

Britain: leaked documents on illegal pre-war bombing campaign against Iraq

Niall Green**10 August 2005**

A leaked document from lawyers at the UK Foreign and Commonwealth Office warning of the illegality of a pre-war bombing campaign against military targets in southern and northern Iraq has cast further light on the criminal preparations by London and Washington in the months leading up to the Iraq war.

The Foreign Office document, dealing with the legal issues surrounding a possible war against Iraq, was written in March 2002 and circulated to senior cabinet members. It was appended as "Annex A" to the Cabinet Office briefing paper on Iraq of July 21, 2002. The latter document was a top secret account of the ongoing preparations for war against Iraq that stated:

"The US Government's military planning for action against Iraq is proceeding apace...

"When the prime minister discussed Iraq with President Bush at Crawford in April he said that the UK would support military action to bring about regime change, provided that certain conditions were met."

The July 21 briefing paper informed discussions at a high-level meeting two days later between Prime Minister Tony Blair, the foreign and defence secretaries, the attorney general, senior military and intelligence personnel and government spin-doctors. The minutes of this meeting—the now infamous "Downing Street Memo"—were leaked to the *Sunday Times* prior to the UK general election in May 2005.

In the Downing Street Memo, Blair is recorded as saying, "If the political context were right," [that is, if the government's false justifications for the war were accepted], "people would support regime change." This was despite the fact that at the same meeting the government's chief legal officer, Attorney General Lord Goldsmith, stated that the "desire for regime change was not a legal base for military action."

Also recorded in the memo was Defence Secretary Geoff Hoon's comment that "the US had already begun

'spikes of activity' to put pressure on the regime."

The leaked Foreign Office advice warned of the legal dubiety of any declaration of war without a United Nations Security Council mandate. The advice stated that Washington was attempting to use supposed breaches by Iraq of United Nations resolutions 687 (1991) and 678 (1990) as justifications for a full military assault on Iraq. The document was highly dismissive of the legitimacy of the US claim that it could decide this unilaterally, pointing out, "We are not aware of any other state which supports this view," and that only the UN Security Council could authorise military action on the basis of any breaches of its own resolutions.

Elizabeth Wilmshurst, the Foreign Office lawyer who co-wrote the report, resigned in March 2003 in protest at the decision to go to war without a UN resolution specifically authorising military force.

With regard to Hoon's statement in the Downing Street Memo about "spikes of activity" against Iraq, the Foreign Office advice bears particular scrutiny, as it warned against US Air Force and British Royal Air Force (RAF) patrols over the no-fly zones (NFZs) in northern and southern Iraq being used to attack Iraqi military installations or put pressure on the Hussein regime.

Initially established on the pretext of monitoring the humanitarian situation in the mainly Kurdish and Shiite regions of the country following the first Gulf War, the NFZs had been in operation for 14 years. Although the patrols were not permitted to launch any offensive attacks in Iraq but only to act in "self defence," the NFZs were used to launch a concerted campaign to weaken Iraq's military infrastructure throughout this time. However, recognising that plans for a new war against Iraq were well under way, the 2002 advice from the Foreign Office reiterated that any aggressive military action over the NFZs had no legal basis. It stated:

"The US [has] on occasion claimed that the purpose of

the NFZs is to enforce Iraqi compliance with resolutions 687 or 688. This view is not consistent with resolution 687, which does not deal with the repression of the Iraqi civilian population, or with resolution 688, which was not adopted under Chapter VII of the UN Charter, and does not contain any provision for enforcement.”

The 2002 memo continued: “In our view, the purpose of the NFZs is to monitor Iraqi compliance with the provisions of resolution 688. UK and US aircraft patrolling the NFZs are entitled to use force in self-defence where such a use of force is a necessary and proportionate response to actual or imminent attack from Iraqi ground systems.”

Despite this legal advice against the use of the NFZs as cover for a campaign against Iraq’s defences, there was a substantive ongoing campaign of aggressive military strikes by US and British aircraft in the year leading up to the war. Written parliamentary answers to Liberal Democrat foreign affairs spokesman Sir Menzies Campbell from Defence Minister Adam Ingram show the “spikes of activity” referred to by Hoon in the memo.

From May 2002 to January 2003, despite there being no appreciable increase in the number of Iraqi “violations” of UN resolutions within the NFZs, US and UK aircraft recorded a massive jump in the number of “threats” they claim to have encountered from Iraqi defence systems. In response to these unlikely threats from Iraq’s antiquated anti-aircraft guns, the USAF and RAF launched scores of attacks, dropping hundreds of tons of ordnance.

From March and April 2002, coalition aeroplanes recorded just one “threat” from Iraqi defences and responded by dropping a total of 0.3 tons of explosives. The USAF and RAF then mounted a large increase in bombing raids over the summer. In September, 54.6 tons of ordnance was deployed in 10 “self-defence” attacks.

Following this peak, US and British attacks fell back in October to six raids dropping 17.7 tons of explosives. However, in November and December 2002 the bombing resumed in intensity.

The amount of ordnance dropped on Iraq increased back up to 33.6 tons in November and 53.2 tons in December—a vital time to soften up Iraqi defences prior to the beginning of 2003, which US military planners had originally hoped to be the starting date of the war.

In total, twice as many bombs were dropped on Iraq in the latter half of 2002 as in the whole of 2001, with a de facto air war ongoing from August 2002 until the March 2003 invasion.

Commenting on the leaked Foreign Office document,

Lord Goodhart, vice president of the International Commission of Jurists and a parliamentary spokesman for the Liberal Democrats, said: “[If] the purpose [of the air strikes over the no-fly zones] was to soften up Iraq for a future invasion or even to intimidate Iraq, the coalition forces were acting without lawful authority.”

He continued, “Putting pressure on Iraq is not something that would be a lawful activity,” as UN resolution 688, used by the allies to justify patrols over the NFZs, was not adopted under Chapter VII of the UN Charter, concerning all matters authorising military force.

That the US and Britain were illegally using their air power over much of Iraq to soften up the country in 2002 was brazenly acknowledged by retired General Tommy Franks, allied commander during the invasion of Iraq, in his autobiography *American Soldier*. In it he recalls a meeting in August 2002 with Condoleezza Rice, then national security adviser, in which he refused to cut the bombing patrols inside the NFZs because he was using them to “degrade” Iraq’s defences to make them “as weak as possible.”

In this effort the RAF played a leading role, dropping the majority of bombs over southern Iraq in October 2002, in direct contradiction to the only clear legal advice given to the government on the matter.

In the run-up to the British general election, when Blair was asked by BBC journalist Jeremy Paxman if he had seen the Foreign Office’s legal advice, the prime minister replied that he had not, but had only received advice from the attorney general. As the Foreign Office advice was circulated to senior Cabinet members on two separate occasions in March and July 2002, Blair was either lying to Paxman and the UK electorate or he was so negligent regarding his government’s obligations under international law that he did not bother to read the legal opinion that was supposed to inform government decisions regarding Iraq.



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