

Declassified

~~CONFIDENTIAL~~

Private  
Office

From: John Grainger  
Legal Counsellor  
Date: 21 March 2002

cc: PS/Mr Bradshaw  
PS/PUS  
Michael Wood  
Peter Ricketts  
Stephen Wright  
Alan Goulty  
William Ehrman  
Heads: UND  
NPD  
News Dept  
PRDD  
MED  
Special Advisers

PS

#### IRAQ: REGIME CHANGE

1. The Secretary of State asked for advice on the provisions of international law relevant to regime change, including on the use of force. The position is as follows.
2. Article 2(7) of the Charter provides that nothing in the Charter shall authorise the UN to intervene in matters which are essentially within the domestic jurisdiction of any state (without prejudice to enforcement measures under Chapter VII). This principle was elaborated by the UN General Assembly unanimously in its Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the UN in 1970. In this so called "Friendly Relations Declaration", the GA proclaimed that the duty not to intervene encompassed a number of principles, including the following:
  - No group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state.
  - Armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic or cultural elements, are violations of international law.

Declassified

~~CONFIDENTIAL~~

- No state shall organise, assist, foment, finance or tolerate subversive or terrorist or armed activities directed towards the violent overthrow of the regime of another state, or interfere in civil strife in another state.

These principles do not affect the provisions of the Charter relating to the maintenance of international peace and security. The International Court of Justice has held, in effect, that the principles set out in the Friendly Relations Declaration amount to principles of customary international law.

3. Consistent with the above principles, any action by HMG to assist any group, internal or external, to overthrow the regime in Iraq by violent means would be contrary to international law. This would be the case even if British forces were not involved (eg the financing of other armed groups which were involved in attempt to change the Iraqi regime by violent means would be unlawful). It also follows from the above that any use of force by HMG with the objective of changing the Iraqi regime would also be unlawful. This also flows from Article 2(4) of the Charter (all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the purposes of the UN). Regime change is not one of the grounds which would justify a use of force (self-defence, UN Security Council authorisation, humanitarian intervention in exceptional circumstances).
4. Conversely, in situations where the use of force is permitted under international law, that use of force is not rendered unlawful simply because it results in a change of regime in the target state. So if military action were taken in Iraq in self-defence, or on the basis of authorisation contained in Security Council resolutions, that action might result in the Iraqi regime being changed, provided that the action was within the criteria for the legitimate exercise of the right of self defence (in particular necessity and proportionality) or provided it was within the authorisation contained in the relevant Security Council resolutions.
5. The Secretary of State may wish to know that Michael Wood and I will meet the State Department Legal Adviser (William J Taft IV) in Washington on 28 March, for an informal exchange on "use of force" and other issues of current concern.



John Grainger  
Legal Counsellor