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Foreign &
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Office

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Iraq: Material Breach

You asked for further advice on material breach. Jonathan Sinclair's letters of 15 and 29 November gave a detailed account of our views.

Our starting point is that a material breach cannot be a minor violation but must be a violation of a provision essential to achieving the object or purpose of the original Gulf War ceasefire. This was reflected in the Foreign Secretary's remarks to the Commons on 25 November when he said that a material breach meant something significant which showed Iraq's intention not to comply. We expect most members of the Security Council will take a similar view.

There are two broad areas of Iraqi behaviour which could amount to a material breach under SCR 1441 (2002): non-compliance with its disarmament obligations and non co-operation with UNMOVIC/IAEA.

Non-Compliance

Iraq would be in material breach if its behaviour demonstrated that they were concealing WMD.

This might take the form of a single incident such as discovery by UNMOVIC/IAEA of WMD material not included in the Iraqi declaration. Or it might be the production of a single piece of evidence (eg yellowcake receipt) for which the Iraqis could not give a satisfactory explanation and which clearly pointed to a concealed WMD programme.

But there would be no need to have a single specific incident. There might be other indications of concealment. This could include a series of unanswered questions identified by UNMOVIC/IAEA which suggested a concealed WMD programme. Or it might be failure by Iraq to demonstrate convincingly that the WMD material identified by UNSCOM in 1998 had been destroyed and properly accounted for.

Non Co-operation

Iraq would be in material breach if its behaviour demonstrated that it had no intention of co-operating fully with UNMOVIC in fulfilling its mandate under SCR 1441 (2002) or other relevant resolutions.

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Again, this might take the form of a single incident such as denying UNMOVIC/IAEA access to a particular site, parts of a site or relevant information and/or personnel. Evidence that Iraq was trying to coach witnesses or smuggle information out of potential sites would also be damning. If the Inspectors came across WMD or related material, they are entitled to remove or destroy it. Attempts by Iraq to impede that would also be non-cooperation and potentially a material breach.

A pattern of lower level incidents could also amount to a demonstration of Iraqi non co-operation sufficiently serious to constitute a material breach. This could include repeated low level harassment of inspectors, a series of relatively short delays at sites before UNMOVIC/IAEA is allowed entry etc. Much would depend on the circumstances and whether the incidents demonstrated deliberate non co-operation rather than inefficiency or confusion.


Declaration

The Foreign Secretary has made clear that in our view OP4 of resolution 1441 (2002) means that an omission in the Iraqi declaration would not, by itself, constitute a material breach. We or UNMOVIC/IAEA would need to produce evidence of non co-operation or non compliance on the lines indicated above.

Security Council Attitude

There are bound to be grey areas over whether Iraqi failures are sufficiently serious to constitute a material breach. There is no agreement in the Council on the precise criteria. We would need in each case to look at the particular circumstances. Moreover, some incidents of non-compliance may be susceptible to remedial action by UNMOVIC/IAEA (eg by destroying weapons etc). In such cases, those seeking to trigger enforcement action would need to explain how such action would be necessary to enforce Iraqi compliance.

I am copying this letter to Sir Jeremy Greenstock (UKMis New York), Sir Christopher Meyer (Washington) and Peter Watkins (MOD).

Yours etc


(Simon McDonald)
Principal Private Secretary

Sir David Manning KCMG
10 Downing Streets

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