

Summary

1. Good progress on key military tasks but these are not yet complete.
Despite previous reluctance, the Iraqi Prime Minister, Nouri al Maliki, now accepts the need for the UK to have combat permissions. A possible legal basis for this has now been proposed. There are three scenarios: an agreement on this basis; a political agreement only; and no agreement.
2. As our military drawdown proceeds, the UK's role in Iraq will change to a "normal" bilateral relationship. Key elements of this are attached at Annex A. Detailed proposals can be considered out-of-committee.

Recommendations

3. That Ministers consider:
 - the implications of the three scenarios for the UK's reputation, and what the Armed forces would be able to do in each; and
 - if we do not get a legal agreement, whether a political agreement would be sufficient or we should move on 1 January to a "normal" bilateral relationship.
4. That Ministers agree the Foreign Secretary should circulate detailed proposals on our future relations for agreement out-of-committee. Annex A sets out the key elements.

Background

5. In his Statement to Parliament on 22 July, the Prime Minister set out our remaining key military tasks: training the Iraqi Army 14th Division (14 Div.); preparing Basra Airport for handover to the Iraqis; and developing the Iraqi Navy

~~CONFIDENTIAL~~
~~DECLASSIFIED~~

so it can protect Iraq's oil platforms. Good progress has been made: the airport is ready to hand over and 14 Div. is likely to reach the necessary standard by May 2009. Naval training is a longer term task and is unlikely to be completed before 2011/12.

6. Maliki had questioned the need for UK forces to be able to use offensive force ("combat permissions"), claiming that we only needed a 'training' agreement. But the training of 14 Div. involves UK personnel assisting the planning and execution of Iraqi combat operations: such a direct role requires the UK personnel to have "combat permissions". Such permissions are also necessary for UK Special Forces' operations and as a contingency for combat engagement as part of our naval operations in the northern Gulf. If we did not have combat permissions, further consideration would be needed on the legal basis for any UK air operations over Iraq and UK personnel in Coalition (US) Command structures.
7. To complete our military mission as currently defined we need:
 - a) a request from the Government of Iraq (GoI) to stay and complete our tasks (including with combat permissions),
 - b) a legal basis providing UK military and civilian personnel (while on duty) with jurisdictional immunities from Iraqi law.

Separately, the Attorney General also needs to confirm that a state of internal armed conflict continues to exist in Iraq. That is expected later this week. The Attorney General's view provides UK personnel with authority under UK law to engage in combat operations.

8. During his meeting with the Prime Minister's Foreign Policy Adviser last week, Maliki confirmed that UK forces should remain to complete their key tasks, provided that our mission ended by 31 May 2009 and all UK combat forces were out of Iraq by 31 July. Maliki appeared content to allow combat permissions, subject to receiving a briefing from the Iraqi MOD (scheduled for 9 December), through a legally-binding agreement to provide the necessary jurisdictional

~~CONFIDENTIAL~~
~~DECLASSIFIED~~

~~CONFIDENTIAL~~
~~DECLASSIFIED~~

immunities. He was adamant that he would not put any more SOFAs to the Council of Representatives (CoR).

9. This means there are now three scenarios which could emerge that will dictate what we can do in 2009:

- a) a legally binding Exchange of Letters (EoL) with jurisdictional immunities enshrined in Iraqi law;
- b) a non-legally binding EoL containing a political agreement to complete our mission (with associated permissions and arrangements), but no jurisdictional protection in Iraqi law;
- c) no agreement.

10. Negotiations following the discussions with Maliki have produced the following proposal:

- a short draft law to the CoR with: authorisation for UK (and Australian) forces to remain in Iraq until 31 July 2009 and exemption from Iraqi jurisdiction for those forces; and a statement that Maliki shall set the necessary arrangements for the tasks and missions of these forces.
- complement this law with a (non-legally binding) EoL between governments enshrining the tasks.

The draft law would be put to the Council of Ministers for approval at its next meeting (14 December) and, if agreed, to the CoR on 16 December. If it proceeded to schedule, the law would be passed by 22 December and would enter force by 1 January 2009.

11. We have not yet seen the text of the draft law. Provided that the parallel EoL contains the tasks and other provisions, the approach looks acceptable from a legal perspective. There is some political risk. Maliki has shown an

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

unwillingness to expend any political capital on behalf of the UK and might leave our law to its fate in the CoR. It might not become clear whether the CoR will definitely pass it until after the UK Parliament rises (18 December).

