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Foreign &
Commonwealth
Office

London SW1A 2AH

29 November 2002

Dear David,

Iraq: 8 December Declaration

You asked for urgent views on handling the Iraqi Declaration due on 8 December, and on the comments by John Wolf recorded in UKMIS New York telno 2257. This letter builds on my earlier one and covers:

- (i) What may be in the declaration;
- (ii) Our immediate response to the declaration;
- (iii) The need for an early Security Council meeting;
- (iv) Analysing the declaration;
- (v) Next steps;
- (vi) Public lines;
- (vii) Our response to Wolf's seven areas (annex A); and
- (viii) A refinement of our thinking on what could comprise a material breach (annex B).

What may be in the declaration

The Iraqis have various options. They could maintain that they have no WMD and defy UNMOVIC/IAEA to prove them wrong, confident that they can conceal the programmes uncovered by UNSCOM in 1998. But our expectation is that they will be more subtle: declaring very large quantities of dual-use items and programmes and reiterating all the past Iraqi declarations to UNSCOM and the IAEA. The result could be a very substantial text, in Arabic, on some highly

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technical subjects. In both cases our assumption is that they will continue to hide programmes from UNMOVIC/IAEA.

El Baradei has suggested that the nuclear declaration is likely to contain information which would be of use to proliferators, and has suggested that it should not be circulated to the Council as a whole. He has identified Syria as of particular concern. However, OP3 of SCR 1441 (2002) requires Iraq to provide their declaration to "UNMOVIC, the IAEA and Council", and any attempt now to restrict circulation of the report is likely to raise suspicions amongst non-P5 members. We assess that Syria would be able to obtain a copy of the declaration directly or indirectly from Iraq if it so wished.

Our immediate response to the declaration

The implication of the US preparations to have a team of translators and analysts standing by to receive the Iraqi Declaration immediately it issues on 8 December is that the Americans may plan to rush out their own analysis (and probable dismissal) of the document in very short order. If Saddam simply denies all his WMD programmes in a short declaration this may be reasonable. But if the declaration is lengthy and technical it will take time to translate and analyse against 10 years of past declarations as well as our own intelligence material. Any immediate US or UK criticism is likely to be regarded as evidence of a determination to pursue military action regardless – particularly as the US are on record as saying that any inaccuracies will constitute material breach. The Iraqis might hope to split the Security Council in this way.

We are also concerned by some practical implications of early public statements rubbishing the declaration. We would be likely to be asked for our hard evidence of false statements (going beyond what we published in the dossier). In the case of intelligence material, it may not be releaseable. In cases where we believe the Iraqis have hidden the purpose of specific WMD facilities, explicit accusations will alert them to potential future visits from the inspectors.

We therefore think that the best approach is likely to delay giving a definitive response until we have been able to assess the content, while expressing a healthy scepticism based on Iraq's past record of deceit. UNMOVIC and the IAEA should ideally lead – not least since they will carry most weight in the Security Council. A public line is set out below – even if we may not be able to hold off giving a considered UK view of at least a generic kind indefinitely.

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Our aim is to get UNMOVIC/IAEA to check (or audit) it as soon as possible through intrusive inspections, interviews, and access to records. Priority activities should be to check the declaration against:

- The information available to UNSCOM in 1998: if Iraq declares nothing they must demonstrate the destruction of material and disbandment of possible WMD programmes identified by UNSCOM.
- Intelligence material provided by US/UK. We have already pointed UNMOVIC towards key sites and provided a list of 6,500 individuals involved in WMD programmes (DIS are working on a top ten list of people). We are co-ordinating our input with the US. This needs to be handled discretely: UNMOVIC/IAEA are willing to visit sites not mentioned by the Iraqis but they will not want to be seen to be taking instructions from the UK/US.
- Information obtained by UNMOVIC/IAEA in Iraq through early interviews with key personnel.
- Information from Iraq's imports under SCR 661, including applications to import goods which were rejected. This should provide some addresses which UNMOVIC might visit.
- Information on other sanctions busting attempts since 1998: SCR 1441 (2002) urges all UN members to provide relevant information.

