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From: Huw Llewellyn, Legal Advisers

Date: 25 February 2004

cc: John Buck

Chanaka Wickremasinghe

Cathy Adams, LSLO

To: Neil Crompton, IPU

SUBJECT: IRAQ: CPA LEGISLATION: NEED FOR UN COORDINATION

1. It has become clear over the last couple of weeks that the CPA is not consulting the UN (SRSG) on "economic reform" and "governance" draft legislation, as is clearly required by Security Council resolution 1483. What should we do about this?
2. Economic reforms and the restructuring of the institutions of government in Iraq have a legal basis in resolution 1483. The resolution requires consultation/coordination with the Special Representative of the Secretary General (SRSG) (and also the IGC and international financial institutions). The Attorney General advised to this effect in relation to the Foreign Investment Order last summer.
3. Until the 19 August bombing of the UN in Baghdad, and the death of Sergio Vierra de Mello, this consultation was taking place. Indeed, de Mello was enthusiastic about economic reforms. But since the departure of the UN from Iraq, we have been trying to establish with the CPA what form consultation has taken. John Evans' enquiries in Baghdad have now made it clear that consultation is not taking place and has probably not happened since the departure of the UN. Our efforts on legal channels to point to the legal requirement for this and to encourage it to happen have got nowhere. The extensive body of CPA legislation dealing with economic reform and governance matters issued since last summer, and the more than 20 further proposed Orders, are therefore of questionable lawfulness. We cannot rule out the risk of claims against the UK (particularly in the economic field).
4. This is an unnecessary risk to run. Consultation should not be painful. We anticipate that the UN would follow the lead of the IFIs.
5. I would recommend that this be taken up with the US at a more senior level or that the UK simply conduct the UN consultation itself. It should not be difficult to send drafts to the office of Ross Mountain in New York.

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