

23 September 2002

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Foreign &
Commonwealth
Office

London SW1A 2AH

Dear Mr. [unclear],

Iraq: INDICT

You requested a short brief on state of play on UK support for INDICT, for use by the Prime Minister during tomorrow's Parliamentary Committee meeting.

INDICT is an NGO chaired by Ann Clwyd MP which seeks to bring key members of the Iraqi regime, including Saddam Hussein, to trial for war crimes. INDICT submitted witness statements and documentary material to the Attorney General, seeking his consent to criminal proceedings against Saddam Hussein and Tariq Aziz for hostage taking. The material concerned events in 1990 surrounding the holding of British and other nationals in Kuwait and Iraq, after the invasion of Kuwait (referred to at the time as "human shields").

The Attorney General issued a statement on 23 April 2001. He concluded that, as serving Head of the State of Iraq, Saddam Hussein would be entitled to assert immunity from prosecution and that in any event the evidence as presented was not sufficient to provide a realistic prospect of a conviction. In the case of Tariq Aziz, too, the Attorney General was not satisfied that the evidence provided a realistic prospect of a conviction; and he thus did not provide a view on immunity. The evidence submitted to him by INDICT was referred to the Metropolitan Police, who were invited to consider whether to start an investigation. Given the Attorney General's views on the chances of success, the Metropolitan Police are unwilling to start what would be an expensive and time-consuming process. We understand that Ann Clwyd has been briefed on these conclusions both by the Attorney General's office and by the Metropolitan Police.


The question of prosecuting Saddam and other key figures for crimes against humanity has also been raised. Not all the crimes alleged against the Iraqi regime could be prosecuted in the UK. For example, genocide can be prosecuted in the UK only if committed in the UK or if committed abroad by a UK national or resident. Nor may criminal prosecutions be brought against current heads of state or senior ministers such as foreign ministers. In respect of offences where there is jurisdiction, the issuing of indictments would depend on the evidence in each case, and would be a matter for the prosecuting authorities and law officers.

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The UK would also support international moves to prosecute key members of the Iraqi regime. But the ICC does not have jurisdiction over crimes committed before its Statute entered into force (1 July 2002). The US have on occasions spoken to other Security Council members about establishing a UN tribunal for Iraq, like the ICTR/Y, but there has been little support for the idea.

Yours sincerely,


(Mark Sedwill)
Private Secretary

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