Where the declaration is inconsistent with intelligence, we would want UNMOVIC/IAEA to be able to discover that inconsistency on the ground before notifying the Council: advance notice of inconsistencies would give Iraq a chance to conceal evidence.

An early Security Council meeting

We should encourage UNMOVIC/IAEA to report quickly to the UNSC on progress in checking the declaration. We should aim for an initial Council meeting – a week to two weeks after receipt of the declaration (say 15 – 20 December) – to adopt a statement urging Blix and El Baradei to check the declaration, and repeating the key tools available to him under SCR 1441 (2002) (unfettered access, including interviews). Unless the declaration has conspicuous shortcomings, this meeting would not, any more than our immediate response, be an occasion for the UK US to expose it. We should stick to the scepticism as set out below. The meeting would demonstrate Council support for Blix and El

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Baradei, and thus keep up the pressure on Iraq. It would also demonstrate that we were living up to our pledge to keep the Council at the centre of Iraq handling.

The initial meeting should also call for a more detailed discussion of the declaration in early January (in advance of the 60-day report on 27 January). The early January meeting would also include an interim discussion of progress on inspections. This would give the US/UK a better opportunity (and more time) to highlight shortcomings.

A Public Line

We need to agree a public line on our expectations for the declaration. In particular, we need to avoid giving the impression that an omission in the declaration would, in itself, constitute a material breach. As the Foreign Secretary made clear in the House yesterday, SCR 1441 (2002) refers to a false statement or omission in the declaration together with a failure to comply with the resolution. Alastair Campbell has asked John Williams for a wider note on handling in the context of a set of public objectives to be agreed with the US. This will include:

Key public points to make:

- Declaration will be a key test of Iraq's willingness to comply. Iraq must declare all its WMD programmes (and other facilities).
- The declaration itself will not be the moment to decide if Saddam is in breach, any more than it can be the moment to decide if he is complying. It must first be tested by the inspectors.
- Experts from UNMOVIC and the IAEA will be analysing the declaration. So will our own;
- We will be drawing any discrepancies or mis-statements we find to the attention of UNMOVIC/IAEA and, if necessary, the Security Council, where the issues will be pursued.
- We have no illusions about Saddam Hussein. With his long record of obstruction and deceit, he is unlikely to make an honest declaration. We want to see his dishonesty demonstrated by inspections, if he makes a false declaration.
- But we will not allow this to become an indefinite game of hide and seek. The last inspection regime listed large stock piles of WMD which must be accounted for openly and honestly. Concealment is not compliance.

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- As the Foreign Secretary told Parliament on 25 November, "material breach means something deliberate and significant which shows Iraq's intention not to comply".

The next step is to discuss all this with the Americans with the aim of tying down US agreement, well in advance of 8 December, to both the tactics and public lines to deploy on and after receipt of the declaration. It would be very helpful if you could talk this over with Condi Rice, cautioning against a rush to judgement. We are asking the Foreign Secretary to do the same with Colin Powell.

...

I am enclosing two annexes:

- A) Our response to Wolf's seven areas against which the US would be measuring the Iraqi declaration.
- B) A refinement of our thinking on what could comprise a material breach.

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

Yours ever,

Jonathan

(Jonathan Sinclair)
Private Secretary

Sir David Manning KCMG
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ANNEX A: Our response to Wolf's Seven Areas

UKMIS New York telno 2257 recorded Wolf's seven areas against which the US would be measuring the Iraqi declaration. Three of these - ballistic missiles, biological programmes and chemical programmes - are statements of the obvious: this is what Iraq has been told to declare (it is odd that Wolf did not add nuclear programmes to the list). Of the rest:

