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From: Irfan Siddiq

Sent: 30 August 2005 09:35

To: [REDACTED]

Cc: [REDACTED]

Subject: CONF: CT: Foreign Secretary's conversation with the Home Secretary, 28 August

The Foreign Secretary spoke to the Home Secretary on 28 August about a number of CT related issues.

Hamas/Hizbullah:

The Foreign Secretary raised the proscription of Hamas and Hizbullah, reviewing the history, the recent evidence suggesting that there was no distinction between the political and military wings and repeating his belief that both organisations should be proscribed in full. Clarke said that he had no strong views on the matter and viewed it as a foreign policy lead, which was the Foreign Secretary's call. He noted, however, that the agencies were arguing against the move and that the Foreign Secretary was "isolated" in his view. The Foreign Secretary was surprised by the view of the agencies, which he said he would look into. Clarke said that he was happy in principle (i.e if the Foreign Secretary could square the agencies) to include Hamas and Hizbullah with the batch of organisations that he was already planning on putting up for proscription before the next session of parliament.

ACTION: Grateful for information on what exactly the agencies' arguments against proscription are. The Foreign Secretary has also asked for the relevant back papers on Hamaz/Hizbullah proscription for today's box, in preparation for the PM's meeting on Thursday.

Hizb ut Tahrir / Al Muhajiroun:

The Foreign Secretary asked about proscription of HuT/AM. HuT was banned by the NUS and a number of school boards and he felt that we should move against them now. He was prepared to look into constructing arguments against HuT on foreign policy grounds. Clarke said he would prefer putting off proscription of HuT until after the proposed amendments to the current legislation: it would, for example, be much easier to argue that HuT met the criteria of "justifying and glorifying violence". Clarke said that his fear was that the Government would lose the case for proscription and so wanted to act cautiously. The Foreign Secretary added that he felt that we should in any case move against AM. If it was now no longer functional, there would be no problem, and if the move was challenged it would prove that AM was no longer defunct and would help identify those associated with AM.

ACTION: The Foreign Secretary has also asked for the relevant back papers on HuT/AM proscription for today's box. He would also like as soon as possible, work to be done on HuT activities abroad. He would like to pursue the foreign policy argument approach and wants to know if there is a case that can be made on foreign policy grounds. He feels that the distinction currently drawn between HuT in the UK and HuT abroad is spurious. He recalls that MeK were proscribed in the UK on the basis of their activities abroad.

MoUs:

The Foreign Secretary said that proscription of HuT, could potentially help improve CT understanding and co-operation with states such as Egypt where HuT was already banned. Clarke said he had wanted to raise the MoU with Egypt. The Foreign Secretary explained the sensitivity of the September Presidential elections. Clarke said he was content to wait until after the Presidential elections, but did not want to wait until the November parliamentary elections. The Foreign Secretary said we would re-engage with the Egyptians after the Presidential elections.

Clarke raised the issue of resources dedicated to the MoU's. We had to have the resources necessary. The Foreign Secretary said that as far as he was aware no potential MoU's were being held up for resource reasons. He agreed that we could not allow progress to be held up by resource constraints.

Irfan

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Foreign Secretary's Office

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-----Original Message-----

From: Robert Tinline
Sent: Tuesday, August 30, 2005 11:16 AM
To: David Richmond
Cc: [REDACTED]

Subject: RE: CONF: CF: Foreign Secretary's conversation with the Home Secretary, 28 August

David

We will incorporate all of this into the briefing going up tonight, attaching, on Hizballah and Hamas, the four FS's letters to the HS and the supporting submissions; and on HuT, the latest Research Analyst paper and the SyS assessment for the last Proscription Working Group.

Could you speak to EMB (and "C" if possible) to confirm that our understanding below remains correct, alert them to the likely discussion on Thursday and allow us to brief the SoS on their likely stance?

CCs: grateful for any comments on my summaries below.

