



HOUSE OF COMMONS

LONDON SW1A 0AA

Rt. Hon. Des Browne MP
Secretary of State for Defence
Ministry of Defence
Floor 5, Main Building
Whitehall
London
SW1A 2HB

10 July 2008

Dear Des,

Re: Extraordinary Rendition

I am writing further to your letter of 19 March 2008. This letter concerns the 'understanding' between the UK and US, Iraqi, and Afghan authorities. I have written to you separately regarding the allegations made by Mr Ben Griffin, in a letter dated 20 June 2008.

The 'Understanding' Between UK and US authorities

In your letter you stated that you "have confidence" in the processes currently in place to ensure adherence to UK legal obligations. You also stated that the 'understanding' in place between US and UK Forces regarding the treatment of prisoners transferred from UK to US Forces is "backed up by assurances...". In your letter of 31 January 2008 you stated: "I have every confidence in our allies that they have and will continue to honour these understandings and we have received no evidence to suggest they have ever done otherwise". Some such evidence has now been provided in relation to Diego Garcia.

In October 2007 I wrote to the Foreign Secretary about allegations that Diego Garcia had been used by the US in its rendition programme, requesting that an investigation be carried out into these allegations. Foreign Office Minister Dr Kim Howells replied, refusing my request in the following terms: "we have had

robust assurances from the US that at no time have there been any detainees either on Diego Garcia, or transiting through the UK's territorial seas or airspace surrounding Diego Garcia. *I have confidence in these assurances*" (emphasis added). On 21 February 2008 the Foreign Secretary made a Statement, in which he confirmed that two rendition flights had refuelled at Diego Garcia:

"Contrary to earlier explicit assurances that Diego Garcia had not been used for rendition flights, recent US investigations have now revealed two occasions, both in 2002, when that had in fact occurred. An error in the earlier US records search meant that those cases did not come to light...

...the mistakes made in those two cases are not acceptable..."

One instance of the US Government erroneously giving the UK Government inaccurate "explicit assurances" that no such flights had occurred has been confirmed. This puts us on notice that other assurances from the US to the UK may also be unreliable as a result of breaches, errors or mistakes on the part of the US.

There are of course other reasons (in addition to breaches of assurances and inadvertent errors in assurances) why the UK Government may be unable to rely on assurances given by the US. For example, the assurances may be accurate in themselves but inadequate because they are expressed imprecisely or ambiguously. This inadequacy may be manifest at the time the assurances are given or may only reasonably become obvious to a recipient of the assurances following subsequent events. It is also possible that the UK and US Governments interpret assurances differently.

The value of assurances derives from their content and the reliability of the person or body giving them. It is possible that the assurances given by the US to the UK relating to individuals captured in Iraq also fall into one of the above categories. In the circumstances a full investigation into whether assurances given by the US authorities relating to individuals captured by UK Forces in Iraq have been breached is imperative. It is also important that the assurances themselves are examined with particular care. It will be necessary to establish how they are currently understood and interpreted by US and UK authorities, and how they were understood and interpreted in the past. Your general references to the "various ways" that the 'understanding' with the UK has been documented is inadequate and of concern. In the absence of a single agreed text, there is likely to be considerable room for differences of view as to what is covered by the 'understanding'.

As you know, I tabled a Parliamentary Question – answered on 5 December 2007 – to ask whether any individuals captured by British Forces during the conflicts in Iraq and Afghanistan have at any subsequent time been held at the United States detention facility in Guantanamo Bay. Your answer suggested that you had not established whether or not this had happened. In response to my question you simply stated that the Government has not given consent for any individual captured by UK Forces to be transferred to Guantanamo Bay. This leaves open the possibility that such transfers might have occurred without the Government's consent.

I subsequently wrote to you on 19 December 2007 asking for further information on this issue, and suggesting that you cross reference your records of people detained by UK Forces with US records of those detained at the detention facility on Guantanamo Bay. You were unwilling to do this on the basis that, you said, it would not produce an answer that could be verified to the degree necessary for it to be put before Parliament. Even if that is the case, such an exercise would be of value, at least in identifying areas for further investigation in relation to specific individuals. This is a necessary step in investigating whether or not any assurances have been broken. Furthermore, I note that you did not say that the exercise would not be feasible. I therefore request again that this exercise be undertaken and its result be made publicly available, subject to any caveats.

In your letter dated 31 January 2008 you also revised your assessment of the 'understanding' in place with US, Iraqi and Afghan Forces on this issue. You stated that, "we have had in place an understanding that they would not transfer that individual to a third country without first seeking our consent *or at least informing us of their intention*" (emphasis added). Merely requiring the US to inform us of their intention to transfer such an individual out of the country, possibly to Guantanamo Bay or to secret detention, is likely to be insufficient to meet the UK's legal obligations. I would be grateful if you would let me know whether this is also the Government's assessment of the law.

I also note another change to the terms of the 'understanding', as you describe it in your letter of 31 January 2008. In your letter you refer to the 'understanding' relating to a situation where an individual is passed "from UK jurisdiction into the jurisdiction" of the Iraqi, Afghan or US authorities. In your Parliamentary answer to me of 5 December 2007, you referred to individuals who have been "captured" by UK Forces. This difference in language underscores the risk that the terms and scope of application of the

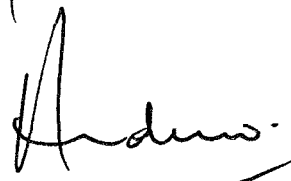
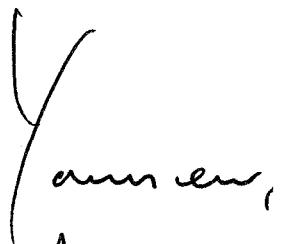
understandings are ambiguous or that the US, Afghan or Iraqi authorities might take a different view from the Government as to when an assurance applies. This makes it even more important that the precise terms of the assurances are closely examined.

Furthermore, I note the acknowledgment in your letter that, "the possibility remains that an individual we have captured and then released has subsequently been detained by the US or another country and then transferred to Guantanamo Bay." This raises the prospect that individuals that have been captured by British Forces and released may have been subsequently transferred to Guantanamo Bay (or elsewhere) by US authorities. If any individuals are in such a situation, there is a need to examine the circumstances of their release and subsequent detention by US Forces. The situation could raise concerns in circumstances where there was a close proximity in time between the release and subsequent re-detention, or the individual had not re-entered the field of combat. At the very least, the adequacy of communications between British and US Forces and the circumstances of their release would need to be investigated.

Does the 'understanding' apply equally to transfers of detainees or captured persons to detention facilities within the same country, as well as to facilities in a third country?

I would be happy to meet you or your officials to discuss these matters further. But I also ask for a written response to the matters raised in this letter.

I am placing a copy of this letter in the public domain.



ANDREW TYRIE

Chairman, All Party Parliamentary Group on Extraordinary Rendition