

DECLASSIFIED

Sr -APS2-S

From: DG OpPol-S
Sent: 11 March 2003 12:00
To: SOFS-Private Office-S
Cc: Hd of MoDLA-S
Subject: URGEnt: For Peter Watkins



QUESTIONS FOR THE
ATTORNEY GEN...

Peter

These bullets may be helpful for the 1300 discussion. Some in the FCO - whether having read the AG's letter or not I don't know - are beginning to believe that the legal base is already OK. It seems to us - and I have discussed this with Martin Hemming - that the position is not yet so clear.

I have not copied this to anyone who does not already have the AG's letter.

I understand you are being copied the FCO submission in respect of the US request for use of Fairford, Diego etc. The key point here will be whether the AG thinks this is legal in present - i.e. pre-vote circumstances. As I understand it, there is no legal distinction between allowing use of Diego etc and actual committal of UK forces.

DECLASSIFIED

DECLASSIFIED

QUESTIONS FOR THE ATTORNEY GENERAL

(his pages below)

- If no 2nd resolution is adopted (for whatever reason), and the PM decides that sufficient evidence exists that Iraq has failed to take the final opportunity to comply offered by 1441, is he satisfied that the currently proposed use of force would be lawful under international law?

[Comment: The AG's minute to the PM is equivocal: he says a 'reasonable case can be made' [for the revival argument] but also says that his view is that 'different considerations apply in different circumstances' [meaning the nature of the Security Council discussions under OP12]. He ends his summary thus: 'If we fail to achieve the adoption of a second resolution, we would need to consider urgently at that stage the strength of our legal case in the light of circumstances at that time'.

- If the answer is yes to the above, can it be assumed that the Attorney will be able to confirm formally at the time that CDS's order to implement the planned operation would be a 'lawful order' (anybody subject to military law commits an offence if he "disobeys any lawful command")

[Comment: Notwithstanding the current uncertainties, when it comes to the crunch, CDS will need to be assured that his orders are lawful. As the Attorney points out in his letter, 'on previous occasions when military action was taken on the basis of a reasonably arguable case, the degree of public and Parliamentary scrutiny of the legal issue was nothing like as great as it is today.]

DECLASSIFIED