

**THE U.N. OIL FOR FOOD PROGRAM: CASH COW
MEETS PAPER TIGER**

HEARING

BEFORE THE
SUBCOMMITTEE ON NATIONAL SECURITY,
EMERGING THREATS AND INTERNATIONAL
RELATIONS

OF THE

**COMMITTEE ON
GOVERNMENT REFORM**

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

OCTOBER 5, 2004

Serial No. 108-286

Printed for the use of the Committee on Government Reform



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THE U.N. OIL FOR FOOD PROGRAM: CASH COW MEETS PAPER TIGER

TUESDAY, OCTOBER 5, 2004

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING
THREATS AND INTERNATIONAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 11:25 a.m., in room 2154, Rayburn House Office Building, Hon. Christopher Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays, Turner, Duncan, Murphy, Lantos, Sanders, Lynch, Maloney, Sanchez, Ruppertsberger, Tierney, Watson, and Waxman [ex officio].

Also present: Representative Ose.

Staff present: Lawrence Halloran, staff director and counsel; J. Vincent Chase, chief investigator; R. Nicholas Palarino, senior policy advisor; Thomas Costa and Kristine McElroy, professional staff members; Robert A. Briggs, clerk; Hagar Hajjar, intern; Phil Barnett, minority staff director; Kristin Amerling, minority deputy chief counsel; Karen Lightfoot, minority communications director/senior policy advisor; David Rapallo, minority counsel; Andrew Su, minority professional staff member; Early Green, minority chief clerk; and Jean Gosa, minority assistant clerk.

Mr. SHAYS. A quorum being present, the Subcommittee on National Security, Emerging Threats and International Relations hearing entitled, "The U.N. Oil-for-Food Program: Cash Cow Meets Paper Tiger," is called to order.

The United Nations Oil-for-Food Program was mugged by Saddam Hussein. Through cynical, yet subtle manipulation, he, and an undeclared Coalition of the Venal on the Security Council, exploited structural flaws in the program and institutional naivete at the U.N. to transform a massive humanitarian aid effort in a multibillion dollar sanctions-busting scam.

How did it happen? How was a well-intentioned program designed and administered by the world's preeminent multinational organization so systematically and so thoroughly corrupted?

The answers emerging from our investigation point to a debilitating combination of political paralysis and a lack of oversight capacity, allowed to metastasize behind a veil of official secrecy. Acceding to shameless assertions of Iraqi sovereignty, sovereignty already betrayed by Saddam's brutal willingness to starve the Iraqi people, the U.N. gave the Hussein regime control over critical aspects of the program. Saddam decided with whom to do business and on

what terms. While Chinese, French, and Russian delegates to the Security Council's Sanctions Committee deftly tabled persistent reports of abuses, the contractors hired to finance and monitor the program had only limited authority to enforce safeguards.

We will hear from these contractors today. BNP Paribas, the international bank retained by the U.N. to finance oil and commodity transactions through letters of credit, describes its functions as purely nondiscretionary. Saybolt International, responsible for verifying oil shipments, faced physical and political constraints on performance of their work. Additionally the firm Cotecna Inspection was given only a limited technical role in authenticating shipments of humanitarian goods into Iraq.

The U.N. appears to have assumed that the rigor of commercial trade practices would protect the program, while the contractors took false comfort in the assumption the U.N. would assure the integrity of this decidedly noncommercial enterprise. Once it became clear the Security Council was politically unable to police the program, no one had any incentive to strengthen oversight mechanisms that would only be ignored.

As this and other investigations got underway, the companies expressed their willingness to provide detailed information on their Oil-for-Food activities but confidentiality provisions in U.N. agreements prevented their coming forward until the committee's "friendly" subpoenas trumped those contractual restraints. Since then, they have provided thousands of pages and gigabytes of data which we and other committees are reviewing.

Today we are releasing some of those documents because, apart from any findings or recommendations we might adopt, a major goal of this investigation is to bring transparency to secretive U.N. processes and to put information about this highly important international program in the public domain. The documents provide the first detailed glimpse into the structural vulnerabilities and operational weaknesses exploited by Saddam and his allies.

From what we have learned thus far, one conclusion seems inescapable: The U.N. sanctions regime against Iraq was all but eviscerated, turned inside out by political manipulation and financial greed. Saddam's regime was not collapsing from within; it was thriving. He was not safely contained, as some contend, but was daily gaining the means to threaten regional and global stability again, once sanctions were removed.

Testimony from our witnesses today will contribute significantly to our ongoing oversight and to the public understanding of the United Nations Oil-for-Food Program. We sincerely thank them for their participation today and we look forward to their continued cooperation in our work.

At this time the Chair would recognize the ranking member of the full committee, Mr. Waxman who is an ex officio member.

[The prepared statement of Hon. Christopher Shays follows:]

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Statement of Rep. Christopher Shays
October 5, 2004

The United Nations Oil-for-Food Program (OFFP) was mugged by Saddam Hussein. Through cynical yet subtle manipulation, he and an undeclared Coalition of the Venal on the Security Council exploited structural flaws in the program and institutional naiveté at the UN to transform a massive humanitarian aid effort into a multi-billion dollar sanctions-busting scam.

How did it happen? How was a well-intentioned program, designed and administered by the world's preeminent multinational organization, so systematically and thoroughly corrupted?

The answers emerging from our investigation point to a debilitating combination of political paralysis and a lack of oversight capacity, allowed to metastasize behind a veil of official secrecy. Acceding to shameless assertions of Iraqi sovereignty - sovereignty already betrayed by Saddam's brutal willingness to starve the Iraqi people - the UN gave the Hussein regime control over critical aspects of the program. Saddam decided with whom to do business and on what terms. While Chinese, French and Russian delegates to the Security Council's Sanctions Committee deftly tabled persistent reports of abuses, the contractors hired to finance and monitor the program had only limited authority to enforce safeguards.

*Statement of Rep. Christopher Shays
October 5, 2004
Page 2 of 2*

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The UN appears to have assumed the rigor of commercial trade practices would protect the program; while the contractors took false comfort in the assumption the UN would assure the integrity of this decidedly non-commercial enterprise. Once it became clear the Security Council was politically unable to police the program, no one had any incentive to strengthen oversight mechanisms that would only be ignored.

As this and other investigations got underway, the companies expressed a willingness to provide detailed information on their Oil-for-Food activities. But confidentiality provisions in UN agreements prevented their coming forward until the Committee's "friendly" subpoenas trumped those contractual restraints. Since then, they have provided thousands of pages, and gigabytes of data, which we and other committees are reviewing.

Today we are releasing some of those documents because, apart from any findings or recommendations we might adopt, a major goal of this investigation is to bring transparency to secretive U.N. processes and put information about an important international program in the public domain. The documents provide the first detailed glimpse into the structural vulnerabilities and operational weaknesses exploited by Saddam and his allies.

From what we have learned thus far, one conclusion seems inescapable: The UN sanctions regime against Iraq was all but eviscerated, turned inside out by political manipulation and greed. Saddam's regime was not collapsing from within. It was thriving. He was not safely contained, as some contend, but was daily gaining the means to threaten regional and global stability again once sanctions were removed.

Testimony from our witnesses today will contribute significantly to our ongoing oversight, and to public understanding of the United Nations Oil-for-Food Program. We thank them for their participation today and we look forward to their continued cooperation in our work.

Mr. WAXMAN. Thank you, Mr. Chairman.

Today the committee is holding the fifth congressional hearing to investigate allegations of mismanagement in the U.N. Oil-for-Food Program. This humanitarian effort was established in 1995 to provide for the basic needs of Iraqis while U.N. sanctions were in effect. Recently there have been serious allegations of corruption, overpricing and kickbacks under this program.

And I want to make it clear that I believe it is appropriate for Congress to investigate these allegations in an evenhanded manner and follow the evidence wherever it leads.

My complaint is that our scope is too narrow. If we are going to look at how Iraq's oil proceeds have been managed, we have an obligation to examine not only the actions of the U.N. but also our own actions. In fact, I would argue that our first priority should be to investigate our own conduct.

The United States controlled Iraq's oil proceeds from the fall of Baghdad in May 2003 until June 2004. Yet Congress has not held a single hearing to examine the evidence of corruption, overpricing and lack of transparency in the successor to the Oil-for-Food Program, the Development Fund for Iraq—which was run by the Bush administration when the United States exercised sovereignty over Iraq.

Here are the facts. When the Bush administration took over in Iraq, it received \$20.6 billion through Iraqi oil proceeds, repatriated funds, and foreign donations. Halliburton was the single largest private recipient of these funds, receiving \$1.5 billion under its contract to run Iraq's oil fields.

This money belongs to the Iraqi people. It is not a slush fund. The Security Council directed the administration to use these funds in a transparent manner for the benefit of the Iraqi people. The Security Council passed Resolution 1483 which set up the International Advisory and Monitoring Board to make sure the Bush administration lived up to its obligations.

But the Bush administration has not complied with this resolution. Reports from auditors at KPMG, an independent certified public accounting firm, as well as the Coalition Provisional Authority's own inspector general, have found that the Bush administration failed to properly account for Iraqi funds.

KPMG said the Bush administration had inadequate accounting systems, inadequate recordkeeping, and inadequate controls over Iraqi oil proceeds. It reported that the administration's entire accounting system consisted of only one contractor maintaining excel spread sheets. That is one person for \$20 billion.

Likewise, the inspector general concluded that the Bush administration had no effective contract review tracking and monitoring system and that it failed to demonstrate the transparency required.

These actions merit a full congressional investigation. They are compounded by evidence that the Bush administration is now actively blocking efforts to account for these funds.

For 6 months, the Bush administration has been withholding documents from international auditors charged by the Security Council to oversee the administration's actions. In particular, the Bush administration is withholding documents about Halliburton's receipt of \$1.5 billion in Iraqi oil proceeds.

The auditors have made seven distinct requests for this information, including a letter from the Controller of the United Nations directly to Ambassador Bremer. But the administration has repeatedly refused to provide the documents, and continues to do so today.

Three months ago, the international auditors ordered a special audit of the contract with Halliburton, but again the Bush administration has obstructed their work. Administration officials have refused to approve the audit's statement of work and refused to issue a request for proposal. The special audit has simply languished inside the Department of Defense.

At this committee previous hearing, Mr. Claude Hanks-Drielsma, an advisor to the Iraqi Governing Council, testified that the Bush administration was not properly accounting for Iraqi funds. Ambassador Kennedy, who is here again today, could not explain why the Bush administration failed to follow its own rules and hire an accounting firm to manage the Iraqi oil proceeds. And the administration failed to adequately respond to the questions for the record we sent jointly regarding the DFI.

These actions are hypocritical, they are arrogant, they breed resentment in the Arab world and they further deteriorate our global alliances, but most of all they undermine our efforts in Iraq because they reinforce the image that our primary objective in Iraq was to seize control of the country's oil wealth.

If we are going to examine how Iraq's oil money has been spent, which I believe we should, we need to proceed in a fair and transparent way; and if we refuse to ask tough questions about the conduct of our own government officials, our efforts will have little credibility in the eyes of the world.

After the opening statements today, I am going to make a motion for subpoenas so that we can continue the investigation of the success or failure of the U.N. Oil-for-Food Program which was run by the United States. I am going to ask for subpoenas, which we asked for, by the way, when subpoenas were issued for this investigation. We asked for subpoenas on the same basis that we needed a subpoena, for example, for the corporate banking operations of BNP Paribas to give us the documents which the chairman is going to make public today. Those documents would not be turned over without a subpoena.

Documents will not be turned over to us from the Federal Reserve Bank on the same basis. We need a subpoena to get them. We need further subpoenas as well, and I will be making a motion for both subpoenas to be issued so that while we have our hearing today, we can be prepared to do the full investigation of what happened to the oil money after we took over.

We want to know what happened when the U.N. was running it; if there was corruption, if there was fraud, if there was a lack of transparency. But we have a special obligation to know what happened to that money when we took it over, if there was corruption, if there was fraud, if there was a lack of transparency. And so far the Bush administration is refusing to help in this investigation to know what happened after they ran those funds.

So I know, Mr. Chairman we are going to have the opening statements from the Members first. Before we then proceed to the first

witness, I will make my motion for subpoenas. And as I understand it, you are going to ask that vote be held later, after the witnesses have testified, presumably because we have done too good a job of getting the Democrats here to vote, and the Republicans, unaware that the vote would be taking place, are not here in sufficient numbers. I understand that is in the chairman's discretion.

I want to vote. If it is a bipartisan vote, that would be great. I think we ought to have a bipartisan vote to get these subpoenas. If it is a partisan vote, well, I think the American people ought to know that the Republicans are going to vote to stop a real investigation of the actions of the Bush administration with regard to the use of those funds and particularly because of the Halliburton involvement.

[The prepared statement of Hon. Henry A. Waxman follows:]

**Statement of
Rep. Henry A. Waxman, Ranking Minority Member
Committee on Government Reform
Before the
Subcommittee on National Security, Emerging
Threats, and International Relations
Hearing on The Iraq Oil-for-Food Program:
Cash Cow Meets Paper Tiger**

October 5, 2004

Today, this committee is holding the fifth congressional hearing to investigate allegations of mismanagement in the U.N. Oil for Food Program. This humanitarian effort was established in 1995 to provide for the basic needs of Iraqis while U.N. sanctions were in effect. Recently, there have been serious allegations of corruption, overpricing, and kickbacks under this program.

I want to make clear that I believe it is appropriate for Congress to investigate these allegations in an even-handed manner and follow the evidence wherever it leads.

My complaint is that our scope is too narrow. If we are going to look at how Iraq's oil proceeds have been managed, we have an obligation to examine not only the actions of the U.N., but also our own actions. In fact, I would argue that our first priority should be to investigate our own conduct.

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But the Bush Administration has not complied with this resolution. Reports from auditors at KPMG, an independent certified public accounting firm, as well as the Coalition Provisional Authority's own Inspector General, have found that the Bush Administration failed to properly account for Iraqi funds.

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These actions merit a full congressional investigation. They are compounded by evidence that the Bush Administration is now actively blocking efforts to account for these funds.

For six months, the Bush Administration has been withholding documents from international auditors charged by the Security Council to oversee the Administration’s actions. In particular, the Bush Administration is withholding documents about Halliburton’s receipt of \$1.5 billion in Iraqi oil proceeds.

The auditors have made seven distinct requests for this information, including a letter from the Controller of the United Nations directly to Ambassador Bremer. But the Administration has repeatedly refused to provide the documents, and continues to do so today.

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failed to adequately respond to the questions for the record we sent jointly regarding the DFI.

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If we are going to examine how Iraq's oil money has been spent – which I believe we should – we need to proceed in a fair and transparent way. And if we refuse to ask tough questions about the conduct of our own government officials, our efforts will have little credibility in the eyes of the world.

Mr. SHAYS. I thank the gentleman. I also thank him for letting me know that he was going to make this motion, but I did not know in time to tell the Members. This is a hearing and I don't think they thought there would be votes, so I appreciate his letting us know.

At this time, the Chair would recognize the vice chairman, Michael Turner.

Mr. TURNER. Thank you, Chairman Shays, for holding this hearing and for continuing your efforts to continue to examine the Oil-for-Food Program.

In our first hearing, we explored the accountability and integrity issues with the program. We discovered a lack of transparency and little accountability. Except for the actions of the United States and the United Kingdom, it appears that no one was bringing to light the corruption in the program.

The Oil-for-Food Program at its creation was poised for corruption. The U.N. allowed Iraq to select not only the suppliers of food and medicine but also the buyers of Iraqi oil. The mechanisms established by the U.N. for controlling Oil-for-Food contracts were inadequate. Transparency was nonexistent, and an effective internal review of the program did not occur. We do not know if members of the Security Council were involved in any of the corruption, but enough ancillary information exists to question the objectiveness and credibility of the Security Council and the United Nations.

Mr. Chairman, I appreciate your continued leadership on this important issue. I appreciate your continued leadership on the issue of our continuing involvement in Iraq and its transition to democracy.

Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman.

At this time the Chair would recognize Mr. Tierney.

Mr. TIERNEY. Mr. Chairman, thank you. I share your concern about the diversion of Iraqi oil proceeds through graft, kickbacks, and other schemes designed to line the pockets of corrupt Iraqi leaders.

If I may, I would like to read an account about the corruption that occurred in Iraq under the management previously in charge. Mr. Said Abdul Kassam was the Iraqi official in charge of withdrawals at the Iraq central bank. He reported that there was no need to rob the bank in a daring heist with guns and masks, because the bank was robbed every day by the directors of the Iraqi ministries.

According to Mr. Kassam, they use up all the money they want to withdraw. If it's a big amount they can get it in big bags. If it's a small amount they get it in a box. But the directors general are those people who are withdrawing the money. They can take the money immediately from the bank and put it in their pockets.

Mr. Chairman, I regret to say that this didn't happen under the Oil-for-Food Program; it happened under the Development Fund for Iraq. When I mentioned the previous management, I was talking about this country, the U.S. administration. The account was from an NPR series called "Spoils of War" and it highlights just how dysfunctional the Bush administration's management of DFI funds actually was. There was virtually no monitoring of what hap-

pened to Iraqi funds once they left the hands of this administration's officials.

Indeed, according to the Wall Street Journal article published on September 17, the Coalition Provisional Authority's own inspector general has now completed a report finding that the Bush administration, "hasn't demonstrated it kept much control over any of the assets it seized following the war."

In particular, the IG study reportedly concludes that the Bush administration failed to account for \$8.8 billion in DFI funds that were transferred to Iraqi ministries. According to the general report, the occupation government was unable to say for sure whether the money it disbursed was spent properly, or even spent at all.

It is amazing that we have held hearing after hearing about the United Nations; management of the Oil-for-Food Program, which I agree we should. I think you are on the right track, and that is necessary. But we have not held even one hearing on this administration's mismanagement of Iraqi oil proceeds, and I agree with Mr. Waxman that is equally as important to the credibility of this country if we are going to really look at the situation and have the respect of the world, knowing that we are trying to be transparent and get to the bottom of how these moneys were expended.

How can we expect the rest of the world to follow this administration's example? How can we expect them to comply with Security Council resolutions when the Bush administration ignores them?

Mr. Chairman, we do no service to the administration by allowing them to proceed in this manner. I urge the committee to immediately address these issues and exercise meaningful oversight as well as continue our hearing process on the U.N. Oil-for-Food Program, but we must be resolute about all of the improprieties or lapses.

Thank you. I yield back.

Mr. SHAYS. I thank the gentleman.