- UAVs reflects our clear intelligence of an Iraqi programme to convert obsolete aircraft (L-29s and perhaps others) to deliver CBW agent. If the Iraqis fail to admit this, we would agree with the Americans that there has been a significant omission;

- the same applies to mobile WMD facilities;

- CBW munitions reflects the outstanding discrepancies we have identified from past Iraqi declarations and UNSCOM reports: our "dossier" detailed our calculation that over 20,000 CW munitions and large quantities of agent remain unaccounted for. The Iraqis need either to declare these stocks, or explain credibly what has happened to them;

- aluminium tubes present a potential problem. The US - including Vice-President Cheney personally - has persistently linked Iraq's attempted procurement of such tubes to a gas centrifuge uranium enrichment programme. We have been much more cautious - our dossier said that there was "no definitive intelligence" that the tubes were intended for a nuclear end-use. We know that IAEA experts are also sceptical. The Iraqis themselves told Blix and El Baradei last week that the tubes were intended for construction of multi-barrel rocket launchers. This may be a breach of other sanctions, but not of the various WMD-related prohibitions on Iraq. If the US intend to pin accusations of a false Iraqi declaration to this issue, we may not be wholly in line. But given the wide range of other issues - all of which are arguably more important than the tubes - this is unlikely to be a serious problem.

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ANNEX B: Possible Material Breach

The Vienna Convention on the Law of Treaties defines a material breach of a treaty as a "violation of a provision essential to the accomplishment of the object or purpose of the treaty". Members of the Council have used this term by analogy, and Blix has made it clear that he will be using a similar definition for the purposes of his reporting under OP11. In that context, the following incidents might, depending on all the circumstances, constitute a material breach under the terms of UNSCR 1441 (2002):

- i) **A single incident of deception sufficiently serious to demonstrate that Iraq has no real intention of complying.**

This could include:

- discovery by UNMOVIC/IAEA of a concealed weapons programme, or of a cache of WMD material not included in the Iraqi declaration.
- production of evidence (eg yellowcake receipt) by any UN member which was not explained in Iraq's declaration, and which clearly points to a concealed weapons programme.

- ii) **Compelling indications (but not necessarily a single incident), indicating evidence of a concealed WMD programme).**

This could include:

- failure to produce evidence to show that the material identified by UNSCOM in 1998 had been destroyed. (Advocates would need to be able to make a distinction between concealment and bad record-keeping.)
- A series of unanswered questions identified by UNMOVIC/IAEA which clearly points to concealment of a weapons programme. Such questions might arise in the context of UNMOVIC/IAEA's interviews or analysis of documents and other data.

- iii) **A single incident demonstrating unwillingness to co-operate with UNMOVIC/IAEA.**

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This could include:

- A decision to harass UNMOVIC/IAEA personnel or to deny them access to a particular site, parts of a site or relevant information/personnel.
- Clear evidence that Iraq had delayed giving UNMOVIC/IAEA access to a site while it smuggled information out or coached potential witnesses.

iv) Other action to constrain UNMOVIC/IAEA's operations in significant ways.

This could include:

- Systematic efforts to deter, obstruct or intimidate the interview process.
- Systematic Iraqi harassment of inspectors, including threatening hostile acts, which jeopardised their ability to fulfil their duties.

v) A pattern of Iraqi obstructions of UNMOVIC/IAEA.

We would not take the view that any short (hours) delay in giving UNMOVIC access to a site would constitute a material breach where UNMOVIC accepted that there were good administrative reasons for it. But repeated incidents of such obstruction, even without evidence of accompanying Iraqi deception, would cumulatively indicate that the Iraqis were not fully co-operating, and thus cast doubt upon whether UNMOVIC would ever be able to implement its mandate properly.

NOTE:

The above list is indicative. Some incidents of non-compliance may be susceptible to remedial action by UNMOVIC/IAEA (eg by destroying weapons, pressing further for answers to questions etc). In such cases, those seeking to trigger enforcement action would need to set out what Iraqi non-compliance enforcement action was designed to correct.

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