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Tom McKane

Defence and Overseas Secretariat

TO6649

28 June 2001

David Brummell
Legal Secretary
The Legal Secretariat to the Law Officers
Attorney General's Chambers
9 Buckingham Gate SW1

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Dear David,

IRAQ

Your letter of 12 February recorded Lord Williams' conclusion that on balance it was still possible to argue that the maintenance of the Iraqi no fly zones was justified as a necessary and proportionate measure to prevent a humanitarian crisis. You stressed the importance the Attorney General attached to keeping the lawfulness of coalition actions under continuous review and asked for an update on the humanitarian situation by the end of May. We subsequently agreed (Paul Berman's letter of 15 May) to postpone this to the end of June.

2. You will recall the assessment set out in my letter of 8 February, which was endorsed by the Defence Secretary and the then Foreign Secretary. No evidence has come to light that would entail a revision of that assessment, but I thought it would be helpful to update the points made in that letter:

- Although we cannot predict with absolute certainty how Saddam would react in the event of a cessation of coalition operations in the southern no fly zone, our judgement remains that he would revert to the use of air power against the Shia population, just as he did in 1991 and 1992.

, indicating that
Saddam is constrained from using helicopter gunships to support counter-insurgency operations in the north and the south precisely because of the no fly zones.

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- Whilst unnecessary in terms of Saddam's current objectives, more effective persecution of the Shia would add to their misery and would risk provoking another cycle of uprising and brutal repression. A grave humanitarian crisis would result. The military advice remains that, without imposing grave risks to coalition aircrew, it would take two weeks for the coalition to regain control of Iraqi airspace sufficient to halt Iraq's use of air power.
- There is no reason to call into question the JIC judgement that abolition of the northern no fly zone would be likely to lead to a refugee crisis at least comparable to 1996 (nor that, in the event that Saddam faced widespread opposition to an assault to recover the north, a humanitarian refugee crisis similar to that in 1991 would follow).
- Our judgement in February was that a decision to move away from patrolling the south would make it more difficult to sustain the necessary political support for the northern no fly zone. That remains our view.
- Overall, our continued collective judgement is that there remains an unacceptably high risk that, in the event that we ceased patrolling the southern no fly zone, extreme humanitarian distress 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.

3. Your letter recorded also Lord Williams' view that – in order to assist his assessment of the continued lawfulness of coalition operations in the no fly zones – we should continue to seek to establish whether alternative methods of achieving our objectives could be identified. As you know, the MOD has conducted a comprehensive review to inform the policy dialogue we have been engaged in with the new US Administration. After our own careful and detailed scrutiny, no other arrangements that would obviate the need to conduct regular patrols over Iraqi territory have been identified. Although this aspect of the US policy review has not yet reached a formal conclusion, we understand that the US military advice is the same as ours.

4. Finally, Lord Williams stressed that – in conducting operations in self-defence against Iraqi air defence targets – every effort must be made to avoid incidental loss of civilian life, injury to civilians and damage to civilian objects. This aspect of the law governing the conduct of military

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operations remains a key concern for coalition commanders in the planning and implementation of attacks on such targets. We know, however, that Saddam Hussain has devoted considerable resources to promoting the notion that the coalition is engaged in an unprovoked bombing campaign against Iraq and to fabricate claims of civilian casualties. Such allegations need to be seen in this light. This does not mean that we have become complacent. All Iraqi allegations are painstakingly examined. Although it remains impossible to make any informed or reliable estimate of the number of people (whether civilian or military) who have been killed or injured as a result of coalition action in self-defence, we are confident that most Iraqi claims are greatly exaggerated.

5. I am copying this letter to John Sawers (No10), Simon McDonald (FCO), Julian Miller (MOD), Sir John Kerr, Alan Goulty, William Patey, Michael Wood and Iain MacLeod (FCO), Simon Webb, Ben Palmer and Martin Hemming (MOD), and to Richard Abel, Robert Cooper, Peter Ricketts and Jon Day (Cabinet Office).

Yours Sincerely,
Tom McKane

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