At this time the Chair would recognize Mr. Duncan.

Mr. DUNCAN. Thank you very much, Mr. Chairman.

A few years ago, 60 Minutes did a report on the scandalously high level of waste, fraud, and abuse occurring at the United Nations, much of it with American money. But this Oil-for-Food Program scandal really takes the cake, and so I appreciate very much your continuing to look into this situation and hold these hearings.

Through this program, Saddam Hussein obtained \$10.1 billion in illegal revenues. I remember hearing a talk a few months ago by Charlie Cook, the very respected political analyst, and he said that people really can't comprehend a figure over \$1 billion. And it is difficult to think of how much money \$10.1 billion is. This money was mostly squandered on Hussein's palaces, luxury cars, and lavish lifestyle that he and his family were living. This theft was made possible, apparently, by surcharges, illegal kickbacks, and abuse by U.N. personnel and by the lackadaisical and inept attitude of—and greedy attitude, really, of some of the companies involved that we will hear from today.

The Wall Street Journal reported in an editorial what a lot of business the U.N. did. Mr. Annan, Kofi Annan's Secretariat and his staff collected more than \$1.4 billion in commissions on these sales.

But during this time the U.N. was doing almost nothing to really push weapons inspections and other things that they should have been doing in Iraq.

The U.N. Oil-for-Food Program was the largest humanitarian effort in U.N. history. Unfortunately, it has now become the shining example of everything that is wrong with this organization. The United States pays one-fourth of the operating expenses of the United Nations, one-third of the money to many of the other U.N. programs, and mostly as much as 90 or 95 percent on most of the U.N. peacekeeping operation. If the U.N. cannot provide any better oversight than what we see through this program, then surely our tax dollars can be spent better elsewhere, particularly at a time when we have a \$7½ trillion national debt, and deficits running in the \$400 to \$500 billion range.

Thank you, Mr. Chairman.

Mr. SHAYS. Thank the gentleman.

And the Chair at this time would recognize Ms. Watson.

Ms. WATSON. Mr. Chairman, thank you. I think it is critical for Congress to address the serious questions surrounding the Bush administration's deficit management of Iraqi oil proceeds and other funds in the Development Fund for Iraq.

We made a commitment to the Iraqi people, a promise that we would spend their money for their benefit, and we do have to remember that it is their money. We also promised to spend it in a transparent manner so the entire world would know that we were managing their funds properly and are not allowing graft, corruption, and mismanagement to infiltrate our mission there.

Unfortunately, Mr. Chairman, it appears that the Bush administration has failed to live up to those commitments. Auditors at the CPA's own Inspector General's Office have issued a report that is extremely critical of the administration's management of Iraqi funds in the Development Fund for Iraq. In particular, the inspector general's report criticizes actions by the administration's contracting activities office in Iraq.

If I may, I would like to read just a short portion of the report. The CPA contracting activity had not issued standard operating procedures or developed an effective contract review tracking and monitoring system. In addition, contract files were missing or incomplete. Further, contracting officers did not always ensure that contract prices were fair and reasonable, contractors were capable of meeting delivery schedules, and payments were made in accordance with contract requirements.

This occurred because the CPA contracting activity did not provide adequate administrative oversight and technical supervision over the contracting actions completed by procuring contracting officers as required. As a result, the CPA contracting activity was not accurately reporting the number of contracts actually awarded by the CPA contracting activity. This hindered the CPA contracting activity's ability to demonstrate the transparency required of the CPA when it awarded contracts using DFI funds.

Mr. Chairman, this is an indictment of the administration's entire management approach to the funds of the Iraqi people.

The inspector general went on to warn that because contract files were not adequately maintained, they cannot be relied upon to en-

sure compliance or to be used as a source for congressional reporting.

How are we in Congress supposed to be able to conduct our oversight responsibilities when the information is not reliable? The inspector general's report found that of the contracts they analyzed, 67 percent had incomplete or missing documentation. Sixty-seven percent, Mr. Chairman. This is a horrendous record.

Finally, the inspector general provided its fundamental conclusion about the administration's stewardship of these Iraqi funds. The inspector general reported we do not believe that transparency can be achieved when pertinent data is unavailable or inaccurate.

Mr. Chairman, this is an embarrassment to our country. The Bush administration has failed to comply with Security Council Resolution 1483 and we need to take action.

Thank you Mr. Chairman.

Mr. SHAYS. I thank the gentlelady.

[The prepared statement of Hon. Diane E. Watson follows:]

Iraq Oil-for-Food Mismanagement

Subcommittee on National Security, Emerging Threats and International Relations

"The UN Oil-for-Food Program: Cash Cow Meets Paper Tiger"

Congresswoman Diane E. Watson

October 5, 2004

Mr. Chairman, I think it is critical for Congress to address the serious questions surrounding the Bush Administration's deficient management of Iraqi oil proceeds and other funds in the Development Fund for Iraq.

We made a commitment to the Iraqi people, a promise, that we would spend their money for their benefit – and we do have to remember that it is THEIR MONEY. We also promised to spend it in a transparent manner so the entire world would know

Iraq Oil-for-Food Mismanagement

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Iraq Oil-for-Food Mismanagement

In particular, the Inspector General’s report criticizes actions by the Administration’s “Contracting Activity” office in Iraq.

If I may, I would like to read just a short portion of this report. It states:

‘The CPA Contracting Activity had not issued standard operating procedures or developed an effective contract review, tracking, and monitoring system. In addition, contract files were missing or incomplete. Further, contracting officers

did not always ensure that contract prices were fair and reasonable, contractors were capable of meeting delivery schedules, and payments were made in accordance with contract requirements. This occurred because the CPA Contracting Activity did not provide adequate administrative oversight and technical supervision over the contracting actions completed by procuring contracting officers as required As a result, the CPA Contracting Activity was not accurately reporting the number of

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Mr. Chairman, this is an embarrassment to our country. The Bush Administration has failed to

Iraq Oil-for-Food Mismanagement

**comply with Security Council Resolution 1483. And
we need to take action.**

Mr. SHAYS. At this time the Chair would recognize Mr. Murphy.
Mr. MURPHY. Thank you, Mr. Chairman.

The focus of today's hearing is really twofold. First, to investigate the structural weaknesses that made the Oil-for-Food Program vulnerable to diversion and exploitation; and second, to determine the steps Oil-for-Food Program manager and contractors took to prevent abuse.

Now, we could spend all day just on point No. 1, but sadly I think the answer is staring us all in the face. The evidence uncovered over the last year by several different investigations cast little doubt that one of the fundamental problems with the U.N. Oil-for-Food Program was that the U.N. was running it, fueled by the greed and complicity of other countries.

Despite repeated criticisms and questions of concern, U.N. member countries and U.N. personnel continually turned a blind eye to the corruption of a program designed to get humanitarian assistance to the people living under one of the most corrupt regimes in the world. We knew Saddam Hussein was corrupt, and his tactics of ruthless violence were a way of life. One would think the U.N. would be aware of this and structure the program in such a way so as to guard against it. One would think that attempts by Hussein to evade the sanctions through this program would be anticipated, and thus steps taken to counter his money-making scheme from the beginning, rather than trying to put out fires after the fact.

Rather, it appears as if the Oil-for-Food Program went out of its way to encourage scandal and the illicit use of humanitarian contracts to line the pockets of Saddam Hussein and his cronies.

Now, the United States gave millions in lives to France in World War I, World War II, and Vietnam. Yet they turned their backs on us when faced with Hussein's ever-increasing threat to the international community.

France and Russia had two choices: Help us militarily, or intervene directly with Saddam Hussein to cooperate with weapons inspectors and stop his murderous regime. They did neither. Why didn't these countries step forward? Perhaps it had something to do with the fact that evidence suggests Russia was the recipient of 1.366 billion barrels of oil through Hussein's voucher scheme. And French companies close to President Chirac also benefited from Saddam's power. They were up to their ears in corruption, and the financial benefit of keeping Saddam Hussein in power weigh more heavily than their friendship with the United States.

Corruption in the Oil-for-Food Program enriched Hussein to the tune of \$10.1 billion, enough to buy and build more weapons, more clandestine activity and further undermine the entire U.N. sanctions program.

There was one line in the subcommittee's background memo that really sums up the problem with the program, "The Oil-for-Food Program was essentially run by Saddam Hussein."

How is it that the U.N. could allow the terms of a program meant to punish a tyrannical leader, while offering assistance to the very people that suffered under him to be dictated by that very tyrant? It is because the current nature of the U.N. is to be soft on terrorism and the world leaders that support it.

The spineless U.N. produced paper tigers in the form of resolutions that had no teeth. Time and again, the U.N. told Saddam Hussein and terrorists that the U.N. was all talk and no follow-through. And the world has reaped the grim harvest of that approach: more terrorists emboldened by the U.N.'s weaknesses.

According to classified documents reviewed by the subcommittee, the U.N. created and encouraged an environment whereby Russia, France, China, and Syria, all nations standing to gain financially by the continued support of Saddam's government, continually blocked efforts by the United States and the United Kingdom to maintain the integrity of the Oil-for-Food Program. And all of those countries sat on the U.N. Security Council.

The contractors responsible for inspecting shipments coming in and out of Iraq were also undermined by the U.N. Oil-for-Food Program policies. If the obstacles by Iraqi personnel were not enough, the U.N. denied the contractors the staff and the authority necessary to enforce inspection standards. One example given was an instance in which Saybolt was unable to prevent the transfer of oil onto a ship with expired letters of credit. If the inspectors had no enforcement powers, why have inspectors at all?

Now, some may question why Congress is so interested in this issue. Our interest in the U.N.'s involvement in Iraq goes far beyond the Oil-for-Food Program. As the United States continues to fight terrorists in Iraq, our level of cooperation with the U.N. has been called into question. Yet, if France and Russia and the U.N. knowingly undermined the mission of the Oil-for-Food Program and knowingly undermined the efforts to stop Saddam Hussein, this Congress has a responsibility to ask who our allies are and who the U.N. is supporting.

When some critics of the Iraq war claim our actions did not pass a global test, we must remember what interests the global community truly values. As I said before, we have given the French millions of our soldiers' lives, and they have given us the cold shoulder. France has repeatedly turned to us for help. In response, they have turned their back on us. The Oil-for-Food corruption scandal may be the answer of why.

When the United States continues to foot the bill for U.N. peacekeeping missions, when the U.N. is unwilling to support us in our efforts to protect our own citizens, if winning the approval of the European countries of the U.N. for U.S. policy is the global test, maybe we should reconsider and question the reliability and supposed altruism of those sitting in judgment.

I yield back my time, Mr. Chairman.

Mr. SHAYS. Thank the gentleman.

At this time, the Chair would recognize the distinguished gentleman from Vermont, Mr. Sanders.

Mr. SANDERS. Thank you very much, Mr. Chairman.

I don't think there is any disagreement on this committee about the importance of investigating the U.N. Oil-for-Food Program. It is important to know how American dollars being contributed to the U.N. were spent and how the corrupt Saddam Hussein regime ended up stealing money that should have gone to hungry people in Iraq. So I have no objection about investigating that important issue.

But I think it is equally important not only that we investigate what the U.N. does with American taxpayer money, it is equally important to investigate what the Bush administration and the U.S. Government does with American taxpayer moneys.

You know, Mr. Chairman, I have been on this committee for more than a few years, and I can recall very clearly that during the Clinton administration this committee held dozens upon dozens of hearings to investigate every single allegation relating to the Clinton administration, no matter how off-the-wall those allegations were. We investigated the Vince Foster suicide. We investigate the Monica Lewinski, so-called Travelgate, Whitewater, ad infinitum, on and on and on. However, rather amazingly, during the Bush administration this committee has not held one substantive hearing to investigate any serious allegation against the Bush administration. And why is that important? It is important because we have a Republican administration. We have a Republican Senate. We have a Republican House. And it is the moral obligation under the Constitution of the United States that the Congress provide oversight to any administration; otherwise the government doesn't work.

Yes, it is easy to beat up an administration from another party. We all know that. But we as Members of Congress have the responsibility to take a hard look at what any administration does, regardless of what party they are. And all over this country I think there is a growing concern, that the U.S. Congress has abdicated its oversight responsibility.

All over America people are asking, why did we in fact go to war? And I know there are two sides to the issue. This committee hasn't looked at the rationale for going to war in Iraq. We haven't looked at the leak of the names of CIA agents. We haven't looked at the fact that the Medicare actuary was threatened with being fired if he actually told Members of Congress the truth about how much money the prescription drug program would cost. We haven't taken a look at the Cheney energy task force.

Especially when we come to issues like Halliburton, we have a double responsibility. Everybody here knows that the Vice President of the United States used to be the CEO of Halliburton. Now, I am not casting any aspersions on what has happened. But all over this country people want to know, did Halliburton get a special deal? How come they got no bid contracts? How come billions of dollars went to Halliburton? Now, how come we are not looking at that issue?

So, Mr. Chairman, what I would simply say is, yeah, let's take a hard look at what the U.N. did. And while I know it is easy to beat up on France and Germany, it might be a little bit more difficult but may be of more interest to the American people to take a hard look at what goes on at the Bush administration.

I yield back.

Mr. SHAYS. I thank the gentleman.

At this time the Chair would recognize Mr. Lynch from Massachusetts.

Mr. LYNCH. Thank you, Mr. Chairman.

I too believe that there is a very strong need to carry out a thorough investigation into the circumstances. I would like to focus on,

however, with the Ambassador's cooperation, the facts that led us to this point. Now, here we have a situation where this Oil-for-Food Program was established back in 1995, after we had fought the first Gulf war, and it was established specifically because Saddam Hussein had run that country into the ground. He had failed to address the infrastructure needs and the humanitarian needs of his own people. He had used the country's natural resources as his own slush fund. He had used the basic funds that were in the treasury, the national treasury, at his own pleasure. He had ignored the basic health and welfare of his citizens in favor of a military buildup.

Saddam Hussein waged wars against Iran and invaded Kuwait. He had fired SCUD missiles into the civilian populations of Israel. And we fought a war to remove him from power, to remove him from Kuwait initially. And even with the evidence of his own atrocities and the evidence of the corrupt activities between him and his son, squandering the wealth of that country and abusing its citizens, after the United States took a leadership role in establishing this fund, in deciding who would contract for the Iraqi people, with this fund of \$20 billion, after that worldwide search for who would negotiate and who would control the terms for the Iraqi people, the responsibility was given to those same people: Saddam Hussein and his thugs, his family, the people that have been abusing that country for the previous 40 years. That was the colossal failure here, that we allowed Saddam Hussein to call the terms of that agreement, and he had the support of some of our international neighbors in getting the most favorable terms, having a private bank handle this.

We could not get information under the arrangement that was agreed to between the United Nations, Kofi Annan, Secretary General, and Saddam Hussein and his regime. How did we ever allow ourselves to be put in this position? How did we allow the victims here—and there are three sets of victims—one, the Iraqi people. This was their national wealth. This was their country, their resources; the American taxpayer footing the bill again; and also the credibility of the United Nations.

There are great misgivings here because of what has gone on. There is a definite—I haven't been on this committee that long. I have come to this committee recently. I have been here, this will be almost 3 years I have been on this committee. But I can tell you there is a definite reluctance on this committee to investigate anything.

I am still waiting, after three meetings with the Defense Department, to get the names of some Halliburton individuals whom they have removed for bribery and corrupt practices with individuals in Iraq and in the Middle East. On an investigatory committee in the Congress, and we can't get the names of our own people when they have conceded that they were involved in bribery and corrupt practices in which the taxpayers' funds have disappeared in the millions.

We need to do our job here, and I believe we will get to it eventually. But there has been tremendous wrongdoing here, and we have to step up to the plate and do what the American people have asked us to do: Get to the bottom of this.

I yield back Mr. Chairman. Thank you.

Mr. SHAYS. I thank the gentleman very much.

And, Mrs. Maloney, you're next.

Mrs. MALONEY. Thank you. Thank you very much, Chairman Shays, and I thank also Ranking Member Waxman for your holding this important hearing. And welcome, Ambassador Kennedy. It's good to see you again.

I think that we learned a great deal last April at our hearing, but since the appointment of Paul Volcker and the independent inquiry of the Oil-for-Food Program, there is much, much more to understand. I do believe that it is very important that we as an oversight body in Congress look at the U.N. and their financing, but we must also look at the finances and how we as a government handled the funds. We need to look at that equally. And I have some grave concerns that some of my colleagues have raised today in their testimony of the stewardship of the Iraqi oil proceeds and the successor to the Oil-for-Food Program, the Development Fund for Iraq which we created.

As was mentioned, on May 22, 2003, after the United States took control of Iraq, the U.N. Security Council passed Resolution 1483, formally transferring the Oil-for-Food assets to a new Development Fund for Iraq, and placing them under the authority of the Coalition Provisional Authority which was headed by Bremer. Resolution 1483 directed the Bush administration to spend these funds on behalf of the Iraqi people. The Security Council also imposed other restrictions, and I think these restrictions are important. And in the testimony today, I want to know why we didn't follow them.

And I will give several examples:

The Security Council required the administration to deposit all oil-sale proceeds into the Development Fund for Iraq, which is held by the central bank of Iraq at the Federal Reserve Bank of New York.

The Security Council required that all deposits to and spending from the Development Fund of Iraq be done, "in a transparent manner."

And the Security Council required that the administration ensure that the Development Fund for Iraq funds were used to meet the humanitarian needs of the Iraqi people, and for other purposes benefiting the people of Iraq.

To ensure that the administration complied with these requirements, the Security Council created the International Advisory Monitoring Board to oversee these actions, the IAMB board. The Board was envisioned as the primary vehicle for guaranteeing the transparency of Iraqi funds. When the Bush administration assumed responsibility for these funds, it explicitly agreed to these terms.

On August 19, 2003, Ambassador Bremer issued a memorandum stating as follows, "As steward for the Iraqi people, the CPA will manage and spend Iraqi funds which belong to the Iraqi people for their benefit. They shall be managed in a transparent manner that fully comports with the CPA's obligations under international law, including Resolution 1483 of the United Nations."

But, Mr. Chairman, the administration has not complied with the resolution and I do not believe that the requirements were very

strict. The administration took in, as Mr. Waxman noted, a total of \$20.6 billion while it controlled this Development Fund in Iraq. On July 15, 2004, the oversight board issued its first audit report on the administration's stewardship of Iraqi funds, and this report was conducted by KPMG, which happens to be headquartered in the district I represent, the same international certified public accounting firm reviewing the Oil-for-Food Program. So we had the same auditor for both programs.

