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20 February 2003

Dear John

IRAQ: SECOND RESOLUTION

1. Thank you for drawing my attention to UKMIS telno 287 and 288 of 20 February which describe discussions with the US about a possible for text a second resolution. I have shown the new text to the Attorney General and I am writing to record his views.

2. As noted in paragraph 3 of my letter to you dated 6 February, the Attorney considers that it would be preferable for any second resolution to indicate as clearly as possible that the resolution is intended to authorise the use of force. The clearer the resolution, the easier it will be to defend legally reliance on the "revival argument", which, as you know, is in itself controversial. A resolution which included the terms "material breach" and "serious consequences", as in the texts attached to your letter to me of 18 February, would therefore be desirable, as Council practice indicates that these terms are accepted as indicating authorisation for the use of force by means of the revival of resolution 678 (1990). However, the Attorney has previously advised that it is not essential in legal terms for a second resolution to include this language. Therefore, if a resolution in the form contained in UKMIS telno 288 is all that is likely to be negotiable, he considers that it would be sufficient, taken together with resolution 1441 (2002), to revive the authorisation to use force in resolution 678, for the reasons given in paragraph 4 of my letter of 6 February. The Attorney wishes to point out, however, that there is very little, if anything, in the draft text which could be dispensed with as "negotiating fat". The text is therefore very close to our legal bottom line. Officials may wish to bear this in mind when considering negotiating tactics.

3. Finally, the Attorney does not agree with the legal analysis in paragraph 5 of UKMIS telno 287. The Attorney considers that OP4 of resolution 1441 is highly relevant to determining whether or not Iraq has taken the final opportunity granted by OP2 of that resolution. Moreover, PP5 of the draft text

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uses language drawn from OP4 of resolution 1441 to establish the fact that Iraq has failed to comply. In these circumstances, the Attorney does not consider that it is accurate to say that the draft text relies on OP1 of 1441 rather than OP4. However, he does not believe that this affects the conclusions reached in paragraph 2 above.

Yours
Cathy

CATHY ADAMS

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