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MINISTRY OF DEFENCE

MAIN BUILDING WHITEHALL LONDON SW1A 2HB

Telephone 071-21 82111/3

MO6/17/15

18~~th~~ August 1990PRIME MINISTER

Dear Dominic

Ministers have agreed revised ROE to cover the extension of ARMILLA Patrol operations to include the enforcement, if necessary, of the UN embargo against Iraq and Kuwait (subject to two outstanding detailed provisos contained in your letter to me of 15 August - these are dealt with below). It will be necessary to amplify this with clear guidance to commanders on the spot on the manner in which they are to conduct monitoring and enforcement operations, especially in circumstances where they may not have time to consult London for advice or instructions. (If we receive good advance intelligence relating to a particular vessel it will of course be possible to provide specific instructions to ARMILLA and, indeed, to take action with the flag state or charterer if appropriate). I attach amplifying instructions which have been prepared in consultation with the FCO, Legal Advisers and the Law Officers' Department and approved by my Secretary of State.

There are two points to bring out. First, the instructions assume that it is HMG's instruction to stop all embargoed cargos (and not simply oil). This is entirely consistent with the Government's public statements but, as far as I am aware, there has not been an explicit decision that RN enforcement action should extend to all types of cargo (other than the very limited permitted exemptions). Although identifying non-oil sanctions breaking involves greater difficulties - including the definition of genuine exemptions - the Defence Secretary believes that we should include all cargoes.

This brings me to the second point. The operating instructions envisage that force should not be used where it is not possible to establish clearly that a particular ship is acting in breach of the embargo. This is not likely to be a significant problem in relation to outbound ships but it may be difficult in some circumstances to demonstrate an inbound ship is bound for Iraq or Kuwait, or to disprove claims that some or all of its cargo is exempt with sufficient confidence to justify the use of force. Quite apart from the legal aspects, there would be a risk of serious presentational damage and of loss of international support for the embargo, if Iraq could plausibly claim that force had been used against an "innocent vessel".

Dominic Morris Esq
10 Downing Street

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The Prime Minister's two outstanding provisos related to the IAZ and enforcement action in the territorial waters of coastal states. On the first we have as yet had no authoritative response from the Iranians (although given the breakthrough in peace negotiations between Iran and Iraq, the future of the IAZ may in any case be limited). For the moment the Defence Secretary believes that it would be prudent not to extend the scale of our operations in the IAZ (or to overfly it with Nimrod aircraft) unless we receive a positive indication from the Iranians (although the position will be kept under review). It is therefore intended that ARMILLA ships should simply transit through the IAZ as they have done for some time, monitoring merchant shipping as they do so. ARMILLA will not be permitted to intercept ships within the IAZ without specific authorisation from London.

We have asked the FCO to follow up the matter of enforcement in the territorial waters of coastal states and will amend instructions to ARMILLA as and when permissions are obtained. It is proposed that these procedures (and the associated ROE) will come into force at 1200Z on Sunday 19 August.

I am sending copies of this letter to Richard Gozney (FCO) and Elisabeth Wilmshurst (Law Officers Department), and to Sonia Phippard (Cabinet Office).

Yours sincerely

J R BINSTEAD
(Private Secretary)

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AMPLIFYING INSTRUCTIONS ON MONITORING AND ENFORCEMENT OF THE
EMBARGO BY RN VESSELS

Introduction

1. The task is to contribute to the multinational effort to monitor all shipping in order to confirm the effectiveness of the UN embargo on trade with Iraq, to identify possible embargo breaking vessels, and, if necessary, take action to enforce the embargo.

Monitoring

2. All merchant ships encountered are to be notified to MOD(UK)(N) stating name, position, last and next ports of call and, where appropriate, its trading schedule within the Gulf. Wherever possible draught marks of tankers are to be reported.

3. An Embargo Surveillance Centre has been set up in the Department of Transport London with responsibility for coordinating information from all sources on all trade to and from Iraq and Kuwait. There is to be a maritime cell within this organisation with the specific aim of providing Naval and MPA units within theatre with intelligence on possible sanctions breakers.

Embargoed cargoes

4. All cargoes, including food, bound for or from Iraq or Kuwait are embargoed, with the exception of inbound medical supplies and foodstuffs identified by HMG as being for humanitarian purposes.

Enforcement Action

5. Where advance intelligence is available in relation to a particular vessel specific instructions will normally be

signalled.

6. Where no specific instructions have been received but where there is clear evidence of a breach of sanctions - for example where a laden tanker is identified outbound from Iraq or Kuwait or where a vessel admits to being inbound for Iraq or Kuwait with a cargo not covered by a specific exemption (see para 4 above) - the vessel is to be informed that it is in breach of sanctions, that it will be reported to the UN and appropriate governments and that it is to be diverted to a destination other than Iraq/Kuwait (if inbound) or forbidden to proceed further (if outbound). Minimum necessary force may be used to secure compliance within the limits and procedures laid down in the Rules of Engagement which have been issued. If a suspect vessel refuses to comply with instructions even after the full range of action permitted by the ROE, it is to be shadowed as far as practicable and urgent instructions sought from MOD(UK).

7. If a commander has reason to believe that a vessel may be acting in breach of sanctions he is to inform the vessel concerned and seek its cooperation in clarifying the position. Depending on the response given and the circumstances, this may require seeking to put a party on board the suspect vessel, within the limits and procedures laid down in the ROE, to inspect documents and/or cargo. The situation should be reported to MOD(UK)N immediately and, if time permits, further detailed guidance sought.

Inbound Ships

8. Where evidence of embargo breaking is inconclusive - such as where an unexpected vessel claims that it is carrying exempted cargo or is bound for ports other than in Iraq or Kuwait - the following procedure is to be followed:

- (a) If a vessel refuses to cooperate it is to be informed that this will be reported to the UN and, if known and

where appropriate, flag state and/or the state of the charterer;

(b) The vessel is to be shadowed for as long as practicable to allow time for further instructions to be sought from MOD(UK);

(c) Force is not to be used unless specifically authorised by MOD(UK).

9. Outbound Ships

(a) A vessel may be allowed to proceed if it is established that it is empty. In such cases the circumstances should be reported immediately both to MOD(UK) and to units of other national forces engaged in sanctions monitoring;

(b) Where there is doubt as to whether or not a vessel is carrying cargo or whether the cargo is outbound from Iraq or Kuwait, the vessel may be instructed to accept a boarding party and, if it refuses, enforcement action may be taken within the limits and procedures laid down in the ROE. Alternatively, if the element of doubt is considerable and to allow time for further investigation and, where appropriate, contact with the flag state or charterer the ship may be allowed to proceed. MOD(UK) should be informed immediately and other units operating in the area alerted to ensure that a further interception can be achieved.