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Foreign &
Commonwealth
Office

2 October 2002

London SW1A 2AH

Dear David

Iraq: UNSC Resolution

As you know, no draft Resolution has so far been circulated in New York. The UK and US are focussing in the P5 on the inspection arrangements in Operative Paragraph 5 (OP5). This leaves time for the Prime Minister and President Bush to discuss the most politically difficult point, the consequences of non-compliance, in OP 10.

It is clear, following the UK/US presentations of the draft resolution in Paris and Moscow, that both the French and Russians will insist that the Council must take a second decision before the use of force is authorised.

The Foreign Secretary and Colin Powell have therefore agreed to look at an alternative two-stage approach. The Prime Minister and Foreign Secretary have always seen this as a possible approach to achieving our overriding objective of getting the inspectors in to tackle the disarmament of Iraqi WMD. Colin Powell is also now discussing this with Condi Rice. It would involve a first resolution establishing a tough inspection regime and sending a strong signal of the Council's willingness to authorise the use of force in the event of Iraqi non-cooperation. There would be a private side agreement committing the French/Russians to agree to the adoption of a short second resolution authorising the use of force in the event of clear Iraqi violations.

Such an approach would require an amendment to the current OP10. We would have to drop the prior determination that any violation constituted a material breach of Iraq's obligations under Council resolutions, and the prior authorisation of all necessary means. We might also have to make clear that only a

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serious violation would trigger further Council action (the French and Russians are worried that, as drafted, the use of force could be authorised on a trivial pretext).

I enclose a paper outlining various Options for a new OP 10.

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

Yours etc

Simon

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OPTIONS FOR A NEW OP10

OPTION 1a

[The Council] Decides that failure by Iraq to comply and cooperate in all respects with UNMOVIC and the IAEA as set out in this and other relevant resolutions will exacerbate the material breach referred to in paragraph 1 and will have serious consequences for Iraq.

This is modelled on the formula in UNSCRs 1154 and 1205 and avoids explicitly authorising 'all necessary means'. It is in essence the first option mentioned by Condi Rice (your letter of 1 October). We would interpret it as authorising the use of force without a further decision by the UNSC. We judge that the Russians and French would see it as giving the US a blank cheque and reject it.

OPTION 1b

[The Council] Affirms that Iraq, notwithstanding its repeated failure to comply with previous Resolutions, is under a clear and binding obligation to comply fully and promptly with the terms of the present Resolution which is designed to restore international peace and security to the region.

This sort of formula would reflect the second broad option mentioned by Condi Rice. It would warn that Iraq must comply, without specifying any follow up action in the event of non-compliance. The US would presumably argue that the reference in OP1 to material breach justified the use of force if necessary.

But the French and the Russians will press hard for OP1 to be deleted in any text to avoid it being cited as justification for the unilateral use of force or if a second resolution is not possible. The US will fight hard to keep this provision. But, we should note that, although OP1 determines a material breach, subsequent provisions in the Resolution are designed to address the breach, with the result that, in its current context, OP1 does not in our view automatically authorise enforcement action.

We believe that in preference to these Options we should focus on developing a clear two-stage approach, as in the following Options.

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OPTION 2 a

[The Council] Declares its readiness to decide, in the case of any false statement or omission in the declaration submitted by Iraq to the Council and failure by Iraq at any time to comply and cooperate fully in accordance with the provisions laid out in this resolution, that there has been a further material breach of Iraq's obligations, and that such breach authorises member states (or another formula - see below) to use all necessary means to restore international peace and security in the area.

This is essentially the formula in the current OP10 with the addition of the opening phrase. It would provide clear language on which to base a second resolution. But it might be regarded as too wide-ranging for the French and Russians.

OPTION 2 b

[The Council] Expresses its intention, in the event of failure by Iraq to comply and cooperate in all respects with UNMOVIC and the IAEA as set out in this and other relevant resolutions, to authorise enforcement action to ensure Iraqi compliance.

