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PRIME MINISTER

IRAQ

1. I have seen the note of the meeting of 23 July 2002. As the note sets out my views in only summary form, and given the importance of this matter, I thought I should set out my advice more fully.

2. As I said at the meeting, there are generally three possible bases for the use of force:

- (a) self-defence;
- (b) exceptionally, to avert overwhelming humanitarian catastrophe;
- (c) authorisation by UN Security Council resolution.

Regime change may follow from a legitimate use of force but cannot of itself be a justification for military action.

3. Force may be used in self-defence if:

- (a) there is an actual or imminent armed attack;
- (b) use of force is necessary i.e. the only means of preventing an attack;
- (c) the force used is proportionate.

4. The key issue here is whether an attack is imminent. The development of WMD is not in itself sufficient to indicate such imminence. On the basis of the material which I have been shown - and I appreciate that there may be other documentation which I have not seen - there would not be any grounds for regarding an Iraqi use of WMD as imminent.

5. The use of force to avert humanitarian overwhelming catastrophe is exceptional. I know of no reason why it would be an appropriate basis for action here.

6. Force may be used where this is authorised by the UN Security Council acting under Chapter VII of the UN Charter. Such use of force against Iraq was authorised in 1990 by Security Council resolution 678 (1990) which in terms authorised States "to use all necessary means" to enforce Security Council demands that Iraq withdraw from Kuwait. This provided the legal authority for Operation Desert Storm.

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7. Following the liberation of Kuwait, resolution 687(1991) provided for a formal cease-fire, suspending the authorisation for the use of force. At the same time, the Security Council decided "to remain seized of the matter and to take such steps as may be required for the implementation of the present resolution".

8. A new Security Council resolution explicitly authorising the use of force under Chapter VII would plainly be the most secure, and preferred, legal basis for military action in the current situation. The question is whether anything less than this would make military action lawful.

9. My predecessors have advised that it may be argued where the Security Council determines that Iraq has committed a material breach of the ceasefire conditions the authorisation to use force under resolution 687 revives. Such use of force would need to be limited to ensuring Iraqi compliance with the ceasefire conditions. You will recall that Operation Desert Fox was launched in 1998, following the Security Council's determination in resolution 1205 that Iraq's cessation of cooperation with UNSCOM constituted a "flagrant violation" of the ceasefire conditions. But the essential basis was that the Security Council had formed the view that there had been a sufficiently serious violation of the ceasefire conditions.

10. The position was expressed by John Morris and Charles Falconer on 14 November 1997 as follows:

"Charles 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 ceasefire conditions and that the Council considers the breach sufficiently grave to undermine the basis or effective operation of the ceasefire".

However reliance on the "revival" of authorisation under resolution 678 (1990) was controversial when it was invoked in 1998 because resolution 1205 (1998) did not contain any explicit authority to use force.

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11. I believe that it is essential to show at least some determination by the Security Council itself that there has been a sufficiently significant violation of the ceasefire conditions. The authorisation of the use of force under the UN Charter is predicated on the central role of the Security Council. Article 39 of the UN Charter makes clear that it is for the Security Council:

"to determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken to be taken with Articles 41 and 42, to maintain or restore international peace and security".

As noted above, in resolution 687 (1991) (providing for the ceasefire) the Security Council decided to "remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the region".

12. I do not consider it legally possible to rely today on resolution 1205 (1998) since more than three years have passed and many events have occurred (and no doubt more will have occurred by the time any decision is called for) which would need to be addressed by the Security Council.

13. My view therefore is that in the absence of a fresh resolution by the Security Council which would at least involve a new determination of a material and flagrant breach, military action would be unlawful. Even if there were such a resolution, but one which did not explicitly authorise the use of force, it would remain highly debatable whether it legitimised military action - but without it the position is, in my view, clear.

14. The issuing of an ultimatum to Iraq may be helpful in delivering a clear political message to Iraq and ensuring that all possible steps have been taken to ensure Iraqi compliance before force is used. However an ultimatum, whether issued unilaterally or by the Security Council, would not in itself provide a separate legal basis for the use of force.

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15. Finally, various options have been canvassed as to the level of the United Kingdom's participation in military action including the use of United Kingdom bases, the provision of logistical or other support, and active participation in hostilities by UK forces. While there are of course importance distinctions in these levels of participation from a political and military perspective, they would all engage the United Kingdom's responsibility under international law. We would therefore need to be satisfied in all cases as to the legality of the use of force.

16. I am copying this minute to the Foreign Secretary and the Defence Secretary.

A handwritten signature in black ink, appearing to read "I. G. G.", written over a horizontal line.

ATTORNEY GENERAL

30 July 2002