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THE LEGAL SECRETARIAT TO THE LAW OFFICERS
ATTORNEY GENERAL'S CHAMBERS
9 BUCKINGHAM GATE
LONDON SW1E 6JP

General enquiries 071-828 7155
Direct line 071-828 1386

13 August 1990

Ms J R Binstead
Private Office
Secretary of State for Defence
Main Building
Whitehall
LONDON S W 1

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Dear Ms Binstead

IRAQ/KUWAIT: OIL EMBARGO

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The Attorney General has seen your letter to me of 11 August asking for his views on certain questions from the Secretary of State for Defence. He has also had the benefit of the oral views of FCO Legal Advisers.

The Attorney has already advised that in the absence of a further UN resolution which expressly authorised the use of force in enforcing the oil embargo, measures for that purpose which were taken in response to a request from the legitimate Government of Kuwait could be justified in principle by reference to the inherent right of individual and collective self-defence, as preserved by Article 51 of the Charter.

To act on the request of a State whose flag ship is believed to be infringing the embargo would provide an alternative legal justification for Royal Navy operations. The RN would in effect be acting on behalf of the flag State in enforcing the latter's domestic law.

The Attorney advises that if any request made by a third State were to be acted upon by an RN ship, then the requested degree of force could not be exceeded, and secondly the request would have had to be accompanied by an indemnity against any civil liability arising from such action. Even then



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such an indemnity might prove unreliable when tested in the courts of the foreign jurisdiction.

The Attorney considers that such advantage as may be derived from gaining an alternative legal justification by these means is heavily outweighed by the consequential implication that there is something wrong with the Article 51 justification.

The Attorney does not consider that the position is any different if the flag State concerned was a member of the Security Council.

As a general principle, the Attorney is of the view that it remains highly desirable that in the context of legal justification for our actions we maintain a common footing with the US and our other allies.

I am copying this letter to Charles Powell, Stephen Wall, Simon Whiteley and Sonia Phippard. I am also copying to Frank Berman (FCO Legal Advisers) and to Peter Ellis (MOD Legal Advisers).

Yours sincerely
E S Wilmshurst

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