KPMG criticized the administration for, "inadequate accounting systems, inadequate recordkeeping, inadequate controls over Iraqi oil proceeds. On the most basic level, KPMG found that the administration failed to follow its own policy, to hire a certified public accounting firm. According to the KPMG report, the CPA was required to obtain the services of an independent certified public accounting firm to assist in the accounting function of the Development Fund of Iraq. But our administration, the current administration never did so. In addition, the sum total of the accounting system used by the administration consisted of—this is directly out of the KPMG report, "excel spread sheets and pivot tables maintained by one individual."

The KPMG report concluded as follows: "the CPA senior advisor to the Ministry of Finances, who is also chairman of the Program Review Board, was unable to acknowledge the fair presentation of the statement of cash receipts and payments, the completeness of significant contracts entered into by the DFI and his responsibilities for the implementation and operations of accounting and internal control systems designed to prevent detect fraud and error."

I believe these are very serious findings. They basically say that the United States has failed to comply with the transparency and accountability requirements set forth by the United Nations in the Security Council Resolution 1483.

So I look forward to the opportunity to question Ambassador Kennedy about these serious problems. Truly having accountable and transparency over money is a very important role of government. We try to do this in our own government, and we certainly should bring the same standards to moneys that we oversaw in Iraq.

So, again, I thank the chairman and the ranking member for their continued oversight. It is important, and I look forward to the opportunity to question Mr. Kennedy.

Mr. SHAYS. I thank the gentlelady.

[The prepared statement of Hon. Carolyn B. Maloney follows:]

Statement by Congresswoman Carolyn B. Maloney
Government Reform Subcommittee on National Security, Emerging Threats and
International Relations
Hearing: "The UN Oil-for-Food-Program: Cash Cow Meets Paper Tiger"
October 5, 2004
2154 RHOB

I'd like to thank Congressman Shays
and Ranking Member Kucinich
for holding this important hearing today.

I think we learned a great deal
last April, but since the appointment
of Paul Volcker and the Independent
inquiry of the Oil-For-Food Program (OFFP)
there is much more to understand.

It's important that look at the UN but we must
also look at ourselves.

Mr. Chairman, I too have grave concerns about
the Bush Administration's poor stewardship of
Iraqi oil proceeds in the successor to the Oil for
Food program, the Development Fund for Iraq.

As mentioned, on May 22, 2003, after the United States took control of Iraq, the U.N. Security Council passed Resolution 1483, formally transferring the Oil for Food assets to a new Development Fund for Iraq and placing them under the authority of the Coalition Provisional Authority.

Resolution 1483 directed the Bush Administration to spend these funds on behalf of the Iraqi people. The Security Council also imposed other restrictions. For instance:

- The Security Council required the Administration to deposit all oil sale proceeds into the DFI, which is held by the Central Bank of Iraq at the Federal Reserve Bank of New York;
- The Security Council required that all deposits to, and spending from, the DFI be done “in a transparent manner;” and

- The Security Council required the Administration to ensure that DFI funds were used “to meet the humanitarian needs of the Iraqi people . . . and for other purposes benefiting the people of Iraq.”

To ensure that the Administration complied with these requirements, the Security Council created the International Advisory and Monitoring Board (IAMB) to oversee your actions.

This Board was envisioned as the primary vehicle for guaranteeing the transparency of Iraqi funds. When the Bush Administration assumed responsibility for these funds, it explicitly agreed to these terms. On August 19, 2003, Ambassador Bremer issued a memorandum stating as follows:

“As steward for the Iraqi people, the CPA will manage and spend Iraqi Funds, which

belong to the Iraqi people, for their benefit . . . [T]hey shall be managed in a transparent manner that fully comports with the CPA's obligations under international law, including Resolution 1483."

But Mr. Chairman, the Administration hasn't complied with the resolution.

The Administration took in a total of \$20.6 billion while it controlled the DFI. On July 15, 2004, the IAMB issued its first audit report on the Administration's stewardship of Iraqi funds. This report was conducted by KPMG, the same international certified public accounting firm reviewing the Oil for Food program.

KPMG criticized the Administration for "inadequate accounting systems," "inadequate record keeping," and "inadequate controls" over Iraqi oil proceeds.

On the most basic level, KPMG found that the Administration failed to follow its own policy to hire a certified public accounting firm.

According to the KPMG report, “the CPA was required to obtain the services of an independent, certified public accounting firm to assist in the accounting function of the DFI.” But it never did so.

In addition, the sum total of the “accounting system” used by the Administration consisted only of “excel spreadsheets and pivot tables maintained by one individual.”

The KPMG report concluded as follows:

The CPA Senior Advisor to the Ministry of Finance, who is also Chairman of the Program Review Board (PRB), was unable to acknowledge the fair presentation of the statement of cash receipts and payments, the

completeness of significant contracts entered into by the DFI and his responsibilities for the implementation and operations of accounting and internal controls systems, designed to prevent and detect fraud and error.

Mr, Chairman, these are serious findings. They basically say that the United States, the Bush Administration, has failed to comply with the transparency and accountability requirements set forth in Security Council Resolution 1483.

I look forward to asking Ambassador Kennedy about these serious problems.

Mr. SHAYS. And at this time, the Chair would recognize Mr. Ruppertsberger.

Mr. RUPPERSBERGER. Sure. Mr. Chairman, I come to this hearing today with many concerns. My first concern is about the allegations that have been made and the way they are being investigated.

There are three main charges that have been levied: overpricing by the Saddam regime; kickbacks made by the companies contracting with Saddam through the program, and what Saddam used that money for; and three, corruption within the U.N. itself in running the Oil-for-Food Program.

These are all very serious allegations, and if any or all of them are proven to be true, those individuals proven to be guilty of illegalities and wrongdoing should be brought to full and complete justice. On that I believe we can all agree.

I have serious concerns about the number of investigations occurring, the leaks to the media, the potential of mishandling of valuable evidence, and the use of the court of public opinion, the media and others, rather than allowing the Paul Volcker investigation to complete its work.

When we last met in April to discuss the same issue, Members of both sides of the aisle praised the unprecedented commissioning of an independent investigation by Kofi Annan and the appointment of Mr. Volcker. Since then, Mr. Volcker has had to assemble a staff, enter into the memorandums of agreement with multiple investigations, assemble and review a decade worth of documents, and all the while answer to U.N. member states, all with vested interests, including the United States. And that is no easy task.

I am concerned that the current investigations are being politicized and the evidence submitted is being leaked before it is ever vetted, authenticated, or corroborated.

I am concerned that this is turning out to be an inductive investigation rather than a deductive investigation. And I know that is the wrong way to conduct a credible investigation.

I urge caution as we proceed further. Let's consider a few facts: The first, the Oil-for-Food Program is no longer in existence and therefore the rush to judgment may do more harm than good.

Second, Mr. Volcker has promised a full and complete investigation report to member states by mid-2005, and we should allow that investigation to conclude before condemning a report that has yet to be written.

Three, we are fighting a global war on terrorism that requires international involvement, including the U.N. damaging the reputation of any politician, national leader, ally, or international institution at this time, this delicate time, without a full vetting of the facts is simply premature and dangerous. We must follow the facts, and I am glad to see that the chairman has called these witnesses to deal with two of the three main allegations head on.

I would hope that the same will be done with the allegations resting on the al-Mada, which is the Iraqi newspaper-published list, and all who possess or witnessed those documents at one time. And I would like to hear from the al-Mada editor-in-chief, from KPMG, Patton Boggs, Fresh Fields, Bucas Derringer, Paul Bremer, Claude Hanks-Drielsma, to address those documents which are the starting point of this scandal.

I also think it would be useful to bring an authentication expert before this committee to discuss authentication and how it is done and what it means and why it is so important. Ultimately, I think we must allow Mr. Volcker to carry out this investigation, to look at the facts and evidence, to look at his conclusions, and then decide as a Nation what is our best interest to do next.

Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman.

[The prepared statement of Hon. C.A. Dutch Ruppertsberger follows:]

Congressman C.A. Dutch Ruppertsberger
*Subcommittee on National Security, Emerging Threats,
and International Relations Hearing*
The UN Oil-For-Food Program: Cash Cow Meets Paper Tiger
Opening Remarks
10.05.04

Thank you Mr. Chairman. I come to this hearing today with many concerns. My first concern is about the allegations that have been made and the way they are being investigated. There are three main charges that have been levied:

1. Overpricing by the Saddam regime
2. Kickbacks made by the companies contracting with Saddam through the program and what Saddam used that money for
3. And corruption within the UN itself in running the Oil for Food program.

These are all very serious allegations and, if any or all of them prove to be true, those individuals proven to be guilty of illegalities and wrongdoing should be brought to full and complete justice. On that, I believe we can all agree.

I have serious concerns about the number of investigations occurring, the leaks to the media, the potential of mishandling valuable evidence, and the use of the court of public opinion by the media and others rather than allowing the Paul Volcker investigation to complete its work.

When we last met in April to discuss this same issue, members on both sides of the aisle praised the unprecedented commissioning of an independent investigation by Kofi Annan and the appointment of Mr. Volcker. Since then, Mr. Volcker has had to assemble a staff, enter into Memorandums of Agreement with multiple investigations, assemble and review a decade worth of documents – and all the while answer to UN Member States all with vested interests including the United States. That is no easy task.

I am concerned that the current investigations are being politicized and the evidence submitted is being leaked before it is ever vetted, authenticated, or corroborated. I am concerned that this is turning out to be an inductive investigation rather than a

deductive one and I know that is the wrong way to conduct a credible investigation.

I urge caution as we proceed further. Let's consider a few facts.

1. First, the Oil For Food program is no longer in existence and therefore the rush to judgment may do more harm than good.
2. Second, Mr. Volcker has promised a full and complete investigation report to Member States by mid 2005 and we should allow that investigation to conclude before condemning a report that has yet to be written.
3. Third, we are fighting a global war on terrorism that requires international involvement including the UN. Damaging the reputation of any politician, national leader, ally or international institution at this delicate time without a full vetting of the facts is simply premature and dangerous.

I have always said we must follow the facts and I am glad to see that the chairman has called these witnesses to deal with two of the three main

allegations head on. I would hope that the same will be done with the further allegations resting on the Al Mada published lists and all who possesses or witnessed those documents at one time.

I would like to hear from the Al Mada editor and Chief, from KPMG, Patton Boggs, Freshfields Bruckhaus Deringer, Paul Bremer and Hanks Claude Drielsma to address those documents – which are the starting point of this scandal. I also think it would be useful to bring an authentication expert before this committee to discuss authentication, how it is done, what it means, and why it is so important.

Ultimately, I think we must allow Mr. Volcker to carry out his investigation – to look at his facts and evidence – to look at his conclusions – and then decide as a nation what is in our best interest to do next.

Thank you Mr. Chairman

Mr. SHAYS. At this time I would like to make a unanimous consent that Doug Ose, a member of the full committee and chairman of the Regulatory Affairs Subcommittee be allowed to participate in this hearing. Without objection, so ordered, and at this time I would welcome any statement that Mr. Ose would like to make.

Mr. OSE. Thank you, Mr. Chairman. I was listening with particular attention to Mr. Ruppertsberger's remarks about this being an inductive investigation as opposed to a deductive investigation. It seems like we have had a lot of rhetoric today about, you, know who is guilty and who is not.

I just want to go back to a couple of uncontested facts. The Oil-for-Food Program was established in April 1995 pursuant to U.N. Security Council Resolution 986. And the food actually started to flow in December 1996. So there was about a year-and-a-half drag between the time it was authorized and the time it was actually implemented. And interestingly enough, the first known request for any examination of the program in terms of fraud or lack of transparency occurred in the first few days of March 2001.

So for 5 years, from December 1996—4½ years, from December 1996 to March 2001, this program just sailed along without oversight interest or monitoring.

Pursuant to the request in early March 2001 that the 661 committee actually look at this issue, on March 7, 2001 Kofi Annan actually sent a notice to Iraq, saying they have to clean up their act. Again, from the time of December 1996 to March 2001, nobody paid any attention. The perpetrators of the scam set the rules. The U.N. signed off on it, and the administration turned a blind eye.

However, in early March 2001 that changed. Finally somebody in the administration did something and brought to the attention of the 661 committee allegations that fraud and lack of transparency were occurring. I think the record needs to be very clear on this issue. But the only thing, this fraud that was taking place—excuse me—that's inductive. The only time that we finally got around to examining whether fraud was taking place was in March 2001. The people who approved the program in the mid-nineties turned a blind eye to it. The Security Council's 661 committee, they just said, just do it; don't bother us with the details.

But in March 2001, somebody finally started asking the hard questions. What changed? I hope we examine that issue. What changed from the mid-nineties to March 2001, so that the questions finally started getting asked? I think that is a central question to this thing, because you cannot uncover fraud. You cannot reverse years and years of practice by snapping your fingers or standing up here beating your chest. This culture got set up, it got established, it got ignored. And in March 2001, we finally called them on it.

Mr. Chairman, I hope we get to the bottom of this.

Mr. SHAYS. Thank the gentleman.

I ask unanimous consent that all members of the subcommittee be permitted to place an opening statement in the record and the record will remain open for 3 days for that purpose. And, without objection, so ordered.

I would ask further unanimous consent that all Members be permitted to include their written statement in the record, and, without objection, so ordered.

We have a representative of the French Embassy, but I think we will have to just make a statement and leave a document. But I think I will first ask Mr. Waxman to make his motion and then we will put that on the table.

Mr. WAXMAN. Thank you, Mr. Chairman. I have two separate motions for subpoenas. The first one is a subpoena under House rule 11(2)(k)(6). On July 8 this committee issued a subpoena to the French bank, BNP Paribas, which was responsible for maintaining the Oil-for-Food escrow account controlled by the U.N. When the committee issued the subpoena, the argument by the chairman and others was that a subpoena was necessary because the bank could not legally cooperate with this committee's inquiries unless it had the legal protection afforded by a subpoena. In other words, they wanted to cooperate, we were told, but they needed to have the subpoena for legal reasons.

Mr. Chairman, my subpoena is for the Federal Reserve Bank of New York. This is the bank that maintains the Development Fund for Iraq which was run by the Bush administration from May 2003 to June 2004. Just as you asked the French bank for documents relating to the inflow and outflow of funds under the Oil-for-Food Program, we ask for identical documents from the Federal Reserve Bank.

In fact, the language of my subpoena tracks the broad language of your subpoena almost word for word, substituting references to the Oil-for-Food program with references to Development Fund for Iraq.

In making this motion, I want the record to reflect that the Federal Reserve Bank has expressed the exact same policy as the French bank. With respect to cooperating with this committee, they cannot respond to a simple letter of request, but they are more than willing to respond to a friendly subpoena, and I want to submit for the record an e-mail received from the counsel and vice president of the Federal Reserve Bank dated October 4, 2004.

It states as follows: "with respect to providing DFI account information to the Congress, we concluded as long as we are acting pursuant to a subpoena, we can provide DFI account information for the period that the DFI was operated by Ambassador Bremer without violating our contractual obligation to the Central Bank of Iraq."

Mr. Chairman, we have an exactly parallel situation. We are talking about the same funds, the Iraqi oil proceeds, which were supposed to be used for the humanitarian benefit of the Iraqi people. We are talking about the financial institutions responsible for maintaining these funds, and we are talking about serious allegations of mismanagement. The only difference is that the United Nations controlled one set of funds, and the Bush administration controlled the other. I believe this committee's legitimacy will be judged by how it treats these two cases. We can choose to treat them equally in an even-handed manner, properly exercising our congressional oversight responsibilities or Mr. Chairman, you and your colleagues can attempt once again to use procedural machina-

tions to shield the Bush administration from embarrassment, and more importantly, from accountability.

My first motion is for the committee to issue a subpoena to Mr. Timothy Geithner, the president of the Federal Reserve Bank of New York, to produce the documents relating to the development fund for Iraq.

I ask unanimous consent that the e-mail be part of the record.

Mr. SHAYS. Without objection, the e-mail will be part of the record.

[The information referred to follows:]

Rapallo, David

-----Original Message-----

From: David Rapallo
Sent: Monday, October 04, 2004 7:43 PM
To: Rapallo, David
Subject: Re: Inquiry re Development Fund for Iraq

David:

Apologies that we could not connect by phone today.

I consulted with senior management today and we concluded that the DFI has had two rather distinct phases of operation. The first phase was from the inception of the DFI until sovereignty was returned to interim government of Iraq. The second phase is the period since sovereignty was returned to the Iraqis. Pursuant to international law and Presidential executive orders, Ambassador Bremer and the CPA controlled the DFI during the first phase of its operations. However, since the return of sovereignty, the DFI has been operated just like any other foreign official account our books - which is to say it has been controlled exclusively by the account holder, in this case the Central Bank of Iraq.

With respect to providing DFI account information to the Congress, we concluded that - as long as we are acting pursuant to a subpoena - we can provide DFI account information for the period that the DFI was operated by Ambassador Bremer without violating our contractual obligation to the Central Bank of Iraq to hold its account information in confidence or chilling the inclination of foreign countries to hold their international dollar reserves at the NY Fed. However, the situation is more complicated for the second phase of the DFI's operation.

The NY Fed holds more than \$1 trillion in assets belonging to over 200 foreign governments and central banks. The United States derives many benefits from the fact that so many countries choose to hold so much of their international dollar reserves as deposits at the NY Fed. Providing Congress with information concerning those assets could have implications for the willingness of foreign countries to hold their international dollar reserves at the NY Fed and might also be violative of our contractual obligations to our foreign customers to hold their account information confidential. We are hopeful that this is not an issue for the Committee because our working assumption is that the Committee is only interested in reviewing the conduct of the USG and the CPA (as a de-facto extension of the USG) with respect to the DFI and does not intend to review the sovereign actions of Iraq with respect to the DFI following June 30th. However, if the Committee does in fact intend to review the sovereign acts of Iraq since June 30th and to request DFI account information from the NY Fed in order to conduct that review, we would very much appreciate an opportunity to discuss that intent with the Committee staff in person at your earliest convenience. We would of course come to you.

Please don't hesitate to respond with any questions or comments. We look forward to working with the Committee.

Regards,
Mike

Michael F. Silva
Counsel & Vice President
Federal Reserve Bank of New York
Tel: (212) 720-8193
Fax: (212) 720-1530

Mr. SHAYS. The motion offered by Mr. Waxman is in order under House rule 11, clause 2(k)(6). That rule states, "The Chairman shall receive and the committee shall dispense with requests to subpoena additional evidence." Pursuant to that rule, the chairman may determine the timing of the consideration of such request. At this time the motion shall be considered as entered and the committee will consider the motion offered by the gentleman from California at 2:45 today.

