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30 January 2003

*Dear Elizabeth*

**IRAQ: SECOND RESOLUTION**

1. Thank you for your letter of 27 January enclosing draft texts for a possible second resolution. I am writing to record the views of the Attorney General on the options described in your letter. These comments are made without prejudice to the separate question, discussed in Michael Wood's letter to me of 9 December 2002, of whether a second resolution is legally required.
2. The question of whether an "implicit resolution" would be sufficient to authorise the use of force turns on whether it can be argued that the authorisation to use force given in resolution 678 (1990) has revived. Previous Law Officers have advised that it may be argued that where the Security Council determines that Iraq has committed a sufficiently serious breach of the conditions of the ceasefire imposed by resolution 687 (1991), the authorisation in resolution 678 revives. The Attorney agrees with this analysis.
3. The Attorney does not consider that it is essential that the Council's finding of a material breach of the ceasefire conditions should be contained in a resolution as opposed to a Presidential statement. The critical element is that there has been a finding, in whatever form, by the Security Council itself.
4. Taking these considerations into account, the Attorney considers that, having regard to the terms of resolution 1441 and the previous practice of the Council, an implicit resolution in terms such as the draft attached to your letter would be sufficient to revive the authorisation to use force in resolution 678. A Presidential statement in similar terms would also be sufficient. However, it appears that it may be more difficult to achieve such a statement given the need for consensus, so this may be an academic issue.

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5. The Attorney does not intend at this stage to offer any detailed drafting comments on your proposed texts given that it is likely that they will change in discussions with the US. He considers, however, that the key element of any resolution would be a reference back to resolution 1441, particularly paragraphs 12 and 13, to establish that the Council is reacting to a failure by Iraq to take its "final opportunity" and that serious consequences will now follow. The Attorney notes that it may be proposed to issue Iraq with a further ultimatum. Any such ultimatum would need to be expressed in very clear terms so that there is no room for doubt whether or not Iraq had met the Council's demands. Otherwise there is a risk of opening up a debate about whether there is a need for a further determination by the Council that Iraq has failed to comply with the new ultimatum.

6. The Attorney wishes to make clear that a second resolution authorising the use of force, whether explicit or implicit, would not give an unlimited right to use force against Iraq. The scope of the authorisation in such a resolution would have to be interpreted in the context of the objectives of the resolution and resolution 1441 as a whole, namely Iraqi compliance with the disarmament obligations which the Security Council has already determined, in resolution 687 and subsequent relevant resolutions, are the necessary requirements for restoring international peace and security in the area. The Attorney therefore considers that any use of force would have to be directed towards the objective of securing compliance with those disarmament obligations. Moreover, any use of force would have to be limited to what is necessary to enforce those obligations and be a proportionate response to Iraq's breach.

7. The Attorney would be grateful to be kept closely informed of developments and would wish to have the opportunity to comment on any draft which is to be tabled for discussion with other members of the Council.

Yours ever

Cathy

CATHY ADAMS

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