

NBR 122/009/01

RECEIVED

07 FEB 2001

DESK INDEX PA ACTION TAKEN

REGISTRY

DECLASSIFIED

6859030

(4)

As discussed

PA NPES

1M048

From: Alan Goulty,  
Director MENA  
Date: 1 February 2001

cc: PS/Mr Wilson  
Dr Jones Parry  
Legal Adviser  
Mr Wright  
Mr Westmacott  
Mr Ehrman  
Mr Wilkinson  
Mr Williams, NewsD  
Mr Patey, MED  
Mr McKane, Cabinet  
Office  
Mr Webb, MOD

Responsible

1/2

Amite 2/10

PS/PUS

PS

Amite

Follow

1/2

IRAQ: SOUTHERN NO FLY ZONE

# ISSUE

- A 1. The Attorney General has said he approves the target of a proposed US/UK attack north of the southern No Fly Zone
- B but only on the basis
- C of a specific assurance from the FCO, which we cannot honestly give. The JIC assessment of 13 December 2000 reflects our views, but the Attorney General regards this as insufficient. Our failure to join in this attack would risk a major disagreement with the US on the eve of the Foreign Secretary's visit to Washington, and increase the threat to our pilots in the SNFZ.
2. The Attorney General's position on the target reflects his long-standing concerns about the continued legality of the SNFZ, and his wish to revisit this question as soon as possible.

# TIMING

3. Urgent - the plan is to carry out the operation early next week.

# PREFERRED OPTION

4. I recommend that the Foreign Secretary speak to the Defence Secretary with the aim of a joint approach to the Attorney General to persuade him to approve this target on political and military grounds, without prejudice to his

1

DECLASSIFIED

10

SECRET  
DECLASSIFIED

urgent re-examination of the legal basis of the SNFZ. Legal Advisers concur.

BACKGROUND AND ARGUMENT

5. The proposed attack would be the first major joint operation since the Bush Administration took office. Failure to take part would send the wrong signal, particularly so close to the Foreign Secretary's visit to Washington and his (possibly difficult) talks with Colin Powell on policy towards Iraq. No 10 are aware of the problem and have expressed concern. Unless and until ministers decide to end the SNFZ we must allow our pilots to act in self-defence. The Attorney General now accepts the legitimacy of the proposed target: his doubts relate to the legality of the SNFZ as such. The immediate need is to persuade him to allow the attack, now planned for early next week, to go ahead. The Legal Adviser has informally drawn his officials' attention to the political considerations, and they will be briefing him on them.

6. We need then to address the Attorney General's concerns about the legality of the SNFZ. An adverse legal opinion would threaten our relations with both the Saudis and Kuwaitis, both of whom see the SNFZ as essential to their own security, as well as with the US. It could also lead to increased pressure on us over the northern NFZ, for which the legal justification on humanitarian grounds is clearer.

D 7. We gave the Attorney General a year ago in respect of both NFZs the assurance he now asks us to repeat. "Without the No Fly Zones, we can be confident that further repression would result, on a scale comparable to that which led to a grave humanitarian crisis and the establishment of the zones in 1991 and 1992." There has been no relevant change in the situation on the ground and we have no doubt that the assurance remains entirely valid in respect of the northern NFZ. On the southern NFZ FCO officials cannot now go further than the JIC paper, commissioned by LSLO because of the Attorney-General's concerns, which well describes the issues, including the difficulty of reading Saddam's intentions. But it does not provide a clear assessment of the likelihood of a humanitarian crisis if the SNFZ were ended. This is what the Attorney General needs.

✓ 8. There remain differences of view between Whitehall departments at official level and a collective view is clearly desirable. We have, therefore, asked the Cabinet Office to convene urgently the official committee on Iraq to review what assessment might properly be given to the Attorney General. We are also looking urgently at the possibility of developing an argument on grounds of self-defence (of Saudi Arabia and Kuwait) for the SNFZ. This would have the great attraction of

SECRET  
DECLASSIFIED

aligning our legal argument with the main current benefit of the SNFZ; though on the basis of what we have so far it seems clear that the legal requirements for the exercise of the right of self-defence cannot be established.

PUBLIC PRESENTATION

9. We need to be able to continue to say that we are satisfied of the legality of the NFZs and of the actions we take to defend our pilots who enforce them. The MoD will prepare press lines for use in the event the proposed target is attacked.

RESOURCE IMPLICATIONS

10. None.

*Alan Goulty*

Alan Goulty

1. I think the Attorney, though he has decided not to press his concerns about the particular target, is probably unhappy that he has been pressed on it so often. It is a pity that Rod didn't leave it to the USAF, and find another one for the RAF. X

2. I think the Dept, and the legal advisers, are right, on the wider issue of the legality of the SNFZ, that we cannot allow the Attorney to put in our mouths a "categorical assurance" (his para 4) about which we can't honestly be categorical. But he knows what he's doing: his motive is his concern to secure a real review of the basis of the SNFZ. So I agree with the proposal for a Horn/Cook approach, from which he would get an undertaking that such a review would

DECLASSIFIED

would start further, then would it exchange  
get the removal of the impossible condition on the  
A-g's authorization of the target, and the soft  
would get the removal of the risk that, just  
as he has his first meeting with Powell, politico-  
military Washington believes the UK has gone  
soft on Iraq.

John

122.

DECLASSIFIED