Would you like to make a separate—

Mr. WAXMAN. I offer them separately because I can see no opposition to the first one.

Mr. SHAYS. Would you like me to comment on your motion?

Mr. WAXMAN. If you would.

Mr. SHAYS. The Chair reserves the time to speak, and I just say that conceptually I think, while I do not agree with the arguments on why this information is needed and that there is wrongdoing that requires it, I do think that there is merit in getting this information. So my interest is in getting this information. My inclination is always to write a letter first. In this instance a letter may not be required with the documentation that you have, and so I want to consider that. I will reserve judgment, frankly, on that motion.

Mr. WAXMAN. Mr. Chairman, I think that is a reasonable position. As you think about it between now and 2:45, I hope you make the decision to support the subpoena.

My second motion is for a subpoena under House rule 11, clause 2(k)(6). As I said in my opening statement, the Bush administration is grossly mismanaging Iraqi oil proceeds and other funds in the Development Fund for Iraq. There have been multiple reports about the administration failing to manage these funds in an open, transparent and accountable manner as required by the Security Council resolution 1483. In addition, the administration is now withholding documents from the international auditors charged by the U.N. Security Council to monitor its stewardship of these funds. I think a subpoena is necessary at this point because the administration has refused requests to voluntarily turn over this information.

Indeed, Mr. Chairman, you issued a press release on June 23 of this year condemning the administration for failing to provide information to this subcommittee regarding both the Oil-for-Food Program and the Development Fund for Iraq. This is what you said about the administration's replay. "the response is incomplete. There is still an insufficient accounting of relevant documents in custody. Several questions and requests are simply unanswered."

The committee still has not received the information we requested on May 21. After the administration rejected the subcommittee's request for information, I wrote to Congressman Davis, the chairman of the full committee, on July 9 and asked that he subpoena the documents. In my request, I tracked exactly the language and format he used to subpoena the French bank handling the Oil-for-Food account.

On July 12, Chairman Davis wrote back refusing to issue the subpoena. He said it was premature, that he preferred to send a letter requesting the information. Well, I wrote to him again on

July 15 attaching a draft letter for him to sign and send out but he never did and he just ignored my request entirely.

I wrote again on July 29 repeating my request. To this day he has failed to respond to my multiple requests to do so. Now that these voluntary efforts have failed, it is clear we have exhausted all our options. We have no choice but to issue an subpoena. In light of these numerous failures to provide information to the United Nations and the U.S. Congress, I move that the committee subpoena Defense Secretary Donald Rumsfeld to produce these specified documents, including records of receipts and disbursements, sole source contracts and other listed materials.

I understand, Mr. Chairman, it is always preferable to send a letter requesting the information, but if we cannot even get the chairman of the committee requesting it, and we have no response to our letters requesting the information directly from DOD, it seems to me that we have no other course but to go ahead with the subpoena. To date, we still have not received these documents. It is clear that we need to move to a subpoena. I urge support for the subpoena.

Mr. SHAYS. Thank you. We will take that up after we discuss the first one and I will reserve judgment as well on this, and we will have dialog before we have that vote. We will have a 5-minute dialog on each of those subpoenas on each side so there will be a 10 minute debate on each motion before we vote.

Let me just say that I see Mr. Lantos is here.

Mr. Lantos, would you like to make a statement on the Oil-for-Food Program, or we will get right to our hearing.

Mr. LANTOS. I will defer.

Mr. SHAYS. The French embassy has asked a representative, Ms. Christine Grenier, to provide some information to the subcommittee. Without objection, I would like to recognize her for a brief statement.

Mr. OSE. Mr. Chairman, I know it is our normal practice to swear in our witnesses.

Mr. SHAYS. How brief is your statement? It is very short, a paragraph, so we are not swearing in this witness.

Ms. GRENIER. Thank you, Mr. Chairman, and distinguished members of the committee, my name is Christine Grenier. I am First Secretary in the Political Section at the French Embassy. Allegations have been voiced on the role of France in the Oil-for-Food Program. The French Embassy will prepare a written statement in response to these unjustified allegations, and I would appreciate your allowing this statement to be included in the hearing record. Thank you, Mr. Chairman.

Mr. SHAYS. Thank you very much. We appreciate you honoring the committee with your presence. We will be happy to insert the statement into the record. Without objection that will happen. Thank you very much.

[The information referred to follows:]

*Ambassade de France
aux Etats-Unis*

L' Ambassadeur
N° 2183

Washington, October 8, 2004

Dear Mr. Chairman,

I respectfully submit the following statement for the hearing record of the Subcommittee on National Security, Emerging Threats and International Relations October 5 hearing on the United Nations Oil for Food Program. During the hearing, France's policy and conduct regarding this program were unfairly criticized.

As was agreed at the hearing on October 5, please find below the response of the French Government to these unjustified allegations.

1 - Background

A. All member states of the United Nations, particularly those on the 661 Committee, had a central responsibility in the implementation of the sanctions decreed in 1990 and in management and follow-up of the "oil-for-food" program after it was set up in 1995/1996.

It goes without saying that the United Nations cannot be satisfied with a situation in which the embargo against Iraq was repeatedly circumvented over the years. That concern existed moreover from the outset of the program established in SCR 986 of April 14, 1995 on the basis of a US draft. The monitoring mechanism was not agreed until over a year later, in May 1996, in the form of a memorandum of agreement. It required many working meetings for the missions of member states of the 661 Committee, including the US mission which succeeded in getting almost all its demands met, to arrive at a memorandum of understanding between the UN and Iraq and an extremely detailed and restrictive procedural document, endorsed by Washington.

The Honorable Christopher Shays
Chairman
House National Security Subcommittee
Committee on Government Reform
B-372 Rayburn House Office Building
Washington DC 20515
Fax : 202 225 2382

B. Although it was not a top priority, the 661 Committee was committed to preventing financial fraud that was difficult or even impossible to identify. UN scrutiny of contracts prior to being forwarded to the 661 Committee included inter alia analysis by a customs expert, who was, for a moment, a British national, whose task was to verify in particular the honesty of the prices. Certainly at the time, attention, especially in the 661 Committee, was focused as a matter of priority on eventual dual-use goods supplied to Iraq in the context of the program (or that Baghdad sought to obtain outside that framework).

Even though during the embargo financial fraud by Saddam Hussein's regime was under surveillance (especially as the money siphoned off could be used for the acquisition of military or dual-use goods), it should be borne in mind that no contract was rejected by the Committee solely on the basis of any financial irregularities. The delays and other rejections, usually the action of a single state on the Committee (the United States), were nonetheless sufficiently significant to represent a total value of \$5 billion in May 2002. In fact, over-billing for goods was practically and technically difficult to identify.

We should all acknowledge that many allegations of fraud were discussed but to date no irrefutable proof has been produced. A case in point, the Essex tanker affair (one of the few cases to have been specifically discussed in the Committee) : the culpability of the various protagonists has never been proved.

In any case, each of the contracts that went forward under the program had the consent of all the member states on the 661 Committee, including therefore the United States (and the United Kingdom).

C. The "oil-for-food" program did not produce smuggling. While the transactions agreed under the program served as "support" for embezzlement and criminal offenses in violation of resolutions, such actions existed before the program was established and continued to exist outside it.

The legitimate and important question raised by the Subcommittee on National Security, Emerging Threats and International Relations (i.e., What were the structural weaknesses of the program which allowed Baghdad to get around the embargo?) has many other dimensions in addition to the implementation of the program. The General Accounting Office report mentions the figure of over \$10 billion in illegal revenue. It should be noted, however, that nearly \$6 billion came from oil smuggled out of Iraq, which happened outside the UN program and the responsibility of the Office of Iraq Program.

In mistaking the target, one limits the scope of answers to questions that the international community must ask about the best way to put an embargo in place, to ensure compliance by member states and to make it an effective political instrument for the attainment of collectively defined goals.

2 – France's role in the Oil for Food Program

A. France continually monitored compliance with the sanctions.

France cannot leave unanswered the direct and repeated charges made against it. Without proof, through conflation and insinuation, France is accused of letting mercantile interests influence its position on the program's management and, beyond that, on the entire question of Iraq, and also of having covered up criminal actions by French companies.

In a national capacity, the French authorities always paid attention to applying UN sanctions and the legal framework of SCR 986 (1995) for transactions that took place under the oil-for-food program. Steps were swiftly taken to monitor compliance. Stringent measures were put in place, and special units set up in the ministries concerned, with the Permanent Mission of France to the United Nations acting as a filter in the forwarding of contracts to the Office of Iraq Program.

More broadly, the legal framework arising from the resolutions (and European Union regulations adopted to this end) was recalled both at trade meetings in which officials of the state participated and also through letters to importers and exporters, especially under the responsibility of the Ministry of Economy and Finance.

In the same spirit the French authorities always gave a positive answer to any request for cooperation in the context of customs inquiries into any violations of the UN-imposed embargo between 1990 and 2003.

This firmness was not just general and a matter of principle; it was applied in practice. In the case of the Essex affair, France, in a national capacity, chose, in spite of the absence of proof, to quickly remove from the list of companies authorized to make approved purchases of Iraqi oil a company allegedly implicated in a violation. It also shared the initial results of the inquiry with the customs authorities concerned (specifically American) and with the members of the Committee. On the contrary, still on this dossier, another intermediary (British) implicated in the same affair was not suspended from the list of buyers; meanwhile the request for explanation sent by the 661 Committee to the US (since the cargo's final destination was an American buyer and the US market), went unanswered.

B. France sought better monitoring of compliance with the embargo by UN member states.

While many have suggested that Washington and London were the sole capitals interested in compliance with the embargo, France consistently floated compromise proposals and sought to promote balanced solutions, taking into account the need to ensure compliance with the sanctions, the humanitarian situation in Iraq and the negative effects of a strategy bent on limiting to the maximum the possibility of implementing the program. This was the case especially in the dossier on setting oil prices (cf. below). To that end, France helped maintain the integrity of the "oil-for-food" program.

That was the spirit in which France approached the discussions in both the sanctions committee, as the reports of the official meetings show, and the Security Council. For instance, France promptly expressed support for the ideas of the US Secretary of State for "smart sanctions" and during the discussions encouraged a consensus in the Security Council to permit the unanimous adoption of SCR 1409 based on a US draft.

With regard to oil prices, France thought that the retro-pricing imposed by Washington and London automatically led to a drop in Iraq oil exports, and therefore to gradually squeezing the humanitarian program at a time when oil market prices were volatile (as they were during 2002). France repeatedly indicated to its partners its willingness to discuss a new mechanism and floated several ideas for this: shortening the validity period of UN-imposed prices, the obligation to pick up the cargo designated in the contract; criteria for reputation and integrity that would allow authorized buyers to be selected to take part in the oil-for-food program.

C. Steady Decline in French-Iraqi Trade

First, the proportion of French contracts in the program fell steadily; it was only 6% in the second half of 2000, no more than 2.5% the following year, and less than 2% in 2002. In 2001 our trade with Iraq represented only 0.2% of French exports, and 0.3% of imports. So we dispute critics claiming that, as the program developed, France stood to gain from maintaining the status quo; neither our share of imports from Iraq nor what this trade represented to our economy supports that argument.

As for exports of Iraqi oil, for reasons having to do with refining techniques in France, a very small percentage of oil from Iraq was destined for France, whereas almost half went to North American markets and buyers.

D. American companies involvement

A distinction should be made in considering these contracts between those signed by French companies, those signed by subsidiaries of foreign companies in France that preferred to operate from France, and those dealing with the resale of goods produced abroad. Many American companies followed that practice, such as Flowserve Pumps (formerly Ingersoll Dresser Pumps), Dresser Rand, Fisher Rosmount, Baker International in the oil-related sector, and General Electric. All in all, such contracts add up to \$552 million (including \$130 Million for Halliburton and its subsidiaries). See list of companies attached.

3 - The Volcker Commission will clear up the allegations surrounding the program and the United Nations.

It is not the place of the French authorities to comment on the repeated charges leveled against the United Nations. We observe, however, that a high-level independent commission of inquiry, led by a former chairman of the Board of Governors of the Federal Reserve Bank of the United States, was appointed by the UN Secretary General in order to get to the bottom of what are at this stage simple allegations.

France supported the initiative, and said it would cooperate fully with the commission. Mr. Volcker was received in Paris on October 7 and all the officials he met confirmed to him that his aides would have access to classified documents regarding the management of the program and could meet with French diplomats directly responsible for the dossier at our permanent mission in New York, as the commission had requested.

4 - Additional comments

- the rule of unanimity, sharply criticized by some as an obstacle to the adoption of US proposals also served the US, for example for delaying contracts (Cf. above) and imposing the mechanism of retroactive oil pricing;

- the action of the multinational interception force, the fleet placed under US command tasked with monitoring maritime traffic in the Gulf to prevent smuggling, also monitored traffic linked to the implementation of the program. France, several times, suggested it should be coordinated with the UN (661 Committee and the Office of the Iraq Program) under whose authority it was placed under SCR 665. These requests were not acted on. France also regretted that its activity should be concentrated on the southern shore of Iran, to the detriment of the rest of the area.

- BNP Paribas, or rather its US subsidiary, subject to OFAC control and responsible for 59% of the funds, was not the only bank involved in the management of the program. JP Morgan Chase Bank managed the rest of the oil revenues, of which 13% was intended for implementation of the program in the three provinces in the North (beyond Saddam Hussein's control) and in which a number of problems were apparently observed. 25% of the oil revenues was earmarked for the UN-run compensation process (in the framework of which a number of errors and duplications were committed which could also legitimately raise questions of an ethical and accounting nature).

- an examination of the oil-for-food program, to be complete, should also focus on the period after November 21, 2003, the date on which the UN entrusted its responsibilities to the Coalition Provisional Authority responsible for the management of the Development Fund for Iraq. In fact, a recent audit by the firm KPMG on behalf of the International Advisory and Monitoring Board (in which are represented such major institutions as the UN, IMF and World Bank: cf. WWW.IAMB.info) revealed many cases of poor management: on the credit side (inadequate controls on oil production, unequal application of procedures for signing contracts, high personnel turnover) and under debits (inadequate accounting procedures, barter operations, failure to respect bidding procedures).

I sincerely hope that these facts clearly answers the questions raised about France's policy and attitude regarding the United Nations Oil For Food program.

With my respectful regards,

Sincerely,



Jean-David LEVITTE

American participation in the Oil For Food Program

French subsidiaries of American companies or companies having exported American goods to Iraq (PHASE I – XII)	AMOUNT USD
AGCO	113 491 600
BAKER	10 611 624
BECTON DICKINSON	4 611 828
BOSTON SCIENTIFIC	315 911
CAMERON	5 764 117
CASE FRANCE	32 418 805
DOSAPRO	1 199 904
DOW AGROSCIENCE	3 856 741
DRESSER INTERNATIONAL / DRESSER RAND	16 136 532
ENVIROTECH	76 372 954
FISHER ROSEMOUNT	9 846 413
FLOWERVE	19 772 973
FMC EUROPE	3 327 597
GENERAL ELECTRIC	1 181 594
GROVE	9 556 000
HEXACORP	5 072 602
IBEX	32 595 435
INGERSOLL	62 105 914
KEMA-PROSER	7 598 562
LUXOR	17 265 777
MARSONEILAN	40 480
PUROLITE / BAKER	357 833
SANCHEZ	2 046 178
SIEMENS S.A.S.	82 283 149
TOEKHEIM	829 229
TOEKHEIN	1 234 696
TOSSCO	3 025 489
TROUVAY & CAUVIN / MANDREL	20 625 320
WEMCO / ENVIROTECH	9 064 142
WYETH / LEDERLE	101 849
TOTAL	552 711 248

Mr. SHAYS. At this time the Chair would note that we have Ambassador Patrick F. Kennedy, U.S. representative to the United Nations for U.N. management and reform, U.S. mission to the United Nations, U.S. Department of State. At this time the Chair will swear in the witness.

[Witnesses sworn.]

Mr. SHAYS. I note for the record our witness has responded in the affirmative. I thank the witness for his patience.

Mr. Ambassador, I thank you for your presence and statement. You have the floor.

STATEMENT OF AMBASSADOR PATRICK F. KENNEDY, U.S. REPRESENTATIVE TO THE UNITED NATIONS FOR U.N. MANAGEMENT AND REFORM, U.S. MISSION TO THE UNITED NATIONS, U.S. DEPARTMENT OF STATE

Ambassador KENNEDY. Mr. Chairman, distinguished members of the committee, I welcome the opportunity to appear before you again to discuss what is commonly known as the United Nations Oil-for-Food Program.

Mr. Chairman, recent allegations of corruption and mismanagement under the Oil-for-Food Program have been targeted not only at the Saddam regime but also at companies and individuals doing business under the program and at U.N. personnel and contractors. We believe that every effort should be made to investigate these allegations seriously and to determine the facts in each case.

As you are aware, there are currently several congressional investigations looking into the question of Oil-for-Food. The independent inquiry committee headed by Paul Volcker and the Iraqi board of Supreme Audit in Baghdad are also conducting their investigations. As these inquiries go forward, you have my assurance, and that of my staff, to cooperate fully with you and your colleagues on other committees and provide all possible additional information and assistance. I welcome the opportunity today to answer your questions relating to these investigations on how the program was created and operated. At the outset, Mr. Chairman, I want to reiterate several points I made here previously in April.

First, I want to emphasize that the establishment of the Oil-for-Food Program was the result of difficult and arduous negotiations among 15 Security Council members, a number of whom advocated a complete lifting of sanctions against Iraq. The Oil-for-Food Program was in no way perfect, but it was, at the time, the best achievable compromise to address the ongoing humanitarian crisis in Iraq in the mid 1990's, while maintaining effective restrictions on Saddam's ability to rearm. Sanctions have always been an imperfect tool, but given the U.S. national goal of restricting Saddam's ability to obtain new materials of war, sanctions represented an important tool in our efforts.

Mr. Chairman, given this general context, I would now like to outline some of the details of how the program worked, how it was created, by whom and how it was operated and was monitored. A comprehensive sanctions regime was established under U.S. Security Council resolution 661 in August 1990 after the Saddam Hussein regime invaded Kuwait. The council's unanimity on the issue of Iraq eroded as key council delegations became increasingly con-

cerned over the negative impact of sanctions on the Iraqi population, the lack of food supplies and the increase in mortality rates were worldwide news.

