



LEGAL SECRETARY

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THE LEGAL SECRETARIAT TO THE LAW OFFICERS  
ATTORNEY GENERAL'S CHAMBERS  
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LONDON SW1E 6JP

22380) copy to: David Manning 4/9

Tom McKane  
Defence and Overseas Secretariat  
Cabinet Office  
70 Whitehall  
London SW1A 2AS

You need to be aware  
of this correspondence.  
I've got the matter in  
hand - I'll probably ask the  
MOD to produce a draft  
reply for discussion with  
24 August, 2001 then + FRO -  
but I may need to ask  
you to weigh in if  
the Attorney is unconvinced  
by our arguments.

John McKane

Dear Tom,

IRAQ

I refer to my earlier letter to you of 25 July 2001 in which I confirmed that the Attorney General is planning to consider in the near future the issues relating to the legal basis for the conduct of operations in the NFZs, having regard in particular to your update of 28 June.

3/9  
is also  
copied to  
John Scarlett  
Julian Miller

The Attorney has asked me to let you and colleagues know that he is planning to review the legal justification for the maintenance of the NFZs following his return from overseas in September. In this context he has asked whether there is any additional information which you or others may wish to draw to his attention and whether there any developments of which he should be aware subsequent to your update of 28 June.

There are, in addition, some specific points on which it would be helpful to have clarification.

Your letters of 28 June and 8 February 2001 state 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. It would be helpful if you could expand on this assessment and in particular the reference to "necessary political support".

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Your letters also state that "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". Is it possible to the expand on the assessment of the *likelihood* of such a crisis occurring?

As recorded in my letter to you of 12 February 2001, the Law Officers have previously accepted that a respectable legal argument that force is justified on grounds of overwhelming humanitarian necessity can be made if, *inter alia*, it is objectively clear that there is, in all the circumstances, no practicable alternative to the use of force if lives are to be saved.

In this connection, you refer at paragraph 3 of your letter to MOD's comprehensive review of the Zones and the conclusion that no other arrangements have been identified that would obviate the need to conduct regular patrols over Iraqi territory. I presume that the comprehensive review includes the Future Military Options paper attached to Simon Webb's letter of 12 January. It would however be helpful if you could direct us to the precise materials and/or passages on which these conclusions are based.

You will also recall that the previous Attorney (paragraph 10 of my letter of 12 February) referred to the MOD analysis, cited in William Patey's letter of 29 January 2001, that "there may be scope for adjustment" in relation to the Northern Zone. If this remains the case, does this affect the assessment of whether there are practicable alternatives to patrolling the Northern No Fly Zone if lives are to be saved?

I am copying this letter to Simon Webb and Martin Hemming (MOD); William Patey and Michael Wood (MOD); and Michael Tatham (No 10).

FW

Yours ever,

David Brummell

DAVID BRUMMELL