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From: John Grainger
Legal Counsellor
Date: 31 October 2002

cc: Elizabeth Wilmshurst
William Ehrman
Edward Oakden
Stephen Pattison, UND
Charles Gray, MED
Tim Dowse, NPD

Edward Chaplin

IRAQ: UKMIS TELNO 2078

1. We discussed paragraph 4 of TUR.
2. I mentioned my concerns that the line which was put forward in that paragraph could be misconstrued. I agree that we do not need OP4 in this resolution, in that however it is drafted (ie as in the US original version, or as in the French redraft, or a combination of both) it does not give authority to use force. But nor does the rest of the resolution. The same holds true for OP1, whether drafted in the present or past tense; and even if Iraq does not comply with the resolution, that would also not be enough, in the sense that again we would not thereby have the authority to use force. The effect of this resolution will be that it does not authorise the use of force, either now or in the event of further Iraqi non-compliance, and that it envisages further Council action if force is to be authorised (as recognised in OP12). Equally, the Council failing to take its responsibilities (ie not authorising the use of force when we believe that politically it ought to do so) would not provide a legal basis for the use of force.
3. I understand that there is a need to avoid being drawn on these issues as much as possible in public, or across the negotiating table; but we must be careful not to give the US (or indeed others in Whitehall to whom this telegram is copied) a false impression of our understanding of the legal position.

John Grainger

Tel;
Fax:

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