The concept of a humanitarian program to alleviate the suffering of the people of Iraq was initially considered in 1991 with U.N. Security Council resolutions 706 and 712, but the Saddam regime rejected those proposals. The council eventually adopted U.N. Security Council resolution 986 in 1995, which provided the legal basis for what became known as the Oil-for-Food Program. While council members were the drafters and negotiators of this text, the memorandum of understanding signed between the U.N. and the former government of Iraq was negotiated between Iraqi government officials and representatives of the Secretary General, in particular his legal counsel, on behalf and at the request of the Security Council.

Under provisions of resolution 986 and the MOU, the Iraqi government, as a sovereign entity, retained the responsibility for contracting with buyers and sellers of Iraq's choosing and the responsibility to distribute humanitarian items to the Iraqi population. This retention of Iraqi authority was insisted upon by Saddam and was supported by a number of Security Council members, as well as other U.N. member states. The exception to this was for the three northern Governorates of Iraq where the U.N. agencies, at the request of the Council, served as the de facto administrative body that contracted for nonbulk goods and distributed the monthly food ration.

The sanctions committee was established under resolution 661 in 1990, also known as the 661 committee, monitored member state implementation of the comprehensive sanctions on Iraq, and also was authorized to monitor the implementation of Oil-for-Food Program after its inception.

The 661 committee, like all sanctions committees, operated as a subsidiary body of the Security Council and was comprised of representatives from the same 15 member nations as the council. The committee was chaired by the Ambassador of one of the rotating 10 elected members of the council. The committee, during its life span, was chaired by the Ambassadors of Finland, Austria, New Zealand, Portugal, Netherlands, Norway and Germany.

Decisionmaking in the committee was accomplished on a consensus basis. All decisions taken by the committee required the agreement of all its members. This procedure is used in all subsidiary sanctions committees of the Security Council.

In providing oversight and monitoring of the sanctions, the committee and each of its members, including the United States, was responsible for reviewing humanitarian contracts, oil spare parts contracts, and oil pricing submitted on a regular basis by Iraq to the U.N. for approval. The committee was also responsible for addressing issues related to noncompliance and sanctions busting. In my previous testimony and statement for the record, I have provided an explanation of what we knew about issues relating to noncompliance, what we did to address them and the degree of success we had in addressing these issues within the confines of the 661 committee.

When the United States became aware of issue related to noncompliance or manipulation of the Oil-for-Food Program by the

Saddam regime, we raised these concerns in the committee, often in concert with our U.K. counterparts. At our request, the committee held lengthy discussion and debate over for example allegations of oil pricing manipulation, kickbacks on contracts, illegal smuggling and misuse of ferry services. To provide the 661 committee with additional insight on issues related to noncompliance, we also organized outside briefings by the commander of the Multilateral Interception Force and other U.S. agencies. Our success in addressing issues of noncompliance was directly related to the willingness of other members of the committee to take action.

Given the consensus rule for decisionmaking in the committee, the ability of the United States and the U.K. to take measures to counter or address noncompliance was often inhibited by other Members' desire to ease sanctions on Iraq. As reflected in many of the 661 committee records which have been shared with your committee, the atmosphere within the committee, particularly as the program evolved by the late 1990's was often contentious and polemic, given the fundamental political disagreement between member states over the Security Council's imposition and continuance of comprehensive sanctions, a debate exacerbated by the self-serving national economic objectives of certain key member states.

Mr. Chairman, you have recently been to Baghdad and know that the voluminous Oil-for-Food documents are now being safeguarded for use by the board of supreme audit in their investigation. The American Embassy in Baghdad is currently working on a memorandum of understanding between the United States and the government of Iraq regarding access to these documents. We will keep this committee updated on the status of these negotiations. Mr. Chairman, as you and your fellow distinguished committee colleagues continue your review of the Oil-for-Food Program, key issues in your assessment likely will be whether the program achieved its overall objectives and whether the program could have been better designed at its inception to preclude what some have suggested were fundamental flaws in its design.

In retrospect, had the program been constructed differently, perhaps by eliminating Iraqi contracting authority and the resulting large degree of autonomy afforded to Saddam to pick suppliers and buyers, then the allegations currently facing the program might not exist. One can postulate the elimination of this authority and the establishment of another entity to enter into contracts on behalf of the former government of Iraq, and this entity might have had tighter oversight of financial flows, thus inhibiting Saddam Hussein's ability to cheat the system through illegal transaction.

The problem is, of course, that these specific decisions to allow the government of Iraq to continue to exercise authority, to let Saddam Hussein continue to determine who he could sell oil to and purchase goods from were all done in the larger context of a political debate on Iraq. It was reluctantly accepted to ensure that the significant sanctions program would remain in place, thus achieving a U.S. goal.

Mr. Chairman, I want to reiterate a point that I made earlier on the issue of sovereignty. While we opposed the authoritarian leadership of the former Saddam Hussein regime, Iraq was, and is, a sovereign nation. Sovereign nations are generally free to determine

to whom they will sell their national products, and from whom they purchase supplies. Members of the Security Council, as well as other member states, insisted on upholding this aspect of Iraq's sovereign authority.

These were the arrangements that prevailed under the Oil-for-Food Program given this reality. Could alternate arrangements have been devised, such as authorizing the United Nations or some other entity to function as the contracting party representing the people of Iraq in oil sales, and humanitarian goods procurement? The answer, given that there was not the political will in the Security Council to use its authorities to take charge of Iraq's oil sales and humanitarian goods procurement depended on the Iraqi regime's agreeing. And it did not.

Mr. SHAYS. Ambassador, I am going to have you summarize when we get back. We have a vote now, and I am going to go to that vote, so we are going to recess.

[Recess.]

Mr. SHAYS. Ambassador Kennedy, there is going to be another vote, but just complete your statement. We will put your statement on the record.

Ambassador KENNEDY. Thank you, Mr. Chairman.

The Security Council's original scheme for the Oil-for-Food Program outlined in resolution 706 and 712 in 1991 were for a program that would utilize the revenue derived from the sale of Iraqi oil to finance the purchase of humanitarian supplies for use by the Iraqi people. It was repeatedly rejected by the Saddam government. Even after the council adopted resolution 986 on April 14, 1995, the resolution that established the Oil-for-Food Program, it took more than 13 months of protracted negotiations before Saddam Hussein finally agreed to proceed, a considerable delay given the ongoing and urgent needs of the Iraqi people.

Mr. Chairman, any plan that would have denied the authority of the Iraqi government to select its own purchasers of Iraqi oil and suppliers of humanitarian products would have been rejected by a number of other key Security Council member states. You and your committee colleagues will recall that most, if not all, of the resolutions concerning Iraq adopted by the Security Council reaffirmed Iraq's sovereignty and territorial integrity. It would not have been possible politically to win support from various U.N. member states for any arrangement that denied Iraq its fundamental authorities as a sovereign nation and that would have endangered the durability of the sanctions regime that helped Saddam's access to war materials.

Finally, Mr. Chairman, I want to underscore the obligations of all U.N. member states to implement and enforce the comprehensive multilateral sanctions imposed by the Security Council under resolution 661. It was not possible for the sanctions to be effective, nor to prevent Saddam Hussein from evading the sanctions through the smuggling of oil, and the purchase of prohibited goods without the full cooperation of other states. I appreciate that this committee is carefully reviewing this matter and I would encourage you to consider the actions of other states in the context of the Oil-for-Food Program.

The United Nations, first and foremost, is a collective body comprised of its 191 members. A fundamental principle inherent in the U.N. charter is that member states will accept and carry out the decisions of the Security Council in accordance with the charter. In this regard, the effectiveness of the Oil-for-Food Program as well as the larger comprehensive sanctions regime against Iraq, largely depended on the ability and willingness of U.N. member states to implement and enforce sanctions. In the 661 committee, the subsidiary body of the Security Council tasked with monitoring sanctions compliance, sanctions violations could be addressed only if there was collective will and consensus to do so.

As you review the effectiveness of the Oil-for-Food Program, and the sanctions against Iraq in general, I encourage you to keep in mind that a decision to take effective action to address noncompliance issues required consensus in the 661 committee, a consensus that repeatedly proved elusive. And in reviewing the effectiveness of the U.N. secretariat, it may be relevant to recall that the staff and contractors are hired to implement the decisions of the member states. They operate within the mandates given to them.

In this regard, resolution 986 and the May 1996 memorandum of understanding between the United Nations and the former government of Iraq defined the mandate governing the work of the independent inspection agents, appointed by the Secretary General, who authenticated the arrival in Iraq of goods ordered under approved Oil-for-Food contracts. Lloyds Registry of the United Kingdom initially performed this function on behalf of the U.N. When the Lloyds contract expired, the Swiss firm Cotecna was hired by the U.N. to continue this authentication function. As defined in resolution 986 and the subsequent MOU, the independent inspection agents, Lloyds and then Cotecna, were tasked with inspecting only those shipments of humanitarian supplies ordered under the Oil-for-Food program.

Lloyds Registry and Cotecna agents were not authorized by the Security Council to serve as Iraq's border guards or customs officials. They lacked authority to prevent the entry into Iraq of non-Oil-for-Food goods. That function and responsibility belonged solely to Iraqi border and Customs officers, given Iraq's sovereignty and to every U.N. member state given the sanctions in place. The United Nations and its agents Lloyds Registry, Cotecna and Saybolt were not responsible for enforcing sanctions compliance. In May 2001, the United States and U.K. delegations circulated a draft resolution to other Security Council members that would have tightened border monitoring by neighboring states as part of a smart sanctions approach to Iraq. Certain council members as well as representatives of Iraq's neighbors, strongly opposed the United States-U.K. text, and the draft resolution was never adopted.

Resolution 986 and the May 1996 memorandum of understanding also called for monitoring by outside agents of Iraq's oil exports the Dutch firm Saybolt performed this function under the Oil-for-Food Program. Saybolt representatives oversaw oil loadings at the Mina al-Bakr loading platform and monitored the authorized out-bound flow of oil from Iraq to Turkey. Saybolt monitors were not authorized by the Security Council to search out and prevent illegal oil shipments by the former Iraqi regime. This was the primary

responsibility of each member state. The multi national maritime interception force operating in the Persian Gulf also was tasked with preventing Iraq's illegal oil smuggling.

Mr. Chairman, now that the Oil-for-Food Program has ended, questions concerning the efficacy of the program have arisen in light of the appearance of the documents belonging to the former Iraqi regime. These documents were never publicly shared during Saddam Hussein's rule with the Security Council or the 661 committee.

A fair question to pose is what might have happened had the Oil-for-Food Program never been established. While any response is purely conjecture. It is fair to assume that the humanitarian crisis besetting the people of Iraq in the mid 1990's would have only worsened over time, given the impact of the comprehensive sanctions on Iraq and Saddam Hussein's failure to provide for the needs of his own civilian population.

A deteriorating humanitarian situation among the Iraqi people would have increased calls among more and more nations for a relaxation and/or removal of the comprehensive sanctions restrictions on Iraq, thereby undermining ongoing United States and U.K. efforts to limit Saddam's ability to rearm. While the United States and U.K. may have succeeded in formally retaining sanctions against Iraq, fewer and fewer nations would have abided by them in practice given the perceived harmful impact such measures were thought to be having on Iraqi civilians. This would have given Saddam even greater access to prohibited items with which to pose a renewed threat to Iraq's neighbors and to the region.

Did the Oil-for-Food Program help to relieve the humanitarian crisis in Iraq and the suffering of the Iraqi people? Despite what might in the end be identified as inherent flaws, the Oil-for-Food Program did enjoy measurable success in meeting the day-to-day needs of Iraqi civilians. Could the program have been designed along lines more in keeping with the U.S. Government competitive bidding and procurement rules? Only if other council members and the former Iraqi government itself had supported such a proposal. In the end, the Oil-for-Food Program reflected three merged concepts: A collective international desire to assist and improve the lives of Iraq's civilian population; a desire by the United States and others to prevent Saddam from acquiring materials of war and from posing a renewed regional and international threat; and, efforts by commercial enterprises and a number of states to pursue their own national economic and financial interests despite the interests of the international community to contain the threat posed by Saddam's regime.

Mr. Chairman, thank you for the opportunity to appear again before this committee. I now stand ready to answer whatever questions you or your fellow committee members may wish to post.

[The prepared statement of Ambassador Kennedy follows:]

FINAL

STATEMENT BY
AMBASSADOR PATRICK F. KENNEDY
U.S. REPRESENTATIVE FOR UN MANAGEMENT AND REFORM
UNITED STATES MISSION TO THE UNITED NATIONS
ON THE
UNITED NATIONS OIL-FOR-FOOD PROGRAM
BEFORE THE
COMMITTEE ON GOVERNMENT REFORM,
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS
AND INTERNATIONAL RELATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

OCTOBER 5, 2004

Mr. Chairman, distinguished members of the Committee, I welcome the opportunity to appear before you again to discuss what is commonly known as the United Nations Oil-for-Food (OFF) Program.

Mr. Chairman, recent allegations of corruption and mismanagement under the Oil-for-Food Program have been targeted not only at the Saddam regime, but also at companies and individuals doing business under the program, and at UN personnel and contractors. We believe that every effort should be made to investigate these allegations seriously and to determine the facts in each case.

As you are aware, there are currently several Congressional investigations looking into the question of Oil-for-Food. The Independent Inquiry Committee headed by Paul Volcker, and the Board of Supreme Audit (BSA) in Baghdad are also conducting their own investigations. As these inquiries go forward, you have my assurance, and that of my staff, to cooperate fully with you and your colleagues on the other Committees, and provide all possible additional information and assistance. I welcome the opportunity today to answer your questions relating to these investigations on how the program was created and operated.

At the outset, Mr. Chairman, I want to reiterate several points I made here previously in April. First, I want to emphasize that the establishment of the Oil-for-Food Program was the result of difficult and arduous negotiations among 15 Security Council members, a number of whom advocated the complete lifting of sanctions against Iraq. The Oil-for-Food Program was in no way perfect – but it was, at the time, the best achievable compromise to address the ongoing humanitarian crisis in Iraq in the mid-1990's, while maintaining effective restrictions on Saddam's ability to re-arm. Sanctions have always been an imperfect tool, but, given the U.S. national goal of restricting Saddam's ability to obtain new materials of war, sanctions represented an important tool in our efforts.

Mr. Chairman, given this general context, I would now like to outline some details on how the Program worked – how it was created, by whom, and how it operated and was monitored.

A comprehensive sanctions regime was established under UNSC Resolution 661 in August 1990 after the Saddam Hussein regime invaded Kuwait. The Council's unanimity on the issue of Iraq eroded as key Council delegations became increasingly concerned over the negative impact of sanctions on the

Iraqi population. The lack of food supplies and the increase in mortality rates were world-wide news.

The concept of a humanitarian program to alleviate the suffering of the people of Iraq was initially considered in 1991 with UNSC Resolutions 706 and 712, but the Saddam regime rejected these proposals. The Council eventually adopted UNSC Resolution 986 in 1995 which provided the legal basis for what became known as the Oil-for-Food Program. While Council members were the drafters and negotiators of this text, the Memorandum of Understanding (MOU) signed between the UN and the former Government of Iraq was negotiated between Iraqi Government officials and representatives of the Secretary-General, in particular his Legal Counsel, on behalf of and at the request of the Security Council.

Under provisions of Resolution 986 and the MOU, the Iraqi Government, as a sovereign entity, retained the responsibility for contracting with buyers and sellers of Iraq's choosing, and the responsibility to distribute humanitarian items to the Iraqi population. This retention of Iraqi authority was insisted upon by Saddam and was supported by a number of Security Council members as well as by other UN member states. The exception to this was

for the three Northern Governorates of Iraq, where the UN agencies, at the request of the Council, served as the de-facto administrative body that contracted for non-bulk goods and distributed the monthly food ration.

The Sanctions Committee that was established under Resolution 661 in 1990 – also known as the 661 Committee – monitored member state implementation of the comprehensive sanctions on Iraq – and also was authorized to monitor the implementation of the Oil-for-Food Program after its inception.

The 661 Committee – like all sanctions Committees – operated as a subsidiary body of the Security Council and was comprised of representatives from the same fifteen nations as the Council. The Committee was chaired by the Ambassador of one of the rotating ten elected members of the Council. The Committee during its lifespan was chaired by the Ambassadors of Finland, Austria, New Zealand, Portugal, Netherlands, Norway, and Germany. Decision-making in the Committee was accomplished on a consensus basis – all decisions taken by the Committee required the agreement of all its members. This procedure is used in all subsidiary sanctions committees of the Council.

In providing oversight and monitoring of the sanctions, the Committee, and each of its members, including the U.S., was responsible for reviewing humanitarian contracts, oil spare parts contracts, and oil pricing submitted on a regular basis by Iraq to the UN for approval. The Committee was also responsible for addressing issues related to non-compliance and sanctions busting. In my previous testimony and statement for the record, I have provided an explanation of what we knew about issues related to non-compliance, what we did to address them, and the degree of success we had in addressing these issues within the confines of the 661 Committee.

When the U.S. became aware of issues related to non-compliance or manipulation of the Oil-for-Food Program by the Saddam regime, we raised these concerns in the Committee, often in concert with our UK counterparts. At our request, the Committee held lengthy discussion and debate over, for example, allegations of oil pricing manipulation, kickbacks on contracts, illegal smuggling, and the misuse of ferry services. To provide the 661 Committee with additional insight on issues related to non-compliance we also organized outside briefings by the Commander of the Multilateral Interception Force (MIF), and other U.S. agencies. Our success in

addressing issues of non-compliance was directly related to the willingness of other members of the Committee to take action.

Given the consensus rule for decision-making in the Committee, the ability of the U.S. and UK to take measures to counter or address non-compliance was often inhibited by other members' desire to ease sanctions on Iraq. As reflected in many of the 661 Committee records that have been shared with your Committee, the atmosphere within the Committee, particularly as the program evolved by the late 90s, was often contentious and polemic, given the fundamental political disagreement between member states over the Security Council's imposition and continuance of comprehensive sanctions, a debate exacerbated by the self-serving national economic objectives of certain key member states.

Mr. Chairman, you have recently been to Baghdad and know that the voluminous Oil-for-Food documents are now being safeguarded for use by the Board of Supreme Audit (BSA) in their investigation. The American Embassy in Baghdad is currently working on a Memorandum of Understanding between the U.S. and the Government of Iraq regarding

access to these documents. We will keep this Committee updated on the status of these negotiations.

