

**PROPOSED US-UK-SPAIN DRAFT RESOLUTION (5/19/03)**  
**and OSI SUGGESTED REVISIONS<sup>1</sup>**

If approved, the resolution tabled by the US and the UK will establish an indefinite American protectorate of Iraq sanctioned by the United Nations and paid for by the oil revenues of Iraq. It would also bring about a serious undermining of international law.

There is a need for the UN and the Secretary General to be given a more substantial role in Iraq. The changes suggested in this memo emphasize that there should be more regular supervision of the occupying powers; that it is essential to set an established time limit for the renewal or termination of this resolution; that UN oversight for systems of justice and accountability will be necessary; and that the Advisory and Monitoring Board for the Development Fund for Iraq—the fund which will contain Iraqi oil revenue—should report back to the Security Council periodically and include a broader cross-section of members.

The following are specific recommendations on how to improve the proposed resolution:

**Operative Paragraph 2**

*Proposed Change:*

2. *Calls upon* all Member States in a position to do so to respond immediately to the humanitarian appeals of the United Nations and other international organizations for Iraq and to provide humanitarian assistance to help meet the humanitarian and other needs of the Iraqi people by providing food, medical supplies, and resources necessary for reconstruction and rehabilitation of Iraq's economic infrastructure;

*This change directly requests Member States to provide immediate humanitarian assistance to Iraq and makes clear that the Council is only requesting humanitarian assistance.*

**Operative Paragraph 4**

*Proposed Change:*

4. *Calls upon* the Authority, consistent with the Charter of the United Nations and other relevant international law, ~~to promote the welfare of the Iraqi people through the effective administration of the territory,~~ to honor its obligations as an occupying power, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people may freely determine their own political future;

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<sup>1</sup> All insertions to the original draft resolution text are underlined; all deletions are in ~~strike through~~.

*This change calls for the occupying forces to honor the international laws and duties of military occupation and makes clear that the paragraph is not an authorization from the UN Security Council for the Authority to ignore the requirements of existing international law.*

#### **Operative Paragraph 5**

*Proposed Change:*

7. Calls upon the occupying powers and all concerned to comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907;

*Again, this change calls for the occupying forces to comply with the international laws and duties of military occupation.*

#### **Operative Paragraph 8**

*Proposed Change:*

8. *Requests* the Secretary-General to appoint a Special Representative for Iraq whose independent responsibilities shall involve reporting regularly to the Council on ~~his activities under~~ this resolution, coordinating activities of the United Nations in post-conflict processes in Iraq, coordinating among UN and international agencies and nongovernmental organizations engaged in humanitarian assistance and reconstructions activities in Iraq, and, in coordination with the Authority, assisting the people of Iraq through:

*This change expands the role of the Special Representative (and, by extension, of the United Nations) in overseeing the specific terms of this resolution and the reconstruction efforts in Iraq. UN participation is necessary to confer legitimacy on all aspects of post-conflict reconstruction, rehabilitation and humanitarian efforts in Iraq. The changes also explicitly acknowledge the important role of NGOs.*

#### **Operative Paragraph 8, section (c)**

*Proposed Change*

(c) working intensively with ~~the Authority~~, the people of Iraq, and others concerned to advance their efforts to restore and establish national and local institutions for representative governance, including by collaborating to facilitate a process leading to an internationally recognized, representative government of Iraq;

*This change enhances the role of the UN Representative in the formation of local and national governance by suggesting that the UN Representative, and not the Authority, will have the lead role.*

## **Between Operative Paragraphs 8 and 9**

### *Proposed Change*

8 bis Requests the Secretary General to report back within 3 months recommendations on an appropriate role for the United Nations supporting the establishment of post-conflict justice mechanisms in order to provide accountability for those who have committed violations of international humanitarian law and serious violations of fundamental human rights law;

*The UN must have a role in establishing justice mechanisms for post-conflict Iraq which will create systems to prosecute violations of international humanitarian law. This addition gives the Security Council responsibility for recommendations on the UN role, and adds to the legitimacy of any courts that may be formed for prosecutions of war crimes, crimes against humanity or other criminal offenses.*

## **Operative Paragraph 9**

### *Proposed Change*

9. *Supports* the formation, by the people of Iraq ~~with the help of the Authority and~~ working with the Special Representative, of an Iraqi interim administration as a transitional administration run by Iraqis, until an internationally recognized, representative government is established by the people of Iraq ~~and assumes the responsibilities of the Authority;~~ Calls upon the Authority to cooperate with the Special Representative for this purpose;

