

Michael Wood, Legal Adviser

Iraq: Legal Basis for Use of Force

I write in response to your minute to my Private Secretary of 24 January. I note your advice, but I do not accept it.

Let me first make a general point: in the Home Office the many legal issues in which I was involved were principally matters of domestic law. This is by its nature much more detailed and certain than almost any question of international law. We have courts sitting daily to determine outstanding questions. However, even on apparently open and shut issues the originators of the advice offered to me accepted that there could be a different view, honestly and reasonably held. And so it turned out to be time and again.

Such a tentative approach was even more pronounced when there was an issue involving both domestic and international law, most notably in the Pinochet cases. The received wisdom (on the basis of good authority) before these cases was that Heads of State had immunity from prosecution and other process for life, and not just whilst in post, in respect of official conduct whilst a Head of State. This "wisdom" was affirmed by the initial Divisional Court judgement (by Lord Bingham). But the Law Lords had come to a very different range of views. They had to say "yes" or "no" to the lawfulness of my decision, but what was particularly interesting was that there were almost as many opinions as there were Law Lords. They accepted and acknowledged that this was not so certain territory and the received wisdom disappeared.

I am as committed as anyone to international law and its obligations, but it is an uncertain field. There is no international court for resolving such questions in the manner of a domestic court. Moreover, in this case, the issue is an arguable one, capable of honestly and reasonably held differences of view. I hope (for political reasons) we can get a second Resolution. But there is a strong case to be made that UNSCR 687, and everything which has happened since (assuming that Iraq continues not to comply), provides a sufficient basis in international law to justify military action.

I have copied this to the Attorney and Sir David Manning as well as your copy recipients.



29 January 2003

JACK STRAW

cc: PS
PS/PUS
Peter Ricketts
William Ehrman
Edward Chaplin
Head: MED