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From: Huw Llewellyn, Legal Advisers
Date: 18 March 2003

cc: Laurie Bristow, IPU
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To:
Iraq Policy Unit

SUBJECT: POTENTIAL HUMANITARIAN AND RECONSTRUCTION ACTIVITIES IN IRAQ

1. You asked for some more detail on the matters listed at paragraph 9 of my minute of 17 March: reform of the judiciary, security sector and police reform, reform of government and its institutions, the education system and the banking system.
2. It is difficult to be specific about what is and what is not acceptable under the rules governing military occupation in the absence of any specific plans. But here are some more general observations.

The administration of justice

3. The administration of justice must remain in the hands of the local courts, administration and police except to the extent that they constitute a threat to the security of the occupying forces or an obstacle to the application of humanitarian law (Geneva Convention IV, Article 64). Where possible, existing personnel involved in the administration of justice should remain in their positions. The occupying power may establish its own courts or tribunals where the existing ones are unable or unwilling to carry out their duties.
4. During the period of military occupation, there may well be a need for some minimum changes to the administration of justice. The idea in principle is to leave the Iraqi criminal code in place, but to supplement it with a code which the forces will apply for the maintenance of security and public order. It may be necessary to remove certain individuals from the justice system insofar as they are a threat to security or public order. These are

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things that will need to be assessed by the occupying powers on the spot. But sweeping institutional or personnel changes which are considered desirable rather than necessary on the above grounds would go beyond the rights of occupying powers.

Reform of government and its institutions

5. The occupying powers do not become the Government of Iraq, but exercise provisional and temporary control. The local administration must be given the opportunity to carry on its activities, subject to any changes which are necessary for the reasons set out above.

6. It follows that the occupying powers will need to make some form of rational assessment of the extent to which Iraqi governmental structures and the administration of the country can be allowed to continue. Sweeping institutional and personnel changes going beyond what is necessary would not be permitted.

The education system

7. Schools and other educational establishments must be permitted to carry on their ordinary activities and the local education authorities must co-operate to that end (Article 50, Geneva Convention IV). Humanitarian assistance to improve facilities and equipment for schools would of course be compatible with these provisions.

8. I do not know whether there are any plans to change the curriculum that Iraqi schools and other educational establishments follow, nor whether there are plans for institutional changes. Any such proposals would be subject to the requirements of necessity set out above and would have to be based on an assessment of the current Iraqi education system.

The economy and banking

9. The Hague Regulations concentrate on limiting the occupying powers' ability to require the occupied country to bear the expenses of the occupation and to restrict its commercial dealings. But the issue in Iraq will be to what extent the economy and the financial and other relevant institutions can be regenerated.

10. There are no specific provisions of the Hague Regulations or Geneva Convention IV dealing with such issues, but they fall to be considered against the same principles set out above. The occupying powers should, as far as possible, allow the Iraqi administration, financial institutions and structures to function on their own. Sweeping democratic and other institutional changes aimed at turning Iraq into a free market economy would go beyond the powers of the occupying forces and require Security Council authorisation.

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11. The oil industry will of course be a major factor in the Iraqi economy. The oil for food programme will need to continue for the foreseeable future, and that is being handled by way of Security Council Resolutions as you know.

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