



THE UNIVERSITY OF
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The Honourable Philip Ruddock MP
Commonwealth Attorney-General

13 April 2006

Dear Attorney-General

We are Australian lawyers and academics who believe that the Attorney General should empower the Cole Commission to consider and report on whether the Australian government breached any Australian or international laws in relation to the United Nations' Oil-for-Food program.

We do not prejudge the legal liability of any Australian government minister, official or department. But evidence before the Commission raises serious questions about the conduct and legal responsibilities of the Australian government. A fundamental principle of the rule of law in any country is that government officials are bound by the law and are accountable for violating it. This includes even the highest government ministers and diplomats serving overseas.

The government argues that the existing terms of reference are wide enough because the Commission can make findings about whether ministers and officials knew of AWB's kickbacks to Iraq. However, the Commission can only use these findings to report on breaches of the law by AWB or other companies. The Commission is not empowered to determine possible unlawful conduct by the Australian government.

The government also says that the Commissioner can request expanded terms of reference. This places the Commissioner in the unenviable position of having to determine his own jurisdiction on sensitive political matters, not to mention asking the government for power to investigate the government itself.

In any event, the Commissioner has unequivocally stated that he will not request such an expansion, because investigating governmental misconduct would be a significant change to the inquiry's current terms of reference. Any amendment must, therefore, be initiated at the political level, yet the government has so far refused to do so.

In the first place, the Commission should be allowed to investigate whether the government breached Australian law. Under the Customs Regulations, the Minister for Foreign Affairs could not authorise exports to Iraq unless satisfied that 'the exportation will not infringe the international obligations of Australia'. The relevant obligations were the UN resolutions requiring all countries to implement sanctions against Iraq.

The incorporation of these obligations into Australian law imposed a duty on the Minister to both consider them and to obtain sufficient evidence to satisfy himself that those legal standards were being met. This may have required consideration of the various warnings from credible sources that Australian companies were breaching the sanctions. The Minister's duties could not be satisfied, for example, by the Minister simply closing his eyes to sanctions breaches, or relying on UN opinions without independent verification.

Second, the Commission should be allowed to investigate breaches of international law by Australia. In particular, the Commission should consider what was required of Australia in implementing the UN resolutions and supervising and regulating Australian companies trading with Iraq. It is certainly arguable that Australia was required to be more than a mere 'post box' for the contracts of the Australian companies involved.

Until the Commission is given expanded powers, Australia's role in any secret and unlawful financing of Saddam Hussein's Iraq will remain unclear.

Yours sincerely

on behalf of

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