Mr. Chairman, as you and your fellow distinguished Committee colleagues continue your review of the Oil-for-Food Program, key issues in your assessment likely will be whether the Program achieved its overall objectives, and whether the Program could have been better designed at its inception to preclude what some have suggested were fundamental flaws in its design.

In retrospect, had the program been constructed differently, perhaps by eliminating Iraqi contracting authority and the resulting large degree of autonomy afforded to Saddam to pick suppliers and buyers, then the allegations currently facing the program might not exist. One can postulate the elimination of this authority and the establishment of another entity to enter into contracts on behalf of the former government of Iraq, and this entity might have had tighter oversight of financial flows, thus inhibiting Saddam Hussein's ability to cheat the system through illegal transactions.

The problem is, of course, that these specific decisions – to allow the

government of Iraq to continue to exercise authority -- to let Saddam Hussein continue to determine who he could sell oil to and purchase goods from -- were all done in the context of the larger political debate on Iraq. It was reluctantly accepted to ensure that a significant sanctions program would remain in place -thus achieving a U.S. goal

Mr. Chairman, here I want to reiterate a point that I made earlier on the issue of sovereignty. While we opposed the authoritarian leadership of the former Saddam Hussein regime, Iraq was, and is, a sovereign nation. Sovereign nations are generally free to determine to whom they will sell their national products, and from whom they purchase supplies. Members of the Security Council, as well as other member states, insisted on upholding this aspect of Iraq's sovereign authority.

These were the arrangements that prevailed under the Oil-for-Food Program given this reality. Could alternate arrangement have been devised, such as authorizing the United Nations or some other entity to function as the contracting party representing the people of Iraq in oil sales, and humanitarian goods procurement? The answer, given that there was not the political will in the Security Council to use its authorities to take charge of

Iraq's oil sales and humanitarian goods procurement, depended on the Iraqi regime's agreeing. And it did not.

The Security Council's original scheme, outlined in Resolutions 706 (1991) and 712 (1991), for a program that would utilize the revenue derived from the sale of Iraqi oil to finance the purchase of humanitarian supplies for use by the Iraqi people, was repeatedly rejected by the Saddam government. Even after the Council adopted Resolution 986 on April 14, 1995, the resolution that established the OFF Program, it took more than thirteen months of protracted negotiations with the UN before Saddam Hussein finally agreed to proceed with the Program – a considerable delay given the ongoing and urgent needs of the Iraqi people.

Mr. Chairman, any plan that would have denied the authority of the Iraqi Government to select its own purchasers of Iraqi oil and suppliers of humanitarian products would have been rejected by a number of other key Security Council states. You and your Committee colleagues will recall that most, if not all, of the resolutions concerning Iraq adopted by the Security Council reaffirmed Iraq's sovereignty and territorial integrity. It would not have been possible, politically, to win support from various UN member

states for any arrangement that denied Iraq its fundamental authorities as a sovereign nation. And that would have endangered the durability of the sanctions regime that helped deny Saddam access to war materials.

Finally, Mr. Chairman, I want to underscore the obligations of all UN member states to implement and enforce the comprehensive multilateral sanctions imposed by the Security Council under Resolution 661 (1990). It was not possible for the sanctions to be effective, nor to prevent Saddam from evading the sanctions through the smuggling of oil, and the purchase of prohibited goods, without the full cooperation of other states. I appreciate that this Committee is carefully reviewing this matter, and I would encourage you to consider the actions of other states in the context of the Oil-for-Food Program. The United Nations, first and foremost, is a collective body comprised of its 191 members. A fundamental principle inherent in the UN Charter is that member states will accept and carry out decisions of the Security Council in accordance with the Charter. In this regard, the effectiveness of the Oil-for-Food Program, as well as the larger comprehensive sanctions regime against Iraq, largely depended on the ability and willingness of UN member states to implement and enforce the sanctions. In the 661 Committee, the subsidiary body of the

Security Council tasked with monitoring sanctions compliance, sanctions violations could be addressed only if there was a collective will, and consensus, to do so. As you review the effectiveness of the Oil-for-Food Program, and the sanctions against Iraq in general, I encourage you to keep in mind that a decision to take effective action to address non-compliance issues required consensus in the 661 Committee, a consensus that repeatedly proved elusive. And in reviewing the effectiveness of the UN Secretariat, it may be relevant to recall that the staff and contractors are hired to implement the decisions of the member states. They operate within the mandates given to them.

In this regard, Resolution 986 (1995) and the May 1996 Memorandum of Understanding between the United Nations and the former Government of Iraq defined the mandate governing the work of the independent inspection agents, appointed by the Secretary-General, who authenticated the arrival in Iraq of goods ordered under approved Oil-for-Food contracts. Lloyds Registry of the United Kingdom initially performed this function on behalf of the UN. When the Lloyds contract expired, the Swiss firm Cotecna was hired by the UN to continue this authentication function.

As defined in Resolution 986 (1995) and the subsequent MOU with the former Iraqi Government, the independent inspection agents, Lloyds Registry and Cotecna, were tasked with inspecting only those shipments of humanitarian supplies ordered under the Oil-for-Food Program. Lloyds Registry and Cotecna agents were not authorized by the Security Council to serve as Iraq's border guards or customs officials. They lacked authority to prevent the entry into Iraq of non-Oil-for-Food goods. That function and responsibility belonged solely to Iraqi border and customs officers, given Iraq's sovereignty, and to every UN member state, given the sanctions in place. The United Nations, and its agents, Lloyds Registry, Cotecna, and Saybolt, were not responsible for enforcing sanctions compliance.

In May 2001, the U.S. and UK delegations circulated a draft resolution to other Security Council members that would have tightened border monitoring by neighboring states as part of a "smart sanctions" approach to Iraq. Certain Council members, as well as representatives of Iraq's neighbors, strongly opposed the U.S.-UK text, and the draft resolution was never adopted.

Resolution 986 (1995) and the May 1996 Memorandum of Understanding also called for monitoring by outside agents of Iraq's oil exports. The Dutch firm, Saybolt, performed this function under the Oil-for-Food Program. Saybolt representatives oversaw oil loadings at the Mina al-Bakr loading platform and monitored the authorized outbound flow of oil from Iraq to Turkey (Ceyhan). Saybolt monitors were not authorized by the Security Council to search out and prevent illegal oil shipments by the former Iraqi regime. This was the primary responsibility of each member state. The Multinational Maritime Interception Force (MIF), operating in the Persian Gulf, also was tasked with preventing Iraq's illegal oil smuggling.

Mr. Chairman, now that the Oil-for-Food Program has ended, questions concerning the efficacy of the Program have arisen in light of the appearance of documents belonging to the former Iraqi regime. These documents were never publicly shared during Saddam Hussein's rule with the Security Council or the 661 Committee.

A fair question to pose is what might have happened had the Oil-for-Food Program never been established. While any response is purely conjecture, it is fair to assume that the humanitarian crisis besetting the people of Iraq in

the mid-1990's would have only worsened over time, given the impact of the comprehensive sanctions on Iraq, and Saddam's failure to provide for the needs of his civilian population.

A deteriorating humanitarian situation among the Iraqi people would have increased calls among more and more nations for a relaxation and/or removal of the comprehensive restrictions on Iraq, thereby undermining ongoing U.S. and UK efforts to limit Saddam's ability to re-arm. While the U.S. and UK may have succeeded in formally retaining sanctions against Iraq, fewer and fewer nations would have abided by them in practice given the perceived harmful impact such measures were thought to be having on Iraqi civilians. This would have given Saddam even greater access to prohibited items with which to pose a renewed threat to Iraq's neighbors, and to the region.

Did the Oil-for-Food Program help to relieve the humanitarian crisis in Iraq and the suffering of the Iraq people? Despite what might in the end be identified as inherent flaws, the Oil-for-Food Program did enjoy measurable success in meeting the day-to-day needs of Iraqi civilians. Could the Program have been designed along lines more in keeping with U.S.

Government competitive bidding and procurement rules? Only if other Council members and the former Iraqi government itself had supported such a proposal. In the end, the Oil-for-Food Program reflected three merged concepts: a collective international desire to assist and improve the lives of Iraq's civilian population; a desire by the U.S. and others to prevent Saddam from acquiring materials of war and from posing a renewed regional and international threat; and, efforts by commercial enterprises and a number of states to pursue their own national economic and financial interests despite the interests of the international community to contain the threat posed by Saddam's regime.

Mr. Chairman, thank you for this opportunity to appear again before this Committee. I now stand ready to answer whatever questions you and your fellow Committee members may wish to pose.

Mr. SHAYS. Thank you, what I will do since we have a vote, I will go back to the vote and then we will just start with questioning. The committee stands in recess.

[Recess.]

Mr. SHAYS. I call the hearing back to order.

I thank you, Mr. Kennedy. I also want to apologize to the second panel for all of the delays.

I would like to start by responding to your closing that suggests that, and let me be clear you accept this point, Ambassador Kennedy, basically you are saying because Saddam and Iraq were a sovereign nation, and because he was not willing to abide by a stricter Oil-for-Food Program, that we, the United Nations, conceded in allowing him to pretty much write his own ticket and that the alternative was, what? That is what I do not understand. In other words, are you suggesting that the sanctions worked?

Ambassador KENNEDY. Mr. Chairman, we do not believe that we permitted Saddam Hussein to write his own ticket. I think that is evident from the fact that it took almost 15 months between the time that resolution 986 was passed by the Security Council and the end of the negotiations to formulate the MOU. Saddam Hussein was obviously interested in achieving the maximum amount of flexibility that he could. The United States, the United Kingdom and others were interested in putting the maximum number of constraints on Saddam Hussein. We had a goal, Saddam Hussein had goals. All of these goals were in the context of other member states of the Security Council, and additionally, other member states of the United Nations, who have very different views on sanctions, some of them philosophical, some related to Saddam Hussein. The United States, United Kingdom and others pushed very, very hard to get the maximum amount of oversight of the sanctions regime. Those activities were resisted by others.

What I am suggesting is that although the program certainly was not perfect, as the work that you and your committee members have done amply demonstrate, I am suggesting, though, that in the absence of these sanctions, we would have probably had a very, very less fulsome situation.

I might note in 2002 the United States and the United Kingdom were holding, meaning denying permission, to over \$5.4 billion in contracts that Saddam Hussein wished to execute. So it was a balance. The need to alleviate the horrible suffering of the Iraqi people, suffering brought on by Saddam Hussein, at the same time to put into effect the most rigorous sanctions regime that we could politically establish.

Mr. SHAYS. I have to say you take my breath away. I feel like you are digging into a hole that I am sorry you are going into because it sounds to me like some critics' concern about the State Department's double speak. It sounds to me like double-speak, and let me explain why.

The sanctions did not work, but we had this program to what, save face for the United States or whatever? We had a program that allowed Saddam to sell oil at a price below the market and get kickbacks and we had a program that allowed him to buy commodities above the price and get kickbacks. He had the capability to now take this illegal money in addition to the leakage that they

had. We are looking at the Oil-for-Food Program as a \$4.4 billion rip-off to the Iraqi people going to Saddam and then the \$5.7 billion of illegal oil being sold through Jordan and Syria and Turkey. But let us just focus on the \$4.4 billion. In addition within that Oil-for-Food Program, he had what was considered legitimate money that he could then pay for commodities and bought things that he was not what he was supposed to be purchasing.

You need to tell me how those sanctions worked if he could do that. I don't know how you can tell me that they worked when that happened.

Are you disputing that \$4.4 billion was basically ripped off and ended up in his hands?

Ambassador KENNEDY. No, sir, I am not.

Mr. SHAYS. Are you in agreement this is not the Oil-for-Food Program, but it was the sanctions, are you in disagreement that he did not filter about \$5.7 billion of oil sales illegally through the neighboring states?

Ambassador KENNEDY. Saddam Hussein engaged in oil smuggling which was not part of the Oil-for-Food Program. I think we all agree that Saddam Hussein was an evil man who attempted to manipulate any opportunity.

Mr. SHAYS. I don't want to go down whether he is evil or not. I want to go back over how you can defend these sanctions. Why did you go in that direction?

Ambassador KENNEDY. I think, Mr. Chairman, that the sanctions enabled Saddam Hussein to be deprived of weapons of war and dual-use items.

Mr. SHAYS. Is it your testimony and your comfort level that \$10.1 billion was not used to purchase weapons?

Ambassador KENNEDY. No, sir. I am saying that the sanctions regime assisted. I said in my testimony that it is not a perfect system. He attempted to purchase materials under the sanctions through the U.N. Oil-for-Food process. We put holds on those. We stopped his purchasing of materials overtly, such as dual-use items. He attempted to purchase for example dump trucks and heavy equipment transporters. Dump trucks are easily convertible into rocket launchers because of the hydraulic mechanisms on the back. And a heavy equipment transporter that can move a bulldozer or a crane is the same piece of equipment, essentially, that you use to move tanks.

Mr. SHAYS. Is it your testimony that you know what he bought? Are you comfortable with the documents that came from Saybolt and Cotecna? Are you testifying that when they testify and basically come before us and say that he was not abiding by the sanctions, bought material he should not have, are you saying that he bought material that he should have? You can't be saying that.

Ambassador KENNEDY. No, sir. What I am saying is the contracts that ran through the Oil-for-Food Program ran through the 661 committee. When the United States, using the example of our own Nation, received those contract proposals, those contracts were vetted by any number of Washington agencies that were specialists in that regard. They vetted those contracts to make sure that none of the material included therein were weapons of war or potential dual-use items.

Mr. SHAYS. Is it your testimony that you in fact believe those documents?

Ambassador KENNEDY. I believe that the United States reviewed contracts and held on contracts that would have been given Saddam Hussein weapons of war and dual-use materials, yes.

Mr. SHAYS. I am not asking that. What I am asking is: So you stopped some transactions, but are you testifying as a representative of the United States that this system, which this subcommittee certainly believes is a paper tiger, was not a paper tiger. Do you believe that Cotecna and Saybolt had the power to properly monitor?

I want to say it again. Representing the United States of America, you come before this committee under oath, are you telling us that this system worked and that both companies were able to verify and properly manage this program? That is the question I am asking you. I want you to think long and hard before you answer it.

Ambassador KENNEDY. I think, Mr. Chairman, that you are conducting an investigation, an investigation we welcome. If Saddam Hussein was moving materials into Iraq outside of those which were contracted for under the Oil-for-Food Program, he and someone else were engaged in smuggling sanctions.

Mr. SHAYS. That is a no-brainer statement, but it is not answering my question. I want you to answer my question. I want you to think a second and answer the question.

Is it your testimony representing the State Department, and representing the administration, that this program, that the way this program was set up, that these two companies were able to properly enforce the sanctions? That is the question. Were they given the power necessary? Were you given the cooperation necessary with the other members of the Security Council, the 661 committee?

Ambassador KENNEDY. Absolutely not. Absolutely not.

Mr. SHAYS. Let us work with that. You are digging yourself out of a hole right now. The bottom line is they were not, correct?

Ambassador KENNEDY. That is correct.

Mr. SHAYS. Tell me in your words what was the problem with the program?

Ambassador KENNEDY. The problem was in the negotiating process that takes place in the international arena all of the time, the ultimate resolution passed by the Security Council, which was a process of negotiation, did not authorize either Cotecna or Saybolt or X or Y or Z, or anyone, to become all encompassing sanctioned enforcement agents.

Mr. SHAYS. That is the extreme they did not do. Tell me the minimum that they did? What power did these companies have?

Ambassador KENNEDY. They were empowered under the resolution to validate goods that were being shipped into Iraq that were declared to be part of the Oil-for-Food Program.

Mr. SHAYS. You are familiar with this program?

Ambassador KENNEDY. Yes, sir.

Mr. SHAYS. Were they able to do that? This is an investigation to know, and I want to know if my own government that is supposed to be overseeing this, that I frankly thought had problems

with this program, I want to know if they were properly able to oversee this program? It is a simple and very clear answer. I want to make sure under oath you are stating it clearly, not something you want me to believe, but I want to know the truth and the committee wants to know the truth. I want to have some confidence that my government that was overseeing it knew what the heck was going on.

Were they able to properly oversee this program?

It is a simple answer.

Ambassador KENNEDY. Because of the efforts of Saddam Hussein, in that sense, no, sir, they were not.

Mr. SHAYS. In any sense they were not able to. The reasons why we will explore later. But were they able to properly oversee this program? You do know they are testifying afterwards?

Ambassador KENNEDY. Yes, sir.

Mr. SHAYS. And you are aware of the complaints they had, I hope?

Ambassador KENNEDY. Yes, sir.

Mr. SHAYS. Even before this hearing, correct?

Ambassador KENNEDY. Absolutely.

Mr. SHAYS. Were they properly able to fulfill their responsibilities and oversee this program?

Ambassador KENNEDY. Up to a point yes; and beyond that, no.

Mr. SHAYS. You are going to have to tell me yes, up to what point and after what no. You tell me up to what point were they able to?

Ambassador KENNEDY. They were empowered by the resolution of the Security Council to authenticate materials that were arriving. They authenticated those materials.

Mr. SHAYS. Wait a second. Are you saying that they authenticated these materials? Are you saying they had a theoretical power to do it or are you saying they actually were able to do it? There is a difference.

Ambassador KENNEDY. It was their mission—

Mr. SHAYS. I want to know if they were able to.

Ambassador KENNEDY. I was not at every border station, sir. They authenticated the materials and submitted documents to the United Nations saying they had authenticated material.

Mr. SHAYS. Isn't it a fact that they said they didn't always have the people? Isn't it a fact that they said sometimes they couldn't even look, that is, in terms of Saybolt, sometimes they could not even be there, and when they left, isn't it a fact that they had suspicious?

Ambassador KENNEDY. Absolutely. And we have testified to that effect.

Mr. SHAYS. That is what is frustrating me. And you are someone who was in Iraq, a friend, and someone I have awesome respect for. What concerns me is you are giving a party line that even you do not believe. I feel very awkward having this public dialog with you, but it is so logical it is almost frightening to me that we cannot at least have the truth and then work from that as to what. I don't want to know why they were not able to authenticate the fact that this happened. I want to know if they did. Then we will explore why they couldn't.

Ambassador KENNEDY. Mr. Chairman, I have tried to answer the question the best I can. And I appreciate the compliment you just paid me. I believe that Cotecna and Saybolt attempted to carry out the functions that they had.

Mr. SHAYS. We agree. They attempted to do that. On one level we are in agreement. The question is could they? The answer is a simple one.

Ambassador KENNEDY. Absolutely. The results were not perfect.

