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From: Michael Wood
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cc: PS/PUS
Mr Ricketts
Hds: MED
UND
Mr MacLeod,
UKMis New York

Private Secretary

IRAQ: SECURITY COUNCIL VOTING

1. You have asked whether it is possible for a permanent member of the Security Council to vote against a resolution while making it clear that this negative vote shall not be regarded as a "veto" ie. shall not have the effect that the proposal before the Security Council fails.
2. The short answer is "no". Such a procedure could not be squared with the requirement of "the *concurring* votes of the permanent members". Under the Charter, a negative vote by a permanent member prevents adoption of a resolution.

Detail

3. Article 27(3) of the Charter of the United Nations provides:

"Decisions of the Security Council on all other matters [ie other than procedural matters] shall be made by an affirmative vote of nine members including the concurring votes of the permanent members;..."

From the very earliest days of the United Nations, the practice developed that if a permanent member abstained, this would not prevent adoption. This practice was endorsed by the International Court of Justice in its 1971 *Namibia* Advisory Opinion, in the following terms:

"22. ...the proceedings of the Security Council extending over a long period supply abundant evidence that presidential rulings and the positions taken by members of the Council, in particular its permanent members, have consistently and uniformly interpreted the practice of voluntary abstention by a permanent member as not constituting a bar to the adoption of resolutions. By abstaining, a member does not signify its objection to the approval of what is being proposed; in order to prevent the adoption of a resolution requiring unanimity of the permanent members, a permanent member has only to cast a

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negative vote. This procedure followed by the Security Council, which has continued unchanged after the amendment in 1965 of Article 27 of the Charter, has been generally accepted by Members of the United Nations and evidences a general practice of that Organization."

4. There is also practice to the effect that the voluntary absence of a permanent member, or its "non-participation" in the vote, have the same effect as an abstention, ie they do not prevent adoption of the resolution. The Soviet Union absented itself from the Council for a number of months in 1950, during which time the Council took important decisions concerning Korea. "Non-participation" is occasionally, especially used where a State does not wish to recognise the propriety of the Council's action.

5. In the mid-90s, Brazil proposed that the Charter be *amended* to enable a permanent member to vote against a proposal without that negative vote counting as a veto. But this proposal was not taken forward.

[signed]

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