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6 February 2003

*Dear John*

**IRAQ: SECOND RESOLUTION**

1. Thank you for your letter of 4 February seeking further advice on the terms of a possible second resolution. I am writing to record the views of the Attorney General.

2. The Attorney agrees that it is not essential for the second resolution to refer expressly to material breach. Provided the new resolution is linked back sufficiently to resolution 1441 so that it is clear that the Council has concluded that Iraq has failed to take the final opportunity granted by resolution 1441, it should be possible to rely on the finding of material breach in that resolution in order to revive the authorisation to use force in resolution 678.

3. As regards the language proposed in the minute attached to your letter, while it would be preferable to secure a clearer text, the Attorney considers that, if necessary, a minimalist version along the lines attached to your letter (with suitable preambular paragraphs referring to resolution 1441) should be sufficient, subject to the following points.

3. First, the Attorney has some doubts about the generality of the wording "Iraq has still not complied" because not every incident of non-compliance will constitute a further material breach under OP4 of resolution 1441 (see for example statements made by the Foreign Secretary in Parliament). Moreover, the Attorney recalls that Blix has indicated that only serious cases of non-compliance would be reported to the Council under OP11. The language proposed could leave some doubt as to whether or not Iraq's non-compliance was sufficiently serious. However, the Attorney considers that if the proposed paragraph on serious consequences became an operative paragraph, as you suggest, then it could be argued that it would be implicit from this reference

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that the Council considered that Iraq's non-compliance was sufficiently serious to lead to enforcement action.

4. Second, the Attorney considers that a better alternative minimalist version would be for the resolution to state simply that the Council has concluded that Iraq has failed to take the final opportunity offered by resolution 1441. This would indicate that the finding of material breach in OP1 of resolution 1441 is no longer suspended, thus reviving the authorisation to use force in resolution 678. In this case there would be no need for an operative paragraph on "serious consequences" because this should follow from the terms of resolution 1441.

*Yours ever*

*Cathy*

**CATHY ADAMS**

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