Rob

[REDACTED]
[REDACTED]
[REDACTED]

H/H

As I understand it, the agencies do not oppose proscription, they oppose reliance on their assessments to justify what they see as a change of policy not fact.

The agencies (especially SyS who write the assessments on which proscription is considered) are reluctant to argue that the nature/structure of either organisation has fundamentally changed since 2001. They argue that their assessment in 2001 could have justified proscribing the whole of both organisations. A policy decision was taken only to proscribe a part of each. Their current assessments could similarly justify proscribing the whole of both organisations but, given the assessments have not substantially changed, could not explain a change of policy between 2001 and now. We have argued that we have more evidence to justify proscribing the whole of both organisations and that the context in which they are operating has changed dramatically since before 9-11. The agencies have been unmoved, arguing it is a policy decision. While the HO, and now the Home Sec, have argued that unless the agencies change their assessment the risk of losing a challenge is too high.

HuT/HM

The under the Terrorism Act 2000, the Home Sec may proscribe an organisation if he believes the organisation: "(a) commits or participates in acts of terrorism, (b) prepares for terrorism, (c) promotes or encourages terrorism, or (d) is otherwise concerned in terrorism."

The Home Office explained their first listings against the following criteria:

- "(a) the nature and scale of an organisation's activities
- "(b) the specific threat it poses to the UK
- "(c) the specific threat it poses to British nationals overseas
- "(d) the extent of the organisation's presence in the UK
- "(e) the need to support other members of the international community in the global fight against terrorism"

HuT is active in many countries and banned in some (Azerbaijan, Egypt, Germany, Jordan, Kyrgyzstan, Kazakhstan, Kuwait, Pakistan, Syria, Tajikistan, Turkey, Uzbekistan). A number of governments cite HuT involvement in violence and links to terrorist organisations (with little supporting evidence). There are unconfirmed claims that HuT cells and individual members have participated in attempted coups in the Middle East. And it is certainly extremist. But there is no apparent case to proscribe HuT because its activities abroad include involvement in terrorism. Indeed it is not entirely clear whether they would be caught under a future criterion of "justifying or condoning violence". Much of their literature explicitly rejects the use of violence.

Supporting other States' work against terrorism is not one of the statutory tests, so I doubt we could rely on that alone if we did not think HuT were involved in terrorism, especially as most of those who have banned it are not known for tolerance of democratic dissent. (The only Western democracy to act, Germany, banned it as anti-semitic not terrorist.)

-----Original Message-----

From: David Richmond
Sent: Tuesday, August 30, 2005 12:50 PM
To: Robert Tinline
Cc: [REDACTED]

Subject: RE: CONF: CT, Foreign Secretary's conversation with the Home Secretary, 28 August

Rob

I have spoken to E M-B and will speak to C this afternoon. Eliza's account of the SyS position is in line with your summary - they do not oppose proscription but oppose reliance on their assessment to justify what they see as a change of policy not fact. She did, however, query some of your detailed description of SyS's position, claiming that the original 2001 assessment did not provide a watertight case for proscribing either the military or the political wings. Whether or not she is right in her recollection, the key point is that they have no new evidence which in their view would satisfy a court or tribunal that the political wings should now be proscribed in the event of a challenge.

She also made the point that the opposition to the proscription of H/H at the 19 August meeting came not from the Agencies but from the NIO because of the read across to Sinn Fein.

David

To: Robert Tinline
From: David Richmond
Subject: RE: CONF: CT: Foreign Secretary's conversation with the Home Secretary, 28 August
Sent: 31 August 2005 11:04:04 GMT

Rob

I have now spoken to C who says that he is not aware of any particular SIS view on proscription of H/H. He sees this as a political issue and a matter for the Foreign Secretary. On Eliza's concern about evidence, he points out that this is a perennial problem.

My conclusion is that there is no opposition to proscription from the Agencies but we shall need to make a careful judgment on whether we can make a case which will withstand legal challenge.

David