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General enquiries: 020 7271 2400
Direct line: 020
Fax: 020 7271 2434

THE LEGAL SECRETARIAT TO THE LAW OFFICERS
ATTORNEY GENERAL'S CHAMBERS
9 BUCKINGHAM GATE
LONDON SW1E 6JP

Sir David Manning KCMG
10 Downing Street
London
SW1

23 October 2002

Dear Sir David,

IRAQ: ATTORNEY-GENERAL'S MEETING WITH THE PRIME MINISTER, 22 OCTOBER

1. The Attorney has asked me to write concerning the next steps following his meeting with the Prime Minister yesterday afternoon.
2. The Attorney expressed the view at the meeting that, as things stand at present and viewing the text as a whole, a resolution in the form of the latest draft seen by him (dated 19 October) would not on its own authorise military action, notwithstanding the references to "material breach" in OP1 and OP1bis, because the provisions of OP10 make clear that the Council will convene for a further discussion if a breach is reported by the Chairman of UNMOVIC. That implies that it is for the Council to decide at that stage what further measures are to be taken. However, it will not be possible to give a final view on the legal effect of the resolution until it has been adopted. Unless the Council's intent is crystal clear from the text (which seems unlikely), it will have to be assessed in light of all the circumstances, in particular any statements concerning the effect of the resolution made by Council members at the time of its adoption.
3. The Prime Minister asked what the position would be if, following a flagrant violation by Iraq, one of the other P5 members perversely or unreasonably vetoed a second resolution intended to authorise the use of force. The UN Charter provides that all permanent members of the Council must concur in the adoption of resolutions on substantive matters. The scheme of the Charter therefore clearly envisages the possibility of a P5 veto and does not provide that such vetoes may only be exercised on "reasonable grounds". In these circumstances it is not easy to see how there is room for arguing that a condition of reasonableness can be implied as a precondition for the lawful exercise of a veto. However, the Attorney agreed to give further

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consideration to whether there were any circumstances in which a case could be made that a "perverse" veto in the face of a flagrant violation by Iraq would justify the use of force.

5. It will be important for the Attorney to be kept closely informed of developments. In particular, he will need to know what statements are made by other members of the Council on adoption of the first resolution. The Attorney also agreed, at your suggestion, to consider in draft the statement which would be made by Sir Jeremy Greenstock. The attitude of other Council members (and the wider international community) in response to any breach by Iraq will also be critical, ie whether there is general support within the Council and the wider community for military action to enforce the terms of the 1991 ceasefire arrangements as amended by the new resolution.

6. The Attorney asked me to make clear that he is available for a further meeting at any time if the Prime Minister would find this helpful.

Yours sincerely

Cathy Adams

PP DAVID BRUMMELL