

*Home Minister*

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*Recd 1514**U.S. rightly calling for a*  
PM/03/031*Big change in our contribution & effort*  
*But legal constraints / possible veto power*  
*may be problematic.*  
PRIME MINISTER*16*  
*4*  
*Don*  
*dc JPO*  
*MR*  
*NC*  
Iraq: Office for Reconstruction and Humanitarian Assistance (ORHA)

## SUMMARY

1. The coalition needs to ensure ORHA is resourced to allow the military successes of Phase III to be carried into the humanitarian and reconstruction tasks of Phase IV.
2. Recommendation that we increase significantly the level of UK political and practical support to ORHA, including the secondment of significant numbers of staff in priority areas. In return, we want the US to sign up to transparency and joint decision-making. Our lawyers are working urgently with the Americans to concert positions on the legal basis for ORHA's activity, making clear that this is essential to our longer-term commitment.

## DETAIL

ORHA

3. ORHA was established by the US Department of Defence to provide the transitional civilian authority for post-conflict Iraq, under coalition military control. It is currently poised in Kuwait, ready to deploy to Baghdad as the security situation permits, and began operating in southern Iraq on 8 April. The organisation is led by a retired US General, Jay Garner, who has previous humanitarian experience in northern Iraq and will assume the role of Interim Transitional Civilian Administrator. The current staff totals about 250, expected to rise to over 1000 after deployment into Iraq.

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1. The US intention is that ORHA will oversee the Phase IV humanitarian and reconstruction effort and restore normal functioning of Iraqi ministries and provinces, with the aim of a phased restoration of full control of government to the Iraqis themselves. In doing so, the US intend that it will work as far as possible with and through the existing Ministries in Baghdad. A team within ORHA will work on constitutional issues including setting up the Iraqi Interim Authority (IIA). The US also envisage the establishment of ORHA 'regional offices' in the provinces.

5. International support has so far been provided for ORHA from the UK (twelve officials seconded), Australia (six), Czech Republic (ten) and Japan (one). Other countries, including Spain and Romania, have agreed to send staff. More would be likely to follow if ORHA were to be brought under a UN mandate.

#### UK approach

6. Our own approach to ORHA has so far been cautious. We would have preferred a structure less closely tied to the Pentagon, and less subject to inter-agency politics in Washington. There are also significant legal questions. The Attorney General's minute to you of 26 March advised that in the absence of a further UN Security Council Resolution, ORHA will be bound by the restrictions on the authority of an occupying power provided by the Hague Regulations 1907 and Geneva Convention IV. The general principle is that an Occupying Power does not become the government of an occupied territory. While some changes to the legislative and administrative structures of Iraq may be permissible if they are necessary for security or public order reasons, or in order to further humanitarian objectives, more wide ranging reforms of governmental and administrative structures would not be lawful.

7. Against this background the support we have so far given to ORHA has been modest relative to our military contribution to the Coalition. Until 14 April, a UK Army officer, Major General Cross, had been serving as one of Garner's three

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deputies without formal appointment or public announcement. A total of twelve military and civilian officers have been seconded to ORHA in Kuwait and the Pentagon. Their role has been 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 on commercial opportunities.

#### Recommendation

8. With ORHA now likely to deploy quickly following the fall of Baghdad, the Ad Hoc Ministerial Group reviewed this position on 10 April. Our conclusion is that, whatever its shortcomings, ORHA will be the essential element in the ability of the Coalition to carry its military successes into the post conflict phase. The legal constraints are unlikely to be a problem in the first stage of ORHA's work, which will be focussed on immediate humanitarian and reconstruction needs, including the restoration of a functioning civil administration. Over time we can expect UN specialised agencies to take on more of the humanitarian work from ORHA.

9. I therefore recommend a step change increase in the resources and personnel we offer, combined with a clear public commitment to ORHA, linked to its role in delivering our Vision for the future of Iraq. The initial requirements are likely to include restoration of administrative capacity across the Iraqi government structure, including in security, central banking and finance, infrastructure, education, oil and health. We are working urgently to establish where we can best make a contribution and how this will be funded. We are in the process of providing extra media support to ORHA, who badly need a better presentational operation. As an initial step I made a public announcement of Major General Cross's position as a deputy in ORHA when I saw him and Garner in Kuwait on 14 April.

10. We now need an immediate effort across Government and with the private sector to get UK experts into the key Iraqi Ministries quickly. Patricia is

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particularly keen that we should appoint people to the economic ministries. I would be grateful for your support as we identify and deploy a wide range of people.

11. Peter is clear that we need an understanding with the US Administration that we would expect this level of support to be reflected in a formal commitment on their part to transparency and joint decision-making. This must include early work by US and UK lawyers to reach a shared understanding on the legal limitations on the scope of ORHA's work, and a process for resolving disputes in an MOU. This is in hand. State Department lawyers share our view, but there is an all too familiar inter-agency dispute going on within the Administration. Peter also believes it will be important for the UK to have a power of veto over ORHA's activities, particularly in areas of Iraq controlled by British forces.

12. We should be clear with the US at the outset that our continued participation in ORHA will depend on these limits being respected. We would need to reconsider our involvement if the US tried to use it to impose radical restructuring in the absence of UN authorisation.

13. I am copying this minute to the Chancellor of the Exchequer, the Secretaries of State for Defence, Trade and Industry and International Development, and the Attorney General. Copies also go to Sir David Manning (No 10), Sir Andrew Turnbull and Desmond Bowen (Cabinet Office).

*Jonathan Sinden*

JP (JACK STRAW)

(Approved by the Foreign Secretary and  
signed by the Private Secretary in his  
absence overseas)

15 April 2003

Foreign and Commonwealth Office

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