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PART ONE OF TWO

SUBJECT: IRAQ - MILITARY ACTION - SANCTIONS AND OIL FOR FOOD -
STRATEGY PAPER

STARTS

IRAQ - AMENDING OIL FOR FOOD AND SANCTIONS

1. This paper considers the amendments we might want to see to the Iraq sanctions regime and Oil For Food programme in the event of military action in Iraq leading to the absence of an effective Iraqi government.

2. The starting point for the paper is that, notwithstanding the downsides of comprehensive sanctions, we would want a sanctions regime and an OFF programme for some time following military action. Lifting sanctions and ending OFF would come later.

- We would need a sanctions regime to maintain control over import into Iraq of military and dual-use equipment until Iraq had stabilised, and to maintain the current asset freeze until proper international consideration could be given to handling of state assets, against which there might be compensation claims, and private assets of members of the regime.

- We would need an OFF programme as a means for Iraq to continue to export oil and import and distribute humanitarian goods until new government structures existed in Iraq which could manage oil exports and oil-funded imports without the involvement of the international community.

3. Although we would want a sanctions regime and OFF programme in Iraq following military action leading to the absence of an effective Iraqi government we would want changes to the existing sanctions regime and OFF programme:

- We would want as light a sanctions regime as possible in order not to hinder import into Iraq of goods needed for humanitarian purposes.

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- For OFF to work under current Security Council resolutions and related arrangements requires the presence of a functioning Iraqi government. In the case of military action leading to the absence of an effective Iraqi government this would not exist. Alternative arrangements would need to be established for the OFF programme to operate.

4. We would want to maximise the amount of money available under the OFF to fund the provision of humanitarian goods for Iraq.

- Where a shortfall existed between funds available from OFF and the requirements of Iraqi people, the international community, including the UK, would have to provide assistance.

5. We would probably want to deal first with humanitarian sanctions/OFF issues and later with other OFF issues. But we should keep this under review.

- It is difficult to judge what the political environment might be in the Security Council in the event of military action in Iraq. But it could be difficult. As I paper indicates, in the event of military conflict the question of the future control over and use of Iraqi oil would be among the most sensitive issues for the Council to deal with. It is likely that there would be: (i) suspicion of US/UK motives on Iraqi oil; and (ii) concern among other Council members that they should not lose out commercially. Given this, and given the need to get rapid Council agreement on humanitarian aspects of sanctions and OFF, our judgement is that we should probably deal first with humanitarian issues, leaving other OFF issues until later. But we should keep this under review as the political situation becomes clearer.

6. It is too early to take a final decision on when a draft resolution should be tabled in the Council on sanctions/OFF. But we should ensure (with the US) that one is ready soon.

- The most likely point for tabling would be immediately following the start of military action. Given the humanitarian imperative it is unlikely we would want to delay a resolution much beyond the outbreak of conflict. But it is also unlikely that we would want to a resolution tabled before conflict began. We would not wish to appear to be prejudging the final stages of pre-conflict diplomatic activity. A resolution at this stage might be rejected as a protest against US/UK policy. And given that a resolution would remove control of its oil from the Iraqi government, it would be difficult for the Council to adopt it until it was clear that we were entering a period when there would be no functioning Iraqi government.

7. We will need to consider who should table a draft resolution. For the moment we should sound out the US on their thinking.

8. We should also, once we and the US have co-ordinated thinking, discuss the way forward with the UN Secretariat, probably initially with Annan. The Secretariat will be able to let us know whether they have the capacity to do what we are proposing and whether we have missed details.

THE HUMANITARIAN ASPECTS OF SANCTIONS AND OFF

9. The key quick decisions we would want the Council to take on

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OFF would be:

- (i) The Council should give the Secretary General authority to decide how to distribute OFF goods and to nominate people to do it.

The current requirement (under UNSCR 986) is that the government of Iraq draws up plans for distribution for the SG's approval. In the absence of an Iraqi government a new arrangement would be needed. Our judgement is that only the Secretary General would have the confidence of all members of the Security Council to take over the process. It would be open to us and others to pass the SG our views on distribution. Given that we do not know what the situation would be in Iraq during and immediately after military action we should give the SG flexibility in deciding who should do the distribution.

- (ii) The Council should give the Secretary General authority to spend OFF funds to provide for the Iraqi people.

Currently only the Iraqi government has authority to request imports against OFF funds. In the absence of an Iraqi government, this authority would need to be passed to someone else. Our judgement is that the Council would be unlikely to agree to this being anyone other than the Secretary General.

- (iii) The Council should authorise the Secretary General to use OFF funds for local purchase of goods to meet the needs of Iraqis.

This would speed the delivery of humanitarian assistance to those who needed it, and would reduce dependence of overseas assistance when OFF was eventually lifted including through encouraging local production.

- (iv) The Council should give the Secretary General authority to reprioritise the delivery of goods under existing contracts to meet the most pressing needs of the Iraqi people.

Given an urgent humanitarian situation it makes sense for the Secretary General to be allowed to arrange for the most urgently needed items to be delivered to Iraq first.

- (v) The Council should make provisions for the UN to provide humanitarian assistance under OFF to Iraqis who have fled outside the Iraqi border during conflict.

It is likely that we will see Iraqis displaced over the border during any conflict and these people will need humanitarian assistance. We should give the Secretary General explicit authority to continue to provide assistance under OFF to these people outside the border.

