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D/PUS/2/45 (61)

Pete Richards

a Private Secretary
with an Honour
Michael Wood

5 March 2003

Edward Chaplin
Edward Oakes

Both CDS & CDS
have told me they will need explicit legal
authorisation. This would be one way of
achieving this, though the Hon. Sec. is a bit wary
Mr J. S.

I am sure you have this in hand already, but in case it might help, I should like to offer you my thoughts on the procedure for handling the legal basis for any offensive operations to achieve our objectives in Iraq - a subject touching my responsibilities since it is the CDS who will need to be assured that he will be acting on the basis of a lawful instruction from the Prime Minister and Defence Secretary.

It is not possible to be certain about the precise circumstances in which this would arise because we cannot be sure about the UN scenario involved. Theoretically, I expect there are four possibilities - an attempted UNSCR which failed to attract sufficient votes; a UNSCR which would have succeeded but for a veto; a decision not to put a second resolution to a vote; or a second resolution is successfully adopted. Clearly full UN cover is devoutly to be desired - and not just for the military operation itself: handling 'Day After' issues would also be much harder without UN cover, not least because we could be liable to discharge wide-ranging responsibilities towards the people of 'our' area in Iraq under the Geneva Conventions, without the essential assistance of UN or NGO bodies.

My purpose in writing, however, is not to argue the legal merits of the case under one scenario or another, but to flag up the point of process that the call to action from President Bush could come at quite short notice and that we need to be prepared to handle the legalities so we can deliver on our side.

In these circumstances, I suggest that the Prime Minister should be prepared to convene a special meeting of the inner 'war' Cabinet (Defence and Foreign Secretaries, certainly, Chancellor, DPM, Home Secretary possibly, Attorney General, crucially) at which CDS effectively receives his legal and constitutional authorisation. We have already given the Attorney General information and MOD briefings on objectives and rationale, and I understand that John Scarlett is conducting further briefing on the basis of the intelligence material.

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While it is not possible to predict the timing of the event precisely, I would guess that we would need to be able to assemble the key individuals within a timeframe which could conceivably be as early as 10 March (7 March Blix report, 12 March the President's original 'A' Day) in the event, albeit unlikely, that the Americans lost hope in the UN and move fast. Michael Jay may have a better fix on this, but I would guess that more likely timing would be for Security Council action around the weekend of 15/16 March, and therefore for a meeting after that.

I am copying this to ~~Michael Jay~~ and David Manning.

? 10-12

Yours em,

Kevin

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