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THE LEGAL SECRETARIAT TO THE LAW OFFICERS
ATTORNEY GENERAL'S CHAMBERS

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*Copies to Jonathan to
Sally*

Matthew

*For response on X
in my absence*

General enquiries: 020 7271 2400
Direct line:
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Sir David Manning KCMG
10 Downing Street
London
SW1

① MR

E 29/1

②

Dear Sir David,

IRAQ

David M / 50p / back bone
** not necessary before w/ed*
Sally

28 January 2003
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1. I refer to Sir Jeremy Greenstock's letter of 24 January reporting his discussion with the Attorney General last Thursday.
2. The Attorney found the letter a useful record of Sir Jeremy's arguments, on which the Attorney is reflecting. However, he would like to make clear, in order to avoid any doubt about his position, that the purpose of the meeting was to allow the Attorney to hear the best arguments which could be made in support of the view that resolution 1441 can be interpreted as authorising the use of force, under certain conditions, without a further Council decision. The Attorney was therefore principally in listening mode rather than seeking to argue the case for the alternative point of view.
3. There is one point on which the Attorney would find it helpful to have further information from Sir Jeremy. His arguments rely heavily on the negotiating history of the resolution and the fact that other delegations sought, but failed to obtain, certain language in OPs 4 and 12. There is of course a legal issue, mentioned in the Attorney's draft note, as to how far it is possible to rely as a matter of law on the negotiating history of a resolution as an aid to its interpretation. It appears from the records of the negotiations which the Attorney has seen that discussions on these key paragraphs were conducted among a small group of delegations. In particular, OP12 appears to have been agreed with the French before a draft text was even submitted to the other P5 members. The Attorney would like to know, if possible, to what extent other members of the Council were aware of these bilateral discussions and, therefore, the significance of the language which was agreed upon.

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4. As David Brummell has already mentioned to Jonathan Powell on the telephone, the Attorney would like to take up Sir Jeremy's suggestion that he exchange views with his US counterparts. He would welcome the opportunity to understand more clearly the US analysis of why a further Council decision is unnecessary before reaching a definitive legal view of the resolution himself. He would also like to hear their views on what is necessary in practice to trigger the authorisation to use force. It would therefore be useful to know who it would be best for him to meet.

5. The Attorney is conscious of the fact that the Prime Minister will be meeting President Bush later this week. The Prime Minister is aware of the Attorney's provisional view of the interpretation of the resolution. However, if the Attorney is to consider the arguments of his US counterparts before reaching a definitive view, he will not be in a position to finalise his advice this week. The Attorney would therefore like to know whether you see any difficulty with this and whether the Prime Minister would wish to have the Attorney's considered advice before he departs for the US.

6. I am copying this letter to Sir Jeremy Greenstock. The Attorney would welcome his views on paragraphs 3 and 4. Please let me know if he would prefer to speak to the Attorney on the Brent.

Yours sincerely

Cathy Adams

CATHY ADAMS