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From: Michael Wood
Legal Adviser

Date: 24 January 2003

cc: PS/PUS
Mr Ricketts
Mr Ehrman
Mr Chaplin
Mr Gray

~~PS~~

IRAQ: LEGAL BASIS FOR USE OF FORCE

1. Washington telno 93 (Foreign Secretary's meeting with Vice President) records the Foreign Secretary as stating that:

"HMG had said that it would much prefer a second Resolution. We would be fine if we got one. We would be OK if we tried and failed (à la Kosovo)."

2. The Foreign Secretary will be aware of my advice, ie that a further decision of the Security Council is necessary if the use of force is to be lawful (see, for example, my submission of 6 November 2002, attached). I understand why, for policy reasons, Ministers publicly take the line that if the Council fails to act we need to "reserve our position". But I hope there is no doubt in anyone's mind that without a further decision of the Council, and absent extraordinary circumstances (of which at present there is no sign), the United Kingdom cannot lawfully use force against Iraq to ensure compliance with its SCR WMD obligations. To use force without Security Council authority would amount to the crime of aggression.

3. Kosovo is no precedent. The legal basis for the use of force over Kosovo was, in HMG's view, the right to act to avert an overwhelming humanitarian catastrophe. It was not based on a veto or on any other particular event in the Security Council. On that occasion, no draft was put forward to the Council that would have authorised the use of force, and no such draft was vetoed.

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