- (vi) The Council should make provision for more flexible arrangements for the authentication of OFF goods delivered by suppliers.

Authentication of goods supplied under OFF is required before suppliers can be paid. Currently this must be done by UN agents at one of five authorised entry points inside the Iraqi border. We should authorise the Secretary General to make arrangements for temporary delivery and storage centres and authentication outside the Iraqi border to facilitate delivery of humanitarian supplies if the current entry points cannot be used.

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(vii) The Council should abolish the phased structure of OFF and give the Secretary General authority to spend unspent funds from earlier OFF phases.

OFF has always been run on a phased basis. The Iraqi government puts forward a spending and distribution plan for each phase (180 days). Oil revenues from each phase are tied to the plan for the phase. Excess revenue from these phases, or revenue allocated to contracts from these phases which were never fulfilled, is in effect frozen. It would make sense for the Secretary General to have access to these funds for humanitarian work in Iraq. With authority for spending OFF funds transferred to the Secretary General, there would no longer be any need for the phased process.

(viii) The Council should suspend payment of OFF revenue to the UN Compensation Commission account (25%). We may also need to assess whether it is necessary to consider authorising the Secretary General to move money from the (Kurdish) 13% account to the 59% account for the rest of Iraq.

25% of OFF funds go into the UN Compensation Commission (UNCC) which was set up to compensate for losses and damages suffered by the occupation of Kuwait. During a crisis any humanitarian funding which is not covered by OFF will have to come from donors. We should seek to minimise the burden on donors by drawing on the 25% which is currently siphoned off for the UNCC. We should not rule out restarting payments in the future once the Iraqi economic situation becomes clearer. Any such move would need to be squared with the Kuwaitis (who have most to lose from this) beforehand, although they have indicated that they are prepared to show some flexibility on the issue.

The issue of removing the division between the 13% and 59% accounts may be more difficult. While the Kurds do get proportionately more per head, moving money from the 13% account to the 59% account would provoke outcry from the Kurds who have long been sensitive to this issue. We should establish how necessary this is before taking action.

(ix) The Council should decide that the Secretary General should be empowered to purchase goods under OFF without going through the existing OFF authorisation procedures. He should, though, have to notify the OFF committee of all his OFF spending.

The current strict controls on OFF spending are necessary because we do not trust the Iraqi government to use OFF revenue for the best interests of the Iraqi people. Once the SG took control of purchasing we would no longer have these concerns. And removing the requirement for OFF committee approval for many OFF items would speed up the process of delivery of humanitarian assistance. The continued requirement for the SG to notify the committee of his spending would enable us to monitor what the UN was doing.

10. The quick decisions we would want the Council to take on the broader sanctions regime would be:

(i) The Council should decide that UN bodies would not require clearance from the 661 Committee for export of non-OFF goods to Iraq. UN bodies would still be required to notify the 661 Committee of exports to Iraq.

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(ii) The Council should shorten the standard deadline for objection by 661 Committee members to export to Iraq of humanitarian items to three working days (instead of the current standard seven day deadline).

This would enable humanitarian organisations to move goods into Iraq more quickly, whilst ensuring that we had enough time to stop the import of anything which caused us concern.

THE LESS IMMEDIATE OFF ISSUES

11. The Council would have to take action on a series of other OFF issues shortly after armed conflict. While these might not be as pressing as the immediate humanitarian issues, Council action would still be needed soon to get OFF working fully in the absence of an Iraqi government.

(i) The Council would need to make arrangements for the agreement of new contracts for purchase of Iraqi oil and for the consequent export of this oil.

(ii) The Council would also need to make arrangements for the agreement of new contracts for maintenance and development of oil fields.

Both these issues will be extremely sensitive. It will be imperative for us that the processes are seen to be scrupulously fair, and that British companies have a fair chance to compete for contracts. We should explore with the US their thinking on this issue. One option would be for the World Bank to take this on under the ultimate authority of the UN Secretary General. The World Bank has expertise in this area, and the Secretary General has the trust of UN member states. Both might have their own views on whether they would welcome this mandate, and we would have to discuss the issue with them before we started to take a public line on it.

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BACKGROUND ON SANCTIONS

12. Goods for import to Iraq are divided into two broad categories: those being imported under OFF (ie paid for through OFF); and everything else.

13. Under the current sanctions regime, non-OFF goods are dealt with in one of three ways:

- Food and medicine: the 661 Committee must be notified of imports of food and medicine. The Committee does not have authority to stop the imports.

- Humanitarian items other than food and medicine: applications for import of humanitarian items must be submitted to the 661 Committee for approval. The Committee deals with them under a no-objection procedure, normally on a 7-day deadline.

- Military and dual-use goods are prohibited.

14. The new arrangements envisaged above would make no change to import of food and medicine. The deadline for objection to import of humanitarian goods would be reduced to 3 working days. And UN bodies would not require clearance from the 661 Committee for exports to Iraq.

15. We are working separately on the military and dual-use category. We have submitted to Ministers on military equipment for use by coalition armed forces (submission of 11 March). Our submission recommends that these be considered as falling outside the sanctions regime. We are pursuing agreement within the 661 Committee in New York agreement for some military or dual-use items to be exported for humanitarian reasons. As a trial case we are seeking agreement for Associated Newspapers to import 8 NBC suits for their journalists. Other cases in the short-term might be eg for mine-clearing equipment or flak jackets for NGOs.

STRAW

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CAOFF1	0	
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DFID1	0	

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