This commits the Council to taking a second decision, but makes clear its willingness to authorise enforcement. It also envisages enforcement action confined expressly to the specific objective of securing compliance (i.e. avoids any arguments on regime change).

OPTION 3

[The Council] Expresses its readiness, in case of serious failure by Iraq to comply with its obligations as reported by the Executive Chairman or the Director General of IAEA, to consider any measure to secure full compliance with all its relevant relations

This is the original French formula. It is weak: it implies the need to point to a serious failure by Iraq, and offers only that the Council will consider any measure (eg further sanctions). It makes explicit that any further action must be linked to UNMOVIC/IAEA reports. It is not clear whether the US, would accept this linkage. They may fear losing control over the process. They presumably know (as we do) that Blix will not run to the Council over every minor blockage.

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In addition, we have looked at whether Kosovo provides a precedent. Several Council resolutions on Kosovo warned of an impending humanitarian catastrophe, and affirmed that the deterioration in the situation constituted a threat to peace and security in the region. But we argued that military action was justified as an exceptional measure to prevent an overwhelming humanitarian catastrophe, rather than that it was based on any provisions in a resolution.

The Foreign Secretary recommends that the Prime Minister discuss the case for moving to one of these options in order to achieve the goal of a much tougher inspection regime, and putting the onus on the Security Council to pass the necessary second resolution in case of non-compliance or do huge damage to the credibility of the UN system. The Foreign Secretary believes we should start with Option 2a above.

A second Resolution would authorise enforcement action following an Iraqi breach. A tough option, drawing on the language of OP 10, would be for the Council to **'authorise member states to use all necessary means to restore international peace and security.'**

But this is likely to be criticised on the grounds that it is vague about who would carry out enforcement action and what their specific mandate would be. This will need to be discussed in detail with the US. One approach would be to pick up the reference in SCR 687 (para 33) to ceasefire being between Iraq and 'Member

States cooperating with Kuwait'. There will therefore be pressure from other members of the UNSC to ensure that any enforcement action is limited to obtaining compliance with the Council's WMD demands, rather than aimed at securing regime change. We would not regard the language of option 2 a as going this far, but nevertheless others will be concerned about it.

An alternative Option would therefore be on the lines of:

[The Council] authorises the Member States referred to in paragraph 33 of Resolution 687 (1991) to use all necessary means to ensure Iraqi compliance with the terms of (the first Resolution).

It will be important to obtain in advance Russian and French agreement to support a second resolution. This will not be straightforward. The French will argue that we should leave it to Blix to report on non cooperation, and to the Council to judge whether any particular incidents were sufficiently serious to justify enforcement action. There is also the risk that any list of conditions which we agree should

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justify enforcement action will only invite the Iraqis to obstruct UNMOVIC in ways we haven't thought of.

But leaving the judgement to Blix and the Council will always give scope for future wrangling. It would therefore be worth exploring a side agreement based on general principles as follows:

The parties agree that the UNSC should adopt the [second Resolution] where there is information/evidence [reported by UNMOVIC/IAEA] of any Iraqi;

- action/attempts to conceal information related to weapons programmes;**
- action/attempts to conceal other information which UNMOVIC/IAEA deem necessary to fulfil their mandate;**
- action/attempts to obstruct the work of UNMOVIC/IAEA personnel in a manner likely to impede UNMOVIC/IAEA's effectiveness in fulfilling their mandate;**
- failure to cooperate in the establishment of OMV, or in the destruction of any equipment designated by UNMOVIC/IAEA or in any other way required of them under the terms of relevant Resolutions or under terms set out by UNMOVIC/IAEA; (an attempt to capture Iraqi obstruction of preparatory talks etc)**
- failure to meet deadlines set out in relevant Resolutions.**

Although the agreement would presumably be private, the French and Russians would have to signal clearly to Iraq that they were willing to support the use of force in the circumstances.

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