*This change expands the UN role and suggests that it will take the lead in the formation of an Iraqi interim administration. The United Nations must be the body that confers international legitimacy on an interim Iraq administration; furthermore, expanding the UN role adds to the transparency of an appointed interim government in post-conflict Iraq and will assist in maintaining the accountability of that government.*

*In an effort to encourage the expeditious formation of an internationally recognized, representative government of Iraq, this change also deletes the benchmark set by the original text that such a government must have assumed responsibilities of the Authority before it can replace an Iraqi interim administration. This benchmark could serve to lengthen the control of the Authority by needlessly extending the interim period.*

## **Operative Paragraph 10**

### *Proposed Change:*

10. *Decides* that, with the exception of prohibitions related to the sale or supply to Iraq of arms and related materiel other than those arms and related materiel required ~~by the Authority~~ to serve the purposes of this and other related resolutions, all prohibitions

related to trade with Iraq and the provision of financial or economic resources to Iraq established by resolution 661 (1990) and subsequent relevant resolutions, including resolution 778 (1992) of 2 October 1992, shall no longer apply;

*This change removes "by the Authority" so that the exception would apply to the Iraqi interim government and to other international entities.*

### **Operative Paragraph 11**

*Proposed Change:*

11. *Reaffirms* that Iraq must meet its disarmament obligations, *invites* the United Kingdom of Great Britain and Northern Ireland and the United States of America to keep the Council informed of their activities in this regard, and *underlines* the intention of the Council to ~~revisit~~ implement the mandates of the UN Monitoring and Verification Commission and the International Atomic Energy Agency as set forth in resolutions 687 (1991) of 3 April 1991, 1284 (1999) of 17 December 1999, and 1441 (2002) of 8 November 2002;

*This change specifies that the mandates of previous Security Council resolutions on disarmament and weapons inspections will be implemented, and removes the possibility that the Authority might dismantle rather than carry out those resolutions. Weapons inspections and disarmament should be undertaken pursuant to existing regimes, and should involve the legitimacy and expertise of relevant UN bodies.*

### **Operative Paragraph 12**

*Proposed Change*

12. *Notes* the establishment by the authority consistent with applicable international law of a Development Fund for Iraq to be held by the Central Bank of Iraq and to be audited by independent public accountants approved by the International Advisory and Monitoring Board of the Development Fund for Iraq and looks forward to the early meeting of that International Advisory and Monitoring Board, whose members shall include duly qualified representatives of the Secretary General, of the Managing Director of the International Monetary Fund, of the Director-General of the Arab Fund for Social and Economic Development, of Iraqi civil society (appointed by the Secretary General), and of the President of the World Bank, and shall include fund management experts and environmental experts;

*The first revision notes that the establishment of the Development Fund for Iraq must be consistent with existing international law. The Development Fund for Iraq will contain monies that arise from Iraqi resources, and international law requires that the occupying power must not use its authority to exploit local resources for the benefit of its own population and territory.*

*Subsequent revisions in this paragraph add to the International Advisory and Monitoring Board for the Development Fund for Iraq the following: Iraqi representation*

*appointed by the Secretary General; fund management experts; and experts on the environmental impacts of oil development (in addition to retaining the resolution's provisions for UN, IMF, Arab Fund and World Bank representation).*

*An international board as described above is necessary to monitor the country's resources transparently and responsibly on behalf of the Iraqi population, and avoids use of revenues by unaccountable parties or in a non-transparent manner.*

### **Operative Paragraph 13**

*Proposed Change:*

13. *Notes further that the funds in the Development Fund for Iraq shall be disbursed at the direction of the Authority, in consultation with the International Advisory and Monitoring Board and the Iraqi interim administration, consistent with international law and for the purposes set out in paragraph 14 below;*

*This change requires that the Authority consult the International Advisory and Monitoring Board (in addition to the Iraqi interim administration) in regards to disbursements from the Fund.*

*This change also requires that the Authority adhere to international law in regards to the administration of any funds that ultimately arise from local and non-local Iraqi resources. International law requires that the occupying power must not use its authority to exploit the population or local resources for the benefit of its own population and territory.*

### **Operative Paragraph 14**

*Proposed Change*

14. *Underlines that the Development Fund for Iraq shall be used in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, ~~for the continued disarmament of Iraq,~~ and for the costs of Iraqi civilian administration and for other purposes benefiting the people of Iraq; the International Advisory and Monitoring Board shall report to the Council on the operations of the fund at least every three months;*

