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THE LEGAL SECRETARIAT TO THE LAW OFFICERS
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LEGAL SECRETARY

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

22 January, 2001

Dear Tom,

IRAQ

1. I refer to your letter of 17 January 2001 to Alan Goulty concerning the meeting held at the Cabinet Office on that day. I am concerned that the second sentence of paragraph 7(d) does not accurately reflect our position.
2. As you indicate, the Attorney General requested an updated assessment of the humanitarian situation in the north and south of Iraq having regard to the need to keep under review the lawfulness of UK and US activities in the NFZs. This relates of course to the lawfulness of current operations in the NFZs. The lawfulness of any options to be discussed with the US Government would need to be considered once these options had been fully worked up.
3. However I note that it has been suggested that, having regard to the current military and political context, on-going operations in the Southern NFZ might be justified by reference to the inherent right of self-defence enshrined in Article 51 of the UN Charter. The Attorney General has indicated that he would be prepared to consider detailed submissions on this matter. If Departments wish him to consider this matter as part of the review of the lawfulness of current operations in the NFZs, he would need to see detailed submissions on this point as soon as possible.

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4. Finally, I note that paragraph 7(a) of your letter states that Iraqi obstruction of UNMOVIC would provide justification for military action. If it were proposed to take military action in these circumstances, then the lawfulness of such action would again need to be addressed.
5. I am copying this letter to John Sawers (No. 10); Simon Webb (DG Ops Pol MOD); Alan Goulty (FCO); Michael Wood (FCO Legal Adviser) and Martin Hemming (MOD Legal Adviser). I would be grateful if you could arrange for it to be copied to other recipients of your letter.

Yours ever,

David Brummell

DAVID BRUMMELL