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1 Apr 03

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OP COS PAPER

**SUBJECT – IRAQ: OFFICE FOR RECONSTRUCTION AND
HUMANITARIAN ASSISTANCE (ORHA)**

The attached paper by the FCO is circulated to COS for information only, no action is required. The paper will inform the verbal ORHA update scheduled to take place during the Ministerial Briefing on 1 Apr 03.

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IRAQ: OFFICE FOR RECONSTRUCTION AND HUMANITARIAN
ASSISTANCE (ORHA)

1. This paper reviews UK policy towards ORHA in the light of recent developments. It starts from the premise that, although our objective in Phase IV is an effective Interim Iraqi Administration (IIA) acting under appropriate UN authorisation, this is unlikely to be in place earlier than 90 days from the cessation of hostilities. So we need to ensure that mechanisms exist from the outset which can deliver humanitarian assistance and (when necessary and within the relevant legal constraints) civil administration, in co-operation with our military and where possible with the Iraqis.
2. Without this, these tasks will fall on the military, who have other priorities and limited resources. The options are as follows:
 - We task and resource 1 Div to do this autonomously in those areas of Iraq for which they are responsible;
 - We work through ORHA and do what we can to increase ORHA's institutional capacity, while accepting that UK-US differences about the legality of some activities ORHA will undertake is likely to impact at some stage on our ability to do so;
 - We find other ways to fulfil these tasks, e.g. through NGOs or international agencies.
3. The first option is not viable. ORHA will administer the whole of Iraq as part of an integrated US-led coalition approach to Phase IV and has large resources at its disposal. We may wish to support 1 Div's capacity to carry out specific actions (e.g. repairing the water supply) in areas where we are responsible for maintaining security. But the logic of ORHA – a nation-wide approach to Phase IV – limits the UK's responsibilities and exposure. Carving out a separate approach in a UK sector would make no sense.
4. The third option is not incompatible with this or with the second option. Indeed, DfID may well wish to go down this route as the primary means of delivering humanitarian and, in due course, reconstruction assistance. We shall need to keep under review where the balance of our overall effort lies.
5. But ORHA remains the coalition's transitional civil administration in waiting and is its primary means for delivering humanitarian assistance. And at least until the UN agencies and NGOs are present on the ground, only ORHA/coalition forces will be in a position to do this. This paper therefore focuses exclusively on ORHA as the means for adding value and exerting UK influence in the immediate post-conflict environment.

Current Situation

6. ORHA was set up by the Department of Defence to provide the transitional civilian authority for post-conflict Iraq, under coalition military control. It has now relocated from Washington to Kuwait. On current plans, once Baghdad falls and the security situation permits, ORHA will deploy to Baghdad and evolve into the civil

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administration dealing with humanitarian and in due course perhaps political and reconstruction issues. Jay Garner will assume the role of Interim Transitional Civilian Administrator. ORHA will remain within the overall military chain of command, but distinct from the military command structure on the ground.

7. ORHA will work as far as possible with and through the existing Ministries in Baghdad. On current plans a senior US official (which some on the US side regard as a "Shadow Minister") will be assigned to each Ministry to liaise with ORHA. There will also be a network of provincial offices. A team within ORHA will work on constitutional issues including setting up the Iraqi Interim Authority (IIA), likely to be drawn in part from those Iraqi exiles currently working alongside ORHA. As circumstances permit, ORHA plans to conduct a phased transfer of civilian authority from ORHA to the IIA.

8. ORHA's current staffing level is about 200. This is expected to rise to over 1000 by the time ORHA deploys into Iraq. The UK now has six officers seconded to ORHA in theatre, with 5-6 more in the pipeline, and one working full time in ORHA's reach-back office in the Pentagon. Their role is to influence and shape ORHA's thinking on the key Phase IV issues, and to ensure that information flows effectively from theatre to HMG – including information about commercial opportunities likely to arise in Phase IV. Our secondees are fully integrated and are adding significant value. At ORHA's request we are considering whether to strengthen our representation. The Australians also have six secondees in ORHA, and the Japanese will shortly have one.