Mr. SHAYS. I did not say perfect. Perfect is too much discretion. Perfect may mean 99 percent, and I don't think it was even close to 50 percent. I don't think they had the power and I don't think anyone who has looked at this program believes they had the power, and I think they are going to testify they did not have the power. What concerns me is you were basically trying to give the impression they were not perfect but, and I think that is misleading to the committee. I think it does not do you credit.

I don't want you to say anything you do not believe. I just do not want you to speak in words that do not frankly help us. I want you to be more precise.

Were they able to make sure that oil sales were actually the oil sales they were and that commodities that were purchased were actually what was bought to the amounts that were bought, the quality and so on? Were they? Maybe you can look at that note and hopefully somebody else is telling you to say no.

Ambassador KENNEDY. It was the position of the United States and joined by the United Kingdom that we wanted a more robust inspection regime. We wanted more robust inspections. Obviously, I think I am trying to answer your point. I am saying yes, there were restraints inherent in the program that prevented Cotecna and Saybolt, and Lloyds before that.

Mr. SHAYS. The problem with the word "robust" is like your word "perfect." It was not robust, so to say that you wanted it to be more is almost meaningless in my judgment as I have looked at this. This was a program that was basically not working. I want you to start us off explaining why it was not working. You have given a justification as to why we basically allowed for this program to go forward even though it was not working. So you have given a lot of people cover, but you have not helped us understand whether you, the government, the State Department, this administration, felt this program worked. You are trying to give us the impression that it was working, but not perfect; that it was robust, but it could be more robust. That to me is misleading. That is what I am wrestling with, and I am trying to understand why. Why do you want me to have this impression?

Ambassador KENNEDY. Mr. Chairman, I grant you, and I am looking for another word other than "perfect."

Mr. SHAYS. Have you been instructed to say that this program worked when it did not work?

Ambassador KENNEDY. No, sir.

Mr. SHAYS. Was there any meeting did you had before that said under no circumstances are you supposed to agree that the program did not work?

Ambassador KENNEDY. No, sir.

Mr. SHAYS. Was the program working?

Ambassador KENNEDY. The program accomplished some of its goals, as I have said.

Mr. SHAYS. What were the goals?

Ambassador KENNEDY. The goals of the Oil-for-Food Program were to relieve the humanitarian crisis of the Iraqi people and retain a sanctions regime on Saddam Hussein that would assist in restricting his desire to rearm. He had other means of attempting to rearm, as you rightly pointed out, sir. He attempted and he did utilize those means, but the program did deliver food and medicine and other supplies and equipment to the Iraqi people.

Mr. SHAYS. That part we concede. I'm going to concede that part. Because we knew that Iraqis were starving and we knew they weren't getting medicine and we knew that Saddam Hussein was willing to starve and kill his people and deprive them of medicine, we decided to cave in and accept a program that simply on the face looked like we hadn't caved in, looked like there were sanctions, but in fact it was about as leaky as it could get. And I wanted to understand if you understood that it was very leaky. Instead you used words, I wanted it to be more robust and I want it to be perfect.

But it wasn't perfect and it wasn't more robust. The bottom line was almost every transaction, it appears, may have been a rip-off, may have been a transaction that compromised the United Nations, compromised other people, and allowed Saddam Hussein to make money illegally without the world community having to agree that he was. That's the way I look at it. Tell me what's wrong with my picture.

Ambassador KENNEDY. Your picture is absolutely correct. Saddam Hussein—you mentioned earlier, sir, in our discussion that you take Saddam Hussein. He was sanction-busting from 1991 until the Oil-for-Food Program started in 1995—1996. He was sanction-busting. The Oil-for-Food Program was put into place. He attempted to get around the sanctions regime at every possible opportunity—

Mr. SHAYS. And the irony is—

Ambassador KENNEDY. He priced—

Mr. SHAYS. Go on.

Ambassador KENNEDY. He attempted to write contracts for oil where he priced the oil below the market rate and attempted to pocket that premium. We discovered that, and the United States and the U.K. raised that in the 661 committee, and then halted all price-setting under the old scheme until we achieved putting a new system into place which set the oil price retroactively after the sale; in other words, stopping him from getting a surcharge.

Having blocked him in that regard, he then moved to another aspect which was kickbacks after sales. We attempted to block that. So it was almost—and I hate to say this—a chess game. He attempted to maneuver and we attempted with certain allies, but not enough of them, to seize and block his activities.

And so I am agreeing that sanctions are leaky. The sanctions regime did not work as it was intended; i.e., to have 100 percent effectiveness.

Mr. SHAYS. No, don't say 100 percent, because I'm not even sure you had 50 percent. So don't say 100 percent. No, I mean, if the

truth comes out, whatever the truth is, it may embarrass the United States. It may embarrass someone else. It may embarrass Congress. But it will be the truth. And from the truth we can learn from it.

And my problem right now is what you are suggesting is that basically Saddam was willing to kill his people by not getting the food and not getting medicine and he wasn't willing to do an Oil-for-Food Program that we wanted, so ultimately we did a program that he wanted. He was able to buy or sell in euros. He was able to undersell his oil. He was able to overpay for commodities. He was able to get kickbacks. He was basically able to tell Cotecna and Saybolt basically they had no authority. He was basically able to ignore them. He was basically able to have more transactions than they could even handle so that they weren't even aware of some transactions. And he did this with the assistance of our allies.

And it's not a bad thing that Americans and the world community have to contend with this because it suggests that even before a decision to go into Iraq, it suggests frankly to me that we didn't have the support of our allies, that President Clinton didn't have the support of our allies, and that it was somewhat of a joke. And that when you had a President finally trying to say, you know, we've got to make this program work and we also have to look at a regime change if he doesn't cooperate, and we still don't have the assistance of our allies, it says to me, well, what's new? What's new about it?

Are you saying to us that the allies cooperated? No, your testimony was the reverse. Isn't it true that you said the allies did not cooperate and enable us to have a sanctions system that is working? Is that a fair statement?

Ambassador KENNEDY. I totally agree sir. As I testified, we sought a sanction regime and we were unable to get the sanction regime we wanted, yes, sir because of the lack of willingness on the part of other members of the Security Council and other nations to agree to that sanction regime.

Mr. SHAYS. OK. And so they didn't agree with it. And then we had a sanction that Saddam basically could live with; and isn't it true that on occasion, the United States protested some of the transactions?

Ambassador KENNEDY. We contested many of the transactions. We were holding at one point, as I mentioned, sir, \$5.4 billion worth of proposed transactions.

Mr. SHAYS. Well, but isn't it true that there were actually transactions that happened that you objected to?

Ambassador KENNEDY. No, sir the system operated on the consensus basis, and if any member of the 661 committee representing the member states of the Security Council, if any member objected to a transaction, that transaction was held—

Mr. SHAYS. OK. Why didn't you object to the fact that Saybolt and Cotecna did not have enough manpower and were not given the authority they needed to make sure that they were actually documenting the actual transactions? Why didn't the United States protest their inability to accurately document transactions?

Ambassador KENNEDY. For example, sir, when we learned that—using the Essex case, the oil tanker in which—it was topped off

after it had been loaded—we did raise that in the 661 committee. We insisted that additional personnel, additional technical matters, whatever, we demanded to the 661 committee.

Mr. SHAYS. And it didn't happen. And why didn't it happen?

Ambassador KENNEDY. Some of it happened, some of it didn't, because it was resisted by other members of the 661 committee.

Mr. SHAYS. Most of it didn't. Most of it did not happen. And it didn't happen because it just took one member to object, correct?

Ambassador KENNEDY. Correct.

Mr. SHAYS. OK. So you could theoretically prevent a transaction from happening that you knew about, but you couldn't make sure that Cotecna and Saybolt had the authority, the personnel, to make sure that they were properly running this program.

Ambassador KENNEDY. The mandate to the companies came from Security Council resolution and from the 661 committee.

Mr. SHAYS. Is that yes or a no?

Ambassador KENNEDY. The answer is that their mandate was governed by the consensus requirements. And, yes, a member state could hold on that consensus and that would have the effect that you outlined.

Mr. SHAYS. Why can't you say that the bottom line to it was that because member states would object if you wanted Saybolt or Cotecna to have more authority, more personnel and so on, because they objected to it, they didn't get it; and because they didn't get it, they couldn't do their job properly? Why is that so hard to say?

Ambassador KENNEDY. Phrased that way, sir, I have no—

Mr. SHAYS. Well, why don't you say it?

Ambassador KENNEDY. The mandate to Cotecna, to Saybolt, was governed from the original Security Council resolution and then implemented in the memorandum of understanding and in the 661 committee. Efforts to achieve our goals on sanctions were blocked by other member states.

Mr. SHAYS. That's not the same thing that I said, which you agreed with. What I wanted to know from you is whether you could say this. And if you can't, because you don't believe it, then tell me you don't believe it. But don't agree with my statement and then tell me something else in your answer.

What I said was because a member state could block the United States or Great Britain from wanting Saybolt or Cotecna to have enough authority and enough personnel to properly document transactions because member states could veto that—any one state, and did—that they did not have enough personnel and they did not and were not able to properly document transactions.

What you said to me was you agree with that statement, but you can't say it in your own words, and I just don't understand why it's hard for you to say it in your own words that way.

Ambassador KENNEDY. I guess, sir, because I think—the only distinction I am trying to draw, if I might, is that there were transactions outside the scope of the Oil-for-Food Program.

Mr. SHAYS. We have put those aside. We're just focused on the Oil-for-Food.

Ambassador KENNEDY. All right. Then, yes, Cotecna and Saybolt and their predecessor in one case did not always have the resources they needed to do their job, yes.

Mr. SHAYS. Or the authority?

Ambassador KENNEDY. Yes.

Mr. SHAYS. Yes, what?

Ambassador KENNEDY. Yes, they did not have the full authority to do their job because the mandate from the Security Council was not as broad as we wished it would have been.

Mr. SHAYS. Wished it would have been. As it should have been; correct?

Ambassador KENNEDY. Should have been, yes. It was our goal, as I said, to have a more robust sanctions regime. That's—

Mr. SHAYS. Don't say more robust. It was not robust at all. It was a paper tiger, it was a leaky sieve, it enabled Saddam to get \$4.4 billion. It was a joke. And you don't have to say it was a joke. I can say it was a joke. But you and I can certainly agree it wasn't robust. Was it a robust program?

Ambassador KENNEDY. No, sir, it was not a robust program.

Mr. SHAYS. OK. Was it close to being a robust program?

Ambassador KENNEDY. I think I'm—

Mr. SHAYS. Was it close to being a robust program?

Ambassador KENNEDY. No, it was not close to being a robust program.

Mr. SHAYS. OK. Well let's leave it right there.

Mr. Waxman.

Mr. WAXMAN. Mr. Chairman, earlier today at this hearing I moved for two subpoenas, and we held off any vote on them. As I understand it, you're willing to issue the first subpoena to the Federal Reserve Bank in New York to get the information that we have requested; and rather than issue a second subpoena, you've suggested that you and I write a letter to the Department of Defense requesting the information that we wanted and would have subpoenaed.

I want to thank you for your suggestion of resolving these subpoena questions in that way. I think it will be very helpful for us to issue the letter to Secretary Rumsfeld, insisting he comply with this request. And, of course, I take you at your word that the committee will followup aggressively if the Pentagon fails to provide the documents we have requested.

I think this is a reasonable way to proceed, and rather than have a vote on it, I would like to have this understanding memorialized at this point in the hearing so that we can go ahead with the one subpoena and issue a joint letter from the two of us in lieu of the second subpoena.

Mr. SHAYS. Thank you. I appreciate the gentleman's, one, effort and interest in this issue. I think he is correct in wanting to get these documents. I do totally agree that the Bank needs a subpoena, and I also want to say to you that we've asked for 12 documents, records—more than 12—but we have made 12 specific requests that are quite extensive, and it is my expectation that the Secretary will provide these documents, and if he doesn't then we need to followup with the subpoena.

Mr. WAXMAN. Well, I thank you very much. I certainly agree with you, and I think it's a reasonable way for us to proceed, to have all of the information which our committee ought to have as we do the investigation and in all respects.

Mr. SHAYS. Thank you very much.

Mr. WAXMAN. Thank you.

Mr. SHAYS. Thank you. Thank you for being here.

Mr. SHAYS. Thank you. Mr. Murphy, you have the floor.

Mr. MURPHY. Thank you, Mr. Chairman. I just have a couple of questions here that I—and I apologize if some of these were covered while I was on the floor of the House.

But, Ambassador, I thank you for being here, and I wanted to know where do we stand with the status of gaining access to the United Nations Oil-for-Food Program documents for Congress now and—can you give me some background with where we stand right now?

Ambassador KENNEDY. The State Department has asked Chairman Volcker of the independent investigating committee for the release of the documents, and up to this point he has declined, saying that he is using the documents and he intends to conduct his investigation. And he has declined to release them, sir.

Mr. MURPHY. Those would just be documents, official U.N. documents; is that what you're saying?

Ambassador KENNEDY. Yes, sir.

Mr. MURPHY. Is anyone trying to pursue documents from any other country, too? Is there any attempt to do that?

Ambassador KENNEDY. Yes, sir. Before I left Baghdad in August, I had presented to the acting chair of the Board of Supreme Audit a proposed memorandum of understanding between the United States and Iraq to release for use of government of Iraqi documents. And I understand that work is continuing and we hope to have a resolution to that request in the very near future. I checked with Baghdad just the other day and I am expecting those—

Mr. MURPHY. So those documents are being scanned now.

Ambassador KENNEDY. We are attempting to make an arrangement between various parties to scan those documents.

Mr. MURPHY. Now, how about the reverse? We have access to the Iraqi documents. Those will be released soon.

Ambassador KENNEDY. The request has been made, sir, yes.

Mr. MURPHY. The request has been made. How about the reverse? Is there any attempts to obtain documents from some of these other countries that are part of this scandal: Russia, France, China, Syria?

Ambassador KENNEDY. I believe that the request to other nations for their documents is within the jurisdiction of the independent investigating commission, Mr. Volcker's commission.

Mr. MURPHY. Are those nations cooperating?

Ambassador KENNEDY. That is a question that would have to be posed to the independent investigating commission, sir.

Mr. MURPHY. Let me ask about another area here. When it became apparent—and it was some years ago—that the issue, the question of some corruption in this Oil-for-Food scandal began to take some legs on it, what was the responsibility of the U.N. Office of Iraqi Programs to maintain the integrity of this program, and did they act within the scope of their responsibility at that time?

Ambassador KENNEDY. That is a question, sir, that is actually part of the investigation that is going on now by the Independent Investigations Commission. We are aware of information that did

come to the attention of the United States, including some from the Office of Iraqi Programs; which then as a member state, as a member of the 661 committee, the United States, the United Kingdom, did follow up on.

If there is other information that came into their possession that they should have followed up on that we are unaware of, of course we are unaware of that information, and that is one of the charges that was given to Chairman Volcker and his colleagues on the Independent Investigations Commission, to find out if there was any malfeasance, misfeasance. And I am not a lawyer, so I may not be using the appropriate words on the part of U.N. employees, but that is one of the mandates of the IIC, to look and see if U.N. employees conducted themselves as appropriate—

Mr. MURPHY. But it appears that there is some lack of cooperation in releasing doubts that would help us know this.

Ambassador KENNEDY. Chairman Volcker has indicated to me that his investigation is ongoing and he intends to get to the bottom of it and then file a full and complete report. I can only report, sir, what he has said to me.

Mr. MURPHY. Does he feel that he is getting cooperation from the member nations and from the U.N. itself, fully?

Ambassador KENNEDY. He has indicated he is getting full cooperation from the United Nations Secretariat. I have not posed the question about discussions with other nations.

Mr. MURPHY. Also in the historical time line of this, what was the year in which the concerns about corruption first began to surface?

Ambassador KENNEDY. First of all, corruption only within the Oil-for-Food Program itself, or issues about Saddam Hussein's sanctions-busting in general? I mean, the fact that he was engaged in oil smuggling came to our knowledge, you know, in 1991–1992. That's outside of the Oil-for-Food Program. And efforts were made then by the United States and others, and it led to the establishment of the multinational interdiction—maritime interdiction force, which were United States and other nations' naval assets deployed in the Shatt al Arab and the Gulf to seize that. We first, I think, became aware of his schemes related to oil, the premium on oil pricing, in July 2000, which is where he was—

Mr. MURPHY. Did the involvement of other countries and the Oil-for-Food corruption continue after July 2000? So even after the United States became aware, did it continue?

Ambassador KENNEDY. We began pushing for a system to bring this under control. It was resisted by other nations. We were challenged. We said, do you have hard evidence? Do you have—

Mr. MURPHY. Wait. Who was asking for the hard evidence?

Ambassador KENNEDY. Other nations.

Mr. MURPHY. Which nations were they?

Ambassador KENNEDY. I would have to go back and read the exact text again.

Mr. MURPHY. France.

Ambassador KENNEDY. France.

Mr. MURPHY. Germany.

Ambassador KENNEDY. France, Russia, and China would be the—

Mr. MURPHY. Syria.

Ambassador KENNEDY. Syria was on the committee at one point. I mean, over the course of the 13 years, there were many nations on the—and in 2000 when this first came to our attention—

Mr. MURPHY. So the very nations that are—

Ambassador KENNEDY. The nations changed every year.

Mr. MURPHY. I want to make sure I understand what you're saying. So the nations that the allegations are against now, at that time were saying you don't have any evidence on us?

Ambassador KENNEDY. Yes, sir. They were saying, do you have hard proof? And we said, we are getting these stories, its being reported in industry trade publications, it's being reported elsewhere. This must be addressed.

We pushed and we pushed and met a lot of resistance, and since we were meeting this resistance, if I might for a moment, sir, the program then was to set the oil price at the beginning of the month. And then what Saddam was playing off of was the volatility of the oil market where the price would move 10, 15, 20, 50 cents a barrel over the course of the month, and then he would sell at one price and sell to a favored supplier and say, I'm going to sell to you at the peg price of \$20.50, but now that the price for the rest of the month is \$20.75, you keep the nickel and you kick me back 20 cents. When we saw that this is what he was doing, and then we met the resistance from others to our activities, what the United States and the United Kingdom then did was to refuse to set an oil price at the beginning of the month. So there was no oil price. Oil sales went on, but there was no price.

We then agreed to an oil price at the end of the month that would then deprive Saddam Hussein of playing with the volatility of the market. And by setting a retroactive price, we believe that from the oil overseers—which were the professionals who had been engaged—that still he was potentially making something, but it might have been on the order of 3 to 5 cents a barrel as opposed to on the order of 25 to 50 cents a barrel simply because of the movements over the course of the month.

