

IRAQ : RECORD OF ATTORNEY GENERAL'S TELEPHONE CONVERSATION WITH THE FOREIGN SECRETARY, 18 OCTOBER

1. The Attorney explained that he was concerned by reports he had received that the Prime Minister had indicated to President Bush that he would join them in acting without a second Security Council decision if Iraq did not comply with the terms of a resolution in the terms of the latest US draft. In the Attorney's view, OP10 of the current draft would not be sufficient to authorize the use of force without a second resolution. The Attorney had made this clear to Jonathan Powell when he spoke to him on 17 October. JP had indicated that the Attorney should speak to the Prime Minister. JP had also suggested that it would be desirable if no further statements were made publicly about the effect of the draft resolution until the Attorney had seen the PM. The AG had agreed with this suggestion.
2. The Foreign Secretary asked whether new OP1bis made any difference. The AG replied that he had only just received the text of the latest draft and had not had time to study it fully. But his initial view was that OP1bis was not enough. OP10 stated that the Council would meet again and consider the issue in the event of an Iraqi breach. This indicated that it would be for the Council to decide at that stage what further action was to be taken. The AG repeated that he was very troubled by the way things appeared to be going.
3. The Foreign Secretary explained the political dimension. He was convinced that the strategy of standing shoulder to shoulder with the US was right politically. It was also important to obtain a decent Security Council resolution. The Prime Minister had said that the UK would act in accordance with international law. That remained the position. The consequences of acting unlawfully were clearly unacceptable. But it was important not to suggest publicly that we had doubts about the proposed resolution. It would make the prospects of reaching agreement on a resolution remote. The Foreign Secretary had made clear to the PM the Attorney's views of the legal position.
4. The Attorney replied that he understood and endorsed the politics behind the Government's approach. It was obviously important to get Bush on side behind a UN resolution. He was not concerned about what Ministers said externally, up to a point. The Government must, however, not fall into the trap of believing that it was in a position to take action which it could not take. Nor must HMG promise the US Government that it can do things which the Attorney considers to be unlawful. The Foreign Secretary commented that he believed that Colin Powell understood the legal position.
5. The Attorney referred to the written advice he had given the Prime Minister in July. He did not know whether the Foreign Secretary had

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declassified.

seen this. No 10 had asked that circulation be highly restricted because of concerns about leaks. He may now need to send a further note of advice. The Attorney recognised that circumstances may change, but he wished to make clear to the Foreign Secretary that his firm view was that if a resolution were adopted in the terms of the present US draft, and if Blix subsequently reported to the Council that there had been a breach by Iraq, the resolution as it stands would not be sufficient to authorise the use of force without another Security Council resolution.

6. The Foreign Secretary suggested the Attorney might not wish to commit himself on paper until he had seen the Prime Minister. There might be circumstances, for example if Russia vetoed a second resolution in the face of clear evidence that Iraq was flouting the Council's demands, in which force would be justified on the basis of existing resolutions. The French had indicated that they would support such an interpretation. The Attorney agreed that he would not write before he had seen the Prime Minister but stressed that he wished to ensure that his advice was clearly on the record. The Foreign Secretary assured the Attorney that the Prime Minister was fully aware of the Attorney's views. The Foreign Secretary himself had made this clear to the Prime Minister.
7. The Attorney added that he hoped that, if there were any further meetings between the Prime Minister, the Foreign Secretary and others at which decisions on the use of force were to be made, the Foreign Secretary would make clear that the Attorney ought to be present. The Foreign Secretary agreed.

CATHY ADAMS

21 October 2002