9. There is considerable tension between the US State Department and the Department of Defence for control over ORHA. There remain also deep differences of view within the Administration over the desirability and need for UN authorisation for Phase IV reconstruction work, and over the relationship between ORHA, the IIA, and a possible future UN Special Co-ordinator.

The Legal Position

10. The Attorney General has set out his advice on the limitations of the authority of an occupying power (letter of 26 March attached). He highlighted the fact that the provisions of the Hague Regulations 1907 and Geneva Convention IV need to be considered against specific proposals in order to give detailed advice on the precise limits of what is lawful. We are putting together such information about the intended activities of ORHA as we have so that that detailed legal analysis can be done.

11. The views given in paragraphs 12-15 about the lawfulness of possible future actions by ORHA are provisional and subject to this detailed analysis.

Likely Sequence of Events in Phase IV

12. Jay Garner sees ORHA acting as the transitional administration for perhaps 30-90 days. The priority for the first 30 days are likely to be to deal with immediate humanitarian needs. These will include: the restoration of food supplies as far as possible through the existing ration system; the payment of public sector salaries; the re-establishment and rehabilitation of essential public services such as

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water/sanitation, power, education and primary healthcare provision. ORHA will also need to work closely with UN staff to ensure that the Oil for Food programme restarts as soon as possible. These activities fall clearly within the responsibilities of occupying powers and will be crucial to securing public consent for ORHA in the early days.

13. Depending on the circumstances, we are likely quite quickly (perhaps during the second 30 days) to be faced with a grey area of possible activities which could move ORHA beyond the UK's understanding of an occupying power's rights and obligations. Examples might include: initiation of a small business loan programme; abolition of Iraqi government restrictions on private business; significant changes to the exchange or trade regimes; significant changes to the structure of the state budget; reform of the police, prisons; security sector. Whether they would be addressed by ORHA (i.e. without a covering UNSCR) or by an Iraqi Interim Authority (potentially under UNSCR cover) remains to be seen, and will depend both on progress in setting up a functional IIA and on progress in New York on the "fourth" resolution.

14. Finally, there continues to be a view in DoD that the absence of a UNSCR need not be an impediment to thorough-going political and economic reform, including in areas that the UK would consider to be clearly outside the scope of an occupying power's rights and responsibilities. These could include significant changes to the country's political or economic governance such as constitutional reform; substantive decisions on oil market strategy and the attraction of foreign investment in the oil sector; or introduction of a new currency.

15. There is also a political dimension to this. There is no agreed US inter-agency view, still less an agreed UK-US view, on how to handle key political issues such as the composition of the IIA, the nature of its relationship with the coalition through ORHA, or the timing or remit of a "Baghdad Conference". We are preparing a separate paper on this.

Implications for UK Involvement

16. ORHA is in many ways a sub-optimal organisation for delivering the UK's Phase IV objectives on the ground in Iraq. But it is at present the only game in town, and will remain so until negotiations over an authorising UNSCR and UN involvement in the administration of Iraq are completed or until there is large-scale NGO activity in Iraq.

17. On the positive side, there is ample scope to use our secondees to exert leverage over both US Phase IV planning and over practical implementation on the ground. **We therefore recommend that the UK should continue to commit resources to ORHA where we can add real value and exert influence over emerging US perspectives and plans.** We should consider fielding additional expertise that can help the Iraqis re-establish essential public services, i.e. working at the humanitarian end of the spectrum.

18. But there remain a number of risks:

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Resource Inefficiency

- Even with UK secondees ORHA may not be up to the tasks we want it to perform.
- Continued US inter-agency jockeying could make it difficult for our secondees to work effectively to deliver UK objectives.

Political Exposure

- Failure to secure local, regional or international political legitimacy for ORHA could arise from e.g. its close association with military rule or from a perception that it had parachuted Iraqi exiles into positions of influence.
- Serious differences between current or future coalition members could arise about ORHA's role, in particular with regard to:

Legality

- In the absence of an authorising UNSCR a situation could arise where ORHA was acting illegally. This would have implications for both our secondees inside ORHA and ORHA's activities within any part of Iraq in which British forces were responsible for maintaining security.

