

From: Michael Wood
Legal Adviser

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To: Private Secretary

cc: PS/PUS
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IRAQ

1. Telno 194 to Washington records that the Secretary of State telling Colin Powell that he felt entirely comfortable making a case for military action to deal with Iraq's WMD. He stressed the need for military action to be clearly within international law, even if not explicitly endorsed by UNSCRs.
2. In order for military action to be justifiable under international law, there must be an acceptable legal basis. In the case of military action in relation to Iraq's WMD, this must be either self-defence, or Security Council authorization.
3. As explained in the paper put up by MED headed "Iraq: Legal background", the conditions that have to be met for the exercise of the right of self-defence are: an armed attack (actual or imminent); the necessity of use of force in the absence of any other means to avert the attack; and the proportionality of the use of force to the object of averting the attack. The case is not made out at present in relation to Iraq's WMD.
4. The alternative is reliance on Security Council resolutions authorizing the use of force. As explained in the paper, we would receive no support for reliance on the 1990 resolution authorising the use of force prior to Desert Storm in the absence of a further decision by the Council (whether by Presidential statement or by new resolution) that Iraq was in flagrant violation of its obligations under the ceasefire resolution.
5. I am glad to see that in public the FCO is avoiding being drawn into legal issues. The Attorney General's advice will need to be sought at the appropriate stage before Ministerial decisions on actions or public statements.

M. C. Wood

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