has been a breach of the cease fire conditions and that the Council considers the breach sufficiently grave to undermine the basis or effective operation of the cease fire".

I would of course be happy to discuss this matter with you and Jack Straw at any time.

I am copying this letter to Jack Straw.

Yours sincerely
JS

DECLASSIFIED