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**LETTER TO MEMBERS OF  
THE UNITED NATIONS SECURITY COUNCIL**

October 8, 2002

Dear Ambassador,

The Security Council has a responsibility to deal with threats to peace and security posed by the existence, proliferation, and potential use of weapons of mass destruction. As the Security Council addresses possible weapons of mass destruction programs in Iraq, we urge that as a member of the Council your government:

- 1) **refrain from supporting any resolution that permits, or can be read to permit, *individual* member states to determine whether Iraqi non-compliance with disarmament requirements justifies use of force – this is a decision for the Security Council alone;**
- 1) **ensure that any determination of Iraqi continuing non-compliance with disarmament requirements be made by the Security Council only after a reasonable period of time has been granted to Iraq to come into compliance, including time for inspections and data analysis;**
- 1) **in the event of a Security Council determination of Iraqi continuing non-compliance, examine very closely, *as a separate matter*, whether use of force under authority of the Security Council is consistent with the UN Charter and is otherwise wise and moral;**
- 1) **ensure consistency in Security Council actions regarding disarmament and non-proliferation obligations as to weapons of mass destruction on a regional and global basis, including by supporting establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery as referred to in Security Council resolution 1284 (1999) and other resolutions.**

In 1990, acting under Chapter VII, the Security Council by Resolution 678 authorized all "necessary means" to eject Iraq from Kuwait and to restore international peace and security in the area. Following the formal cease-fire recorded by Resolution 687 in 1991, there has been no Security Council resolution that has clearly and specifically authorized the use of force to enforce the terms of the cease-fire, including ending Iraq's missile and chemical, biological, and nuclear weapons programs. Such a resolution is required for renewed use of force. *It is the Security Council that has assumed responsibility regarding Iraq, and it must be the Security Council that decides, unambiguously and*

*specifically, that force is required for enforcement of its requirements.* Past Security Council resolutions authorizing use of force employed language universally understood to do so, regarding Korea in 1950 (prior to General Assembly action, Security Council Resolution 83 recommended that UN member states provide "such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area"), and Kuwait, Somalia, Haiti, Rwanda, and Bosnia in the 1990s ("all necessary means" or "all measures necessary").

In setting policy towards Iraq, it is fundamental that the UN Charter, Article 2(3) and (4), gives priority to the peaceful settlement of disputes and the non-use of force. Article 2 (4) barring the threat or use of force has been described by the International Court of Justice as a peremptory norm of international law, from which states cannot derogate. (*Nicaragua v United States*, [1986] ICJ Reports 14, at para. 190) *Given the values embedded in the Charter, despite its past record, Iraq must be afforded the chance to act on its present declared willingness to comply with Security Council requirements.* The burden is on those who claim use of force is justified. Again, given those values, if use of force is decided upon, it must be done so by the Security Council acting collectively, clearly and unambiguously. More broadly, in a political environment in which fundamental UN Charter principles of peaceful resolution of disputes and non-use of force are emphasized, and in which the Security Council pays due attention to its wider regional and global responsibilities regarding disarmament and non-proliferation of weapons of mass destruction, including in the Middle East, it is more likely that an enduring disarmament of weapons of mass destruction in Iraq will be accomplished.

*If and when, after Iraq has been afforded a reasonable period of time for compliance, the Security Council determines that Iraq is in continuing non-compliance, whether force is justified under the Charter and is otherwise advisable is a separate issue, which deserves very careful consideration.* The Security Council has never authorized force based on a *potential*, non-imminent threat of violence. All past authorizations have been in response to *actual* invasion, large-scale violence, or humanitarian emergency (Korea, Kuwait, Somalia, Haiti, Rwanda, and Bosnia). In determining whether a potential threat justifies an armed response, it is relevant that the only other basis for use of force under the Charter, Article 51, applies only "*if an armed attack occurs*" (emphasis added). There is no precedent in international law for use of force as a *preventive* measure in response to a *potential* threat of violence. *Preventive war by states is not countenanced by the Charter or by international law predating the Charter, nor should it be a tool utilized by the Security Council.* Indeed, it appears contrary to the Charter, given the Charter's emphasis on the peaceful resolution of disputes and the non-use of force. Further, if the Security Council authorizes preventive war, that will undermine the Charter restraints on states' resort to force, including preventive war.

It is also of course true, as you are well aware, that a country's defiance of Security Council resolutions or of the will of the international community does not automatically trigger Security Council use of force. The list is a long one. Illustratively, South Africa re-

sisted UN condemnation of apartheid over decades, and had a nuclear weapons arsenal. India and Pakistan have failed to comply with a recent Security Council resolution demanding that they end their nuclear weapons programs. India for decades has ignored a Security Council resolution calling for a UN-supervised plebiscite in Kashmir. Israel is in violation of several Security Council resolutions, and possesses nuclear weapons. The example of South Africa shows that a long-term strategy of international pressure can be effective. It appears reasonably possible that it could be effective with respect to Iraq as well, especially in combination with progress on other Middle East issues well known to you.

Enclosed is a legal memo that, while aimed primarily at U.S. policymakers, provides additional analysis and sources supporting the above points. Please contact us should you wish to discuss these matters.

Very truly yours,

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