19. The resource and political risks are strong arguments for our engagement with ORHA: only by full, constructive engagement can we hope to shape the outcomes in ways that stay within UK red lines. The political risks are in any case inseparable from our prominent role in the coalition.

20. The legal risks are at present hypothetical but potentially serious. Although they are not – yet – a determining factor in our commitment to ORHA, it is possible to imagine a situation where the position of UK secondees to ORHA could become legally unsustainable. This would be a major blow to the coalition's cohesion and to our ability to deliver UK objectives in Iraq. They can be managed only by applying the Attorney General's advice to specific ORHA plans and policies as they emerge, and seeking to shape them in accordance with the Attorney General's advice.

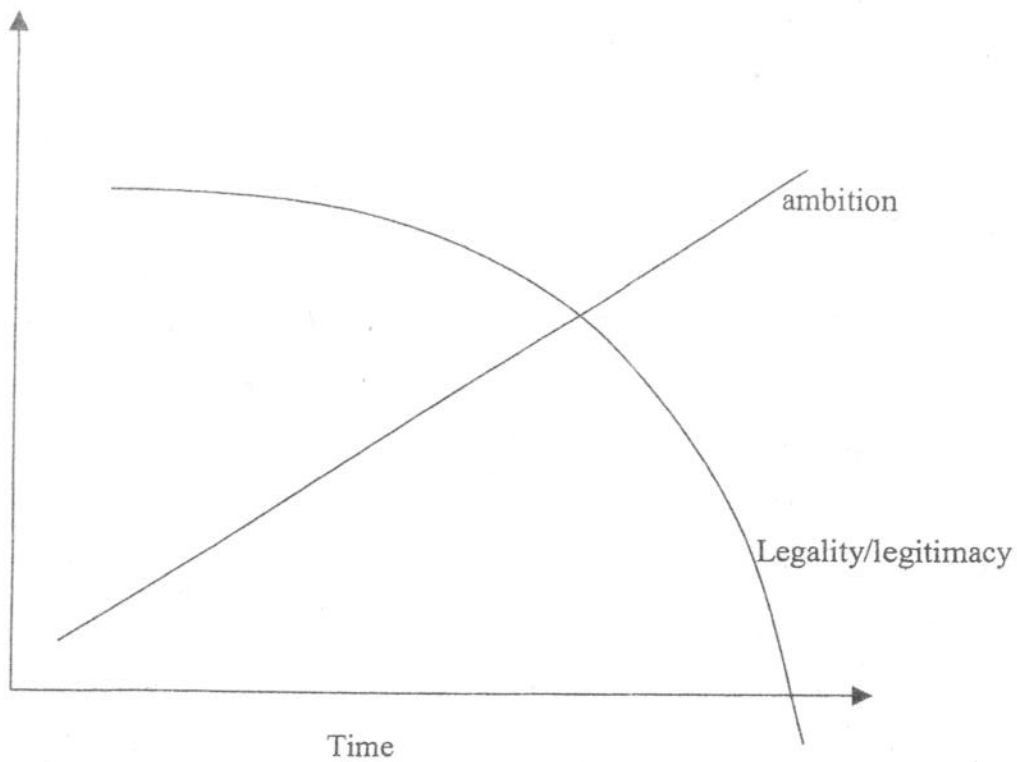
21. As and when we have this further detailed legal advice, we will need to consider the position of our secondees within ORHA in the event that the US proposes action that we consider to be unlawful. We will also need to give careful thought to the position of UK forces in Iraq, in particular those that will occupy an area of Iraq in the south east, and the action that they should take if asked by ORHA to undertake activities that we consider unlawful.

22. Recommendations:

- **In continuing discussions about Phase IV, we make clear to the US the limits within which the UK, including UK personnel in ORHA, will have to operate.**
- **But we want ORHA to succeed. We therefore need close consultation on ORHA's plans, to ensure they stay within UK red lines.**
- **Subject to the above, we would be content to confirm General Cross' position as Deputy to Garner, and other UK support for ORHA's work.**

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Iraq Planning Unit
28 March 2003

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