12. Failing to secure any agreement – scenario c) above - would mean that UK forces would not have the required consent from the GoI to remain in Iraq and would have no authority to complete their mission; they would need to leave as quickly as possible. There would be reputational damage to the UK (the Army in particular).
13. A political agreement would require us to adjust our force posture. The precise implications will depend on what the text says. As a minimum we would need to stop any activities supporting combat operations. That would need to be explained carefully to Maliki (and the US) if the political agreement contained combat permissions which we could not use, as it would not be legally-binding. That would mean the US would have to complete much of our mission in Basra. With a political agreement, UK forces could remain in Iraq but would only be able to carry out limited training (advisory) tasks.
14. We would use the Prime Minister's visit and planned Statement to Parliament as key elements to project as positive a narrative as possible around whichever scenario emerges. That would include details of the next military roulement. If we fail to secure an agreement, the narrative would need to focus on limiting reputational damage as much as possible. We would profile the progress made on our key tasks. Programme elements in the Prime Minister's visit are being designed to do this. Retaining a military mission under the auspices of a political agreement only poses risks of us being exposed to accusations of not being in control of our own mission.

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~
~~DECLASSIFIED~~

Annex A – Future Relations: Key Elements

The following lists the main activities proposed for the UK's future bilateral relationship with Iraq, including how they will be resourced:

Diplomatic/ Political:

- Lobbying and influencing in support of full range of HMG activities, including supporting other departments' work on the Overseas CONTEST strategy for Iraq, development, education and energy.
- Encourage Iraq's political development, resolution of disputes, respect for human rights and good governance; and support engagement by international partners.
- Migration and consular activities, including visa issuing services, returns programme and hostage issues.

Resource implications: FCO will retain a substantial Embassy in Baghdad at roughly current levels (20-25 FCO UK-based staff); a small post in Erbil (4 UK staff – to be reviewed again March 2009); and – subject to Ministers' views – a small post in Basra (3-4 UK staff, down from 9 at present) until at least March 2010. Non-staff running costs in FY08-09 are c £55m. These should reduce to below £50m in 09/10. The majority of these are recovered by FCO from cost-sharers (other departments, programme budgets, tenants). Provided that there is not a sharp reduction in cost-sharers, FCO can continue to meet these costs from its delegated budget.

Economic/ Development:

- Influence Iraqi economic policy, including improving the climate for foreign investment, help improve World Bank and IMF engagement in Iraq, capacity-building on public finance management, continued support for the Prime Minister's economic initiatives and support to other departments' work on investment, trade and higher education.

Resource implications: Programmes will be funded from existing DFID bilateral aid comprising £20mn (09/10) and £10mn (10/11), as well as potential Stabilisation Aid

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~
DECLASSIFIED

Fund programmes (see below). Staffing levels will be established according to programme needs, with all in-country personnel based in Baghdad

Defence:

- Continued UK leadership of the Coalition Naval Training Team, involving around 60 UK personnel;
- A NATO-badged Iraqi Army officer training/ education programme at the Iraqi Military Academies, involving around 30 UK personnel;
- Places for Iraqi Officers at military academies in the UK, funded from the Stabilisation Aid Fund (but see below);
- Capacity-building in the Iraqi Ministry of Defence and Joint Headquarters in Baghdad, involving around 25 UK personnel;
- Royal Naval participation in Coalition maritime operations in the Northern Arabian Gulf; Royal Air Force participation in Coalition air operations over Iraq and UK personnel in Coalition headquarters roles in Baghdad (currently around 70), subject to review after the conclusion of the current negotiations over the tasks, permissions and legal basis for UK forces remaining in Iraq. A further 180 UK personnel may be employed in force protection and support roles after transition in Basra.

Resource implications: Initial estimates, subject to further clarification and the outcome of negotiations over the future legal basis of UK forces in Iraq, suggest that the net additional costs of Operation TELIC – including these activities - may fall from around £1,270M in 2008/09 to around £500M (exclusive of remediation and recuperation costs) in FY 2009/10. The costs for 2009-10 are expected to be borne by the Reserve. Thereafter resourcing will be a matter for discussion between MOD and HM Treasury, depending on MOD's plans.

NB: Any UK role in air operations over Iraq once UK combat forces have left theatre needs further consideration.

~~CONFIDENTIAL~~
DECLASSIFIED

~~CONFIDENTIAL~~
~~DECLASSIFIED~~

Energy:

Ensure security of Iraq oil supply and long-term increase in oil output through political lobbying on hydrocarbons legislation and national energy policy and regional support.

Resource implications: delivered primarily through FCO staff.

Commercial:

- Support for trade missions, UK investor visits and political lobbying to ensure a level playing field for UK exporters/ investors.

Resource implications: the new, short-term UKTI Business Specialist in Iraq will provide recommendations in early 2009 on resource needs.

Educational:

- Increased collaboration with Iraqi educational institutions, civil society, student exchanges and English Language Training.

Resource implications: Current British Council staff will be retained. Any increase in staff will depend on partnership and client funding. Project costs will continue to be funded from within existing British Council budgets, complemented by partnership and client funding.

A number of these activities are delivered through or supported by funding from the Stabilisation Aid Fund (SAF) and Peacekeeping Budget (PKB). Decisions on whether funding can be made available will be taken in the wider context of demands on those budgets. That will be discussed at NSID(OD) chaired by the Foreign Secretary planned for January.

~~CONFIDENTIAL~~
~~DECLASSIFIED~~