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18 October 2002

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Dear Cathy,

#### IRAQ: LATEST TEXT

1. I attach a copy of the latest US resolution on Iraq. The text reflects discussions between the US, UK and France, but has not been agreed by France. My understanding is that discussion will continue in the P5 this afternoon (and perhaps over the weekend) with a view to presenting this text, or a further text closely based on it, to all Security Council members next week.
2. You will note that certain elements of this draft resolution are particularly relevant to the issue of whether it could be regarded as authorising the use of force by Member States against Iraq. OP1 decides that Iraq is still, and has for a number of years been, in material breach under relevant resolutions including resolution 687(1991), in particular through its failure to cooperate with UN inspectors and the IAEA and to complete its disarmament obligations. OP1 bis recalls that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations. OPs2 through 8 then set out actions to be taken by Iraq pursuant to its disarmament obligations, which it must accept within seven days. Under OP9 UNMOVIC and the IAEA are to report immediately to the Council any failure by Iraq to comply with its disarmament obligations, including its obligations regarding inspections, and OP10 decides that the Council will convene immediately upon receipt of such a report in order to consider the situation and the need for full compliance with all relevant resolutions in order to restore international peace and security.
3. The Attorney will be aware from previous correspondence of the argument that a finding by the Council that Iraq is in material breach of its obligations under the cease-fire resolution (687(1991)), together with a warning that Iraq will face serious consequences from continued non-compliance, can have the effect of reviving the authority to use force granted in resolution 678(1990). OP1 does decide that Iraq remains in material breach of its obligations, and OP1 bis recalls previous warnings of serious consequences and were those two paragraphs to stand alone the revival argument might be sustainable.

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4. Nevertheless the resolution must be read as a whole. The subsequent paragraphs indicate that the Council is setting out detailed obligations for Iraq to remedy the violations, rather than authorising member states to take action unilaterally. This view is reinforced by OP10. OP10, while not expressly stating that it is for the Council to take further action to authorise the use of force, decides that the Council will convene immediately to consider a report from UNMOVIC and the need for compliance, which gives a clear indication that further action will be for the Council. Accordingly, it is our view that this resolution cannot be read as permitting the revival argument. We would expect a significant number of Council members to make this interpretation clear on adoption of the resolution, were it to be finalised in terms similar to its current form.
5. We would be grateful for any advice which the Attorney General may wish to give on the resolution as currently drafted and would, as ever, be happy to come over and discuss the matter.

*Yours ever*

*Michael*

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MC Wood

cc: Elizabeth Wilmshurst  
John Grainger  
Peter Ricketts  
William Ehrman  
Edward Chaplin  
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