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Date: 17 March 2003

From: Huw Llewellyn, Legal Advisers

cc: Laurie Bristow, IPU
Elizabeth Wilmshurst
John Grainger
Gavin Hood

To: , IPU

**SUBJECT: POTENTIAL HUMANITARIAN AND RECONSTRUCTION
ACTIVITIES IN IRAQ**

1. Thank you for your minute of 12 March. You ask about the compatibility with the rules of military occupation of 3 possible categories of DfID/Dfid funded action in post-conflict Iraq. I agree with your conclusions.
2. The rights and obligations of the coalition forces during the period of military occupation are set out in Regulations annexed to Hague Convention IV of 1907 (The Hague Regulations), and in Section III of Geneva Convention IV of 1949.

Provision of basic humanitarian assistance

3. Under Article 56 of Geneva Convention IV, the occupying power has a responsibility for the medical care of the population. It must ensure, so far as possible, that existing hospitals, medical, public health and hygiene services are continued. It has a special responsibility to prevent the spread of disease. The occupying power must take account of the moral and ethical standards of the population.
4. Under Article 55 of Geneva Convention IV, the occupying power must ensure, to the fullest extent possible, that the civilian population is supplied with food, medical supplies, clothing, bedding, means of shelter and other supplies essential to their survival. If the resources of the occupied territory are insufficient these items must be supplied by the occupying power.
5. Under Article 58 of Geneva Convention IV if the whole or part of the population suffers from a shortage of supplies, the occupying power must permit relief schemes for the provision of food, medical supplies and clothing, permit the free passage of such relief supplies and guarantee their protection.

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6. Clearly therefore, there is no incompatibility between the rules of military occupation and the provision of basic humanitarian assistance post-conflict regardless of Security Council authorisation. But thought is being given to how the existing sanctions regime and oil for food programme can best be adjusted (by Security Council resolution) to enable humanitarian assistance to reach the Iraqi people as quickly and effectively as possible.

Rehabilitation

7. As I understand it, this means essential repair work, (for example to schools, hospitals, government buildings, roads). It is closely connected with basic humanitarian assistance.

8. Although there is no express mention of this sort of repair work in The Hague Regulations and Geneva Convention IV, I see no incompatibility with the obligations of the occupying powers. Article 55 of the Hague Regulations requires the occupying power to "safeguard" the capital of public buildings etc. Repair work would be consistent with that obligation. It is work which is in furtherance of the basic humanitarian effort, and there would be no need for Security Council authorisation.

Reconstruction

9. You list under this heading matters such as reform of the judiciary, security sector and police reform, demobilisation, reform of government and its institutions, the education system, and the banking system. I take it that it might also include the building of new roads and other structures to assist the regeneration of Iraq.

10. Construction of entirely new roads and buildings may in some circumstances be permissible - where this is necessary for the relief effort or, for example, for maintaining security or public order. As you know, the scope for action on the other issues during a military occupation is limited. Any actions going beyond these limits would require Security Council authorisation.

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