*This change removes use of the Development Fund for Iraq for several purposes: (1), for the continued disarmament of Iraq. Disarmament is a function which the Security Council has under its control; funds should be used for UNMOVIC to complete its task, and not for the disarmament activities undertaken by the United States. And (2), it removes funding for "other purposes benefiting the Iraqi people," because this clause would effectively free the Authority from the restrictions posed by international law if it concluded that the expenditures would "benefit the Iraqi people."*

*This change also enhances the UN role in managing the uses of the Development Fund for Iraq and increases transparency and accountability by requiring the Fund's advisory board to report directly to the Security Council at three month intervals.*

### **Operative Clause 20**

#### *Proposed Change:*

20. *Decides* that all export sales of petroleum, petroleum products, and natural gas from Iraq following the date of the adoption of this resolution shall be made consistent with prevailing international market best practices, to be audited by independent public accountants reporting to the International Advisory and Monitoring Board referred to in paragraph 12 above in order to ensure transparency, and *decides further* that, except as provided in paragraph 21 below, all proceeds from such sales shall be deposited into the Development Fund for Iraq, until such time as an internationally recognized representative government of Iraq is properly constituted; *decides that no decision shall be made affecting the long term organization of the Iraq oil industry during this period;*

*This change restricts any entity from making long term commitments regarding any of Iraq's oil resources, until such time as an internationally recognized government of Iraq is properly constituted.*

### **Operative Clause 21**

#### *Proposed Change:*

21. *Decides further* that 5 percent of the proceeds referred to in paragraph 17 above shall be deposited into the Compensation Fund established in accordance with resolution 687 (1991) of 3 April 1991 and subsequent relevant resolutions and that, unless an internationally recognized, representative government of Iraq and the Governing Council of the United Nations Compensation Commission, in the exercise of its authority over methods of ensuring that payments are made into the Compensation Fund, decides otherwise, this requirement shall be binding on a properly constituted, internationally recognized, representative government of Iraq and any successor thereto; *Decides further that X percent shall be available to UNMOVIC and X percent for the activities of the UN in Iraq*

*This change allows a percentage of funds of the Development Fund for Iraq to be earmarked for UNMOVIC in order to fund UN weapons inspection teams. The revision also provides that resources from the Fund should be used to pay for UN activities in Iraq.*

### **Operative Clause 23**

#### *Proposed Change:*

23. *Decides* that all Member States [with Iraqi assets]...shall freeze without delay such funds until they can be transferred to an internationally recognized, representative government of Iraq and ~~immediately cause the transfer of those funds or other financial~~

~~assets or other economic resources to the Development Fund for Iraq~~, it being understood that, unless otherwise addressed, claims made by private individuals or non-government entities on those transferred funds or other financial assets may be presented to the internationally recognized, representative government of Iraq; and *decides* further that all such funds or other financial assets or economic resources shall enjoy the same privileges, immunities, and protections as provided under paragraph 22;

*This change escrows Iraqi assets being held by Member States for use by the new Iraqi government rather than putting them at the disposal of the Authority.*

#### **Between Operative Paragraphs 23 and 24**

*Proposed Change:*

23 bis *Endorses the exercise of the responsibilities stated in this resolution by the Authority for an initial period of 6 months from the date of the adoption of this resolution, to continue thereafter as the Security Council decides;*

*This change is an essential addition to any Security Council resolution on Iraq. Without the addition of this section, which sets a time limit of six months for the resolution and the authorization it grants to reconstruction efforts in Iraq, the Authority is given a virtually limitless mandate to operate in Iraq. This addition also ensures that renewal will not be automatic, by requiring an affirmative vote of the Security Council to renew the resolution.*

#### **Operative Paragraph 24**

*Proposed Change:*

24. ~~Requests the Secretary General to report to the Council at regular intervals on the work of the Special Representative with respect to the implementation of this resolution and on the work of the International Advisory and Monitoring Board and invites the United Kingdom of Great Britain and Northern Ireland and the United States of America periodically to inform the Council of their efforts under this resolution;~~

*This change expands the role of the United Nations by ensuring that the Secretary General will be charged with reporting to the UN Security Council on the entire reconstruction process, including any activity by his representatives, by the Authority, or pursuant to any provisions of the resolution.*