Mr. MURPHY. And what countries were involved with that after the United States has worked to deal with oil prices at the end of the month? What countries were still purchasing oil and giving him a kickback at that time?

Ambassador KENNEDY. We do not know which country. That is part of the investigation now. I do not have in front of me a confirmed list of what countries were engaged in that. I should say these were national—these were companies that were purchasing the oil and giving kickbacks, not nations themselves.

Mr. MURPHY. Well that's an important distinction. Was there any role or awareness, for example, of the French, the Russian, Chinese governments of these kickbacks going on?

Ambassador KENNEDY. We informed their members of the 661 committee.

Mr. MURPHY. So they were informed. Back in what year? Mid-nineties?

Ambassador KENNEDY. In 2000, sir, when it came to our attention. It was first raised, I believe, in the July 13, 2000 meeting of the 661 committee on oil price.

Mr. MURPHY. So that's the definite date by which we know that those member nations were notified. And I'm assuming that in the U.N. investigation we may find that those member nations knew something prior to that, but we don't know.

Ambassador KENNEDY. That would be speculation, sir, that I cannot comment on.

Mr. MURPHY. But they were notified at least in the year 2000, and yet the Oil-for-Food purchasing continued on after this. It didn't end in 2000. It continued on; am I correct?

Ambassador KENNEDY. We believe that because of the steps we took to put this retroactive pricing, that we drove the premium or surcharge down from, you know, multiple cents a barrel to 2 or 3 cents a barrel. But I cannot say that we ended it entirely, because Saddam Hussein was always looking for some way to get around the sanctions.

Mr. MURPHY. Mr. Chairman, I'm not sure. Could I have 2 more minutes or 1 more minute?

Let me shift to a different line of questioning here. The total amount of money that I understand Saddam Hussein received from this Oil-for-Food corruption was of the nature of \$10 billion, am I correct, \$10.1 billion? In the whole package of things here.

Ambassador KENNEDY. He achieved much more than that if you count in the oil smuggling that took place outside the scope of the Oil-for-Food Program, and it is very difficult to get an exact estimate. But I'm in no position to challenge the figure that we are talking about that was provided by the Government Accountability Office. I have every reason to believe that figure is probably in the ball park.

Mr. MURPHY. So it's probably in the ball park. It may be more.

Ambassador KENNEDY. Could be a little more, a little less. Yes, sir.

Mr. MURPHY. OK. And what did he do with the money?

Ambassador KENNEDY. He did a wide variety of things, I'm sure. Some of the sumptuous palaces that are extant in Baghdad at this time are undoubtedly built with that money. And he may well have done other things, but I don't have direct and confirmed information about that.

Mr. MURPHY. Will we have information from these investigations with regard to what he spent that money on? For example, did he purchase weapons on a black market or directly with that money?

Ambassador KENNEDY. I do not believe that is going to be the subject of the Volcker or the IIC investigation. That may come out through other U.S. Government channels, sir.

Mr. MURPHY. As we connect the dots, the thing that worries me intensely on this is not only the oppression Saddam Hussein kept his people under, the tortures and the murders, the killing fields which continued on at that time, but also it kept his regime going, much of it in sumptuous palaces which I have seen in Iraq. But the third, it kept his military going.

And I would hope that somebody would find in this—I'm sure, Mr. Chairman, this is some of your concerns as well—that if one penny of that was used to buy any bullets or bombs or grenade launchers or anything else, I suspect on the black market, because he's not permitted to purchase them overtly—and this is where we

have to also connect the dots to find if those companies within those member nations of the U.N. have blood on their hands against our soldiers.

And I would hope that is part of what this investigation brings out; that those nations who acted holier than thou in saying, you don't have any evidence, you don't know anything about what's going on, but also saying stay away from Iraq, they're nice people, leave them alone, could very well be—and this is the crux of what we have to find out from this investigation—if they were sending the money to Saddam Hussein which he used to arm his soldiers against the world.

Ambassador KENNEDY. I agree. That is something that is absolutely abhorrent; absolutely, sir.

Mr. MURPHY. And I hope the world is paying attention to that, because all this time that people are looking at let's ask the United Nations, they're not an altruistic system. Let's ask other member nations to come out and somehow decide what is best for the United States. The fact is no Ambassador from another country is given a mission of deciding what's best for the United States. They're all supposed to represent their own nation. And I hope that people pay attention to this; that when you have this sort of absolute power to spend and to find that kind of money, that nations and the businesses that operate within them are not pure. And we may like to think about perhaps these other nations may have some pure motives, but quite frankly, there's too much in the negative column to suggest otherwise.

And I would hope that the investigation of this committee, led by the chairman and by the United Nations, would give us that answer. I wish we could get that answer soon. But as it is, I go back to my opening statement, too, that it concerns me deeply that these nations which have been very quick to ask us for help when they needed it, when we ask them for help—if they knowingly participated, if it was active or passive participation in sending money to this murderer Saddam Hussein, which he then used to keep his military regime in power, which was then used against our own soldiers and citizens is disgusting.

Thank you, Mr. Chairman.

Mr. SHAYS. I'll allow counsel to ask a few questions, and then I'll have a few more, Ambassador, and then we'll be all set.

Mr. HALLORAN. Thank you, Mr. Chairman.

Ambassador Kennedy, two areas. First, much of the document, many of the documents the State Department has provided are marked sensitive or classified because of their foreign origin, I believe. In particular, there has been recent media reference to a document produced by the Iraqi Oil Ministry soon after the Governing Council and the CPA was in place, characterizing in detail the Oil-for-Food Program and abuses. That report is marked sensitive and classified and not for distribution.

I'm wondering what the process is for the U.S. Government to request or accomplish the declassification and public release of such a report.

Ambassador KENNEDY. Let me find out those exact parameters and get back to the committee for the record.

Mr. HALLORAN. Thank you.

The other area I want to explore is this concept of sovereignty, and try to plumb the depths and the parameters of that concept. It struck me in your testimony that it is not an absolute, that I— if you could describe other situations in which sovereignty has been described or observed differently in other U.N. regimes; that it's struck us in the documents that Saddam simply waited out those who had the most expansive view of sovereignty possible, but that other formulations of this problem were possible within a plausible concept of sovereignty for a nation that was already under an oppressive sanctions regime, that had already been documented as trying to avoid that sanctions regime. So, in one sense, the sovereignty had already been severely mortgaged.

Could you describe those negotiations a little more, please?

Ambassador KENNEDY. I will first plead that I am not an international lawyer and I am not qualified to provide you with a textbook definition of sovereignty. What I believe we are talking about here is, I will call it a political definition of sovereignty. The United States, the United Kingdom, other allies, sought to put into place, and did in 1990 after the invasion of Kuwait, a complete embargo on the movement of goods and services into Iraq. And then it was later amended to permit certain donations of food and medicines.

But as we saw over the course of the years between 1991 and 1995, you know, the mortality rate; the ability of the Iraqis to get basic nutrition, was just simply collapsing because of Saddam Hussein's own unwillingness to treat his people in a humane sense. This built political pressure on those nations who were in favor of sanctions. And we did not wish to see that sanctions regime end, because of our goal of doing whatever possible to restrict the movement of materials of war to Saddam Hussein so he could re-arm.

So taking the political aspect of trying to keep the sanctions in place, but seeing the resistance, a series of negotiations took place within and among member states at the United Nations to formulate a new regime that eventually led to the Security Council resolution that established the Iraq program.

Did we want a program that had more teeth in it than that? Absolutely. Could we get other nations to agree to that fully and completely? Could we get Saddam Hussein to tell the other nations that he was willing to accept that? The answer was no. Why—

Mr. HALLORAN. So we can conclude there is another formulation of the Oil-for-Food arrangement that would give Saddam less control but still observe the concept of the sovereignty.

Ambassador KENNEDY. As I said in my testimony, yes, one could have had such another activity. However, in the negotiations that took place in the 661 committee and in the Security Council, we did not achieve that consensus on a regime with more teeth.

Mr. HALLORAN. Thank you.

Mr. SHAYS. Thank you, Ambassador. Let me ask you, how many months were you in Iraq?

Ambassador KENNEDY. I was in Iraq for 6 months in 2003 and then I went back again for another 3 months' assignment in 2004, sir.

Mr. SHAYS. Was that a classified assignment, then, or can you tell us, bottom line, what you were involved in?

Ambassador KENNEDY. No, sir. I can tell you. For the first 6 months in 2003, I was the chief of staff of the Coalition Provisional Authority, and then when I went back in 2004, I was the chief of staff of a small unit that was working on the transition from CPA to American Embassy and the transition logistically from the Iraqi Governing Council to the Iraqi Interim Government.

Mr. SHAYS. Well, we know those were not easy assignments, and we sincerely appreciate what you did during that time. I would like you to describe to me the Clovely incident, C-L-O-V-E-L-Y, the ship. Are you familiar with it?

Ambassador KENNEDY. No, sir. I am aware of the Essex incident that took place several years ago, but, Mr. Chairman, I will be glad to research that and provide you information for the record. I apologize. I am unaware of such.

Mr. SHAYS. You don't need to. If you don't know of the incident, I'd just as soon you not respond to it.

When I listened to your statement, and I really—you know, we don't usually allow someone to speak for more than 10 minutes. I wanted to hear your whole statement. I think why I get uneasy is certain things seem so simple to me, and then they are the hard things. And then I think you have a big dialog about the hard things.

The easy things are that it's clear Saddam starved his people and deprived them of medicine and would have continued to do that unless we had some way to allow him to get food and medicine for his people. And we basically decided to let him determine, really, how the program should function. He decided it was in euros, not dollars. He decided who could buy oil. He decided who he would buy commodities from. He basically set the price of oil. He set the price of commodities. He undersold his oil. No reason to do that. He overpaid for commodities. No reason to do it, unless he did what he did. And that was, he got kickbacks in both ways.

And it seems very evident to me that both Saybolt and Cotecna did not have the capability, either in personnel or authority, to prevent bad things from happening in this program. And so they happened routinely, not on occasion. It seemed to me we could have just had a quick dialog. What is of concern to me, is there anything that I just said that you would disagree with?

Ambassador KENNEDY. No, sir. If I do, is that one that neither Saybolt nor Cotecna set the price of oil or set the price of commodities.

Mr. SHAYS. No, they didn't.

Ambassador KENNEDY. No, sir.

Mr. SHAYS. So everything I said was pretty accurate from your standpoint.

Ambassador KENNEDY. Except, sir, that he proposed the price of oil.

Mr. SHAYS. He being—

Ambassador KENNEDY. Saddam Hussein. He proposed the price of oil, but the price of oil was then set by the 661 committee, not by Saddam Hussein. He—

Mr. SHAYS. And in some cases set it below market price.

Ambassador KENNEDY. When it was set at the beginning of the month, when the market moved, it ended up being below market

price, which is why the United States and the United Kingdom moved to set the price at the end of the month so that he could not take advantage of the natural market shifts. Yes, sir.

Mr. SHAYS. And so I'm getting to my point. What concerns me is that you basically have described to me the reality that our allies who didn't support the embargo were pretty much shaping it, and that was the reality of this program; and that it was more important to have the program happen, even though it wasn't working properly. In other words, having the program and not having it work properly was better than not having the program at all. I conclude from that, because you felt the only alternative was that we would continue to see Iraqis starve and they wouldn't get the medicine. And I guess that's the conclusion of the State Department.

Ambassador KENNEDY. I think, sir, if there had been massive starvation in Iraq, I think the belief at that time—and I was not there—was that the entire sanction regime totally would have collapsed, and then Saddam Hussein would have had no sanction regimes to have to deal with at all, and that free rein would have been not in the U.S. national interest.

Mr. SHAYS. OK. But the bottom line is as a result, we had Saddam able to make a fortune in kickbacks. That was basically the compromise. And it is a fact that the United States knew this was happening.

Ambassador KENNEDY. Every time, sir, that we saw him move to abuse the system—pricing oil, kickbacks—we moved to try to counter that in the 661 committee; and, as you have rightly noted earlier, sir, met resistance from other member states.

Mr. SHAYS. Who could veto.

Ambassador KENNEDY. Yes, sir. The way the Security Council procedures work, yes, sir.

Mr. SHAYS. Ambassador, are you set to ask questions? Would you like to ask some questions?

Ms. WATSON. Yes.

Mr. SHAYS. Thank you. We have two Ambassadors here.

Ms. WATSON. I am a bit confused—thank you, Mr. Chairman—because I just heard you say that every time you saw something appeared abusive, that there would be some response. However, we have been told how Saddam Hussein had taken the money intended for the people and food, and built magnificent palaces. It seems to me that this would be the time that some action should have been taken. Can you respond, please?

Ambassador KENNEDY. There is no doubt, Madam Ambassador, that Saddam Hussein received kickbacks. That is a fact. We moved to counter those kickbacks, but during this period of time while he was making kickbacks, and as I testified before this committee several months ago, what he did was on very large quantities of goods, and he—remember, he was feeding a nation of some 23 to 25 million people—he would attempt to get very small kickbacks on very large sums. But the sums mount up over that kind of volume. He was receiving those funds. Yet the medicines and the foodstuffs were still going in.

I am not defending what he was doing by any means. What he was doing is wrong. But the food and medicines were going in, and he was getting the kickbacks while we and our United Kingdom al-

lies moved to cutoff either his attempt to manipulate oil prices or attempt to add surcharges or attempt to add after-sales service contracts. And so we took steps to block him as soon as we discovered it. And as we have discussed earlier, we were not successful in blocking all his activities.

Ms. WATSON. And I know, Mr. Ambassador how difficult this is. I have been there, too. However, I think you're the only one that can help our understanding of what went wrong so wrong. And so I understand that the Oil-for-Food Program helped provide food for 27 million Iraqi residents. It prevented malnutrition. It reduced communicable diseases. It eradicated polio, and was a major success for a period of time. We're focusing on \$4.4 billion of a \$67 billion humanitarian success story.

So do you believe that this program met its objectives, and do you believe that we as the United States, and the monitors who were participating, were on the job? I need to know out in the field what it was that was lacking and how we lost so much of the fund to corruption. What was it that should have been done beyond what you've just described?

Ambassador KENNEDY. The Oil-for-Food Program had multiple objectives. One objective was to ensure that foods, medicine, and other essential human needs of the Iraqi people were met. And so to that extent, it met its objective by ensuring that the infant mortality rate and maternal mortality rate, which had gone up, went back down.

The nutrition was achieved by the Iraqi people. So yes, it met that objective. But in terms of being a sanctioned regime that stopped any attempt by Saddam Hussein to bust the sanction regime and keep him from cheating on the sanctions regime, busting it and then potentially using those funds to get other materials, it was not a total success. But—

Mr. SHAYS. Would the gentlelady suspend for a second?

Ms. WATSON. Certainly.

Mr. SHAYS. When you say "any attempt" and "it was not a total success" as it relates to that part of it, you seem to be going back and suggesting that the abuses were infrequent. Is it your testimony that the abuses were infrequent?

We've already conceded that people are going to get aid. They are going to get money and medicine. But on the other side of the equation, is it your testimony that it was just any attempt, we didn't succeed in any attempt? Where the abuse is more frequent, happened more than less? I want to know which way you see it.

Ambassador KENNEDY. The abuses, Mr. Chairman, were continuous. But they were, if I might, sir, they were different abuses each time. I mean, he abused it with oil smuggling outside of program. He abused it with kickbacks. He abused it with premiums on oil. He took different steps, so continuous abuse, different tools that he used each time to cause the abuses, sir.

Mr. SHAYS. Thank you. Thank you.

Ms. WATSON. If I might continue—and if you want to continue to respond to my last question, fine—but let me raise another issue. What other U.N. bilateral or multilateral mechanism besides the 661 committee could the United States have utilized to publicize and put an end to these practices? I'm concerned that too

much of the oil moneys were diverted in other directions, and those who suffered were the Iraqi people. With the Coalition, what could have been done to end this misuse?

Ambassador KENNEDY. With Saddam Hussein as the figure here, I don't know that anything would have stopped Saddam Hussein from attempting to get around any activities.

Ms. WATSON. Well let me just ask you this, then. What would have stopped the flow of funds into the program Oil-for-Food?

Ambassador KENNEDY. The only thing that would have stopped it would have been if you had had a different sanctions regime. But the sanction regime that was put into place was the one that was the result of long, extensive, and arduous negotiations with other member states to achieve that sanctions regime. If you had had a regime in which, again, hypothetically a company had pumped all the oil, sold all the oil, and bought all the goods and sent them in, then there might not have been any leakage as you described. However, there was not the political will on the part of nations to impose that kind of a sanctions regime.

Ms. WATSON. What of our political will here? Did we make a strong enough effort, Security Council in the United Nations, to bring their attention and get a focus on possibly changing the kind of structure that we had? What was being done from within?

Ambassador KENNEDY. I only arrived at the U.S. mission to the United Nations in the fall of 2001. But my preparation for this, my reading of the very extensive record, indicate that the U.S. Government made extensive efforts to get the most teeth into sanctions that it could, and met resistance from other member states who are unwilling to accept that.

Ms. WATSON. I understand how difficult it is when you're coming in and programs like this have been running. That is the reason why we were concerned on this committee with our oversight, and we wanted to see what records, what documents, documentation, what facts there are held by other departments and branches. I understand that there were 60 staffers and five different U.S. agencies who reviewed each of the Oil-for-Food contracts. If we had that information, then my questions might be answered.

And I want to thank you for your service, and I want to thank you for coming here and being on the hot seat. But I think there should be some others that are on the hot seat so we can find where we went wrong, where it went wrong.

We know that Saddam Hussein was wrong. But that doesn't excuse this whole thing. And so we would just like to get to the bottom of it. I appreciate your service and I thank you so much for trying to explain what happened before your duties started. But we are trying to seek truth.

Thank you, Mr. Chairman.

Mr. SHAYS. Thank you.

Just very briefly, Ambassador, do you feel this story should come out?

Ambassador KENNEDY. Absolutely.

Mr. SHAYS. Do you feel this story should come out, even if it embarrasses our allies?

Ambassador KENNEDY. Absolutely.

Mr. SHAYS. Do you believe it should come out, even if it embarrasses some allies and makes it more difficult to get their cooperation in Iraq?

Ambassador KENNEDY. Absolutely.

Mr. SHAYS. Thank you. Thank you very much.

We are going to go to our next panel. Thank you.

Our next panel, our last panel, and many hours later, David Smith, director, Corporate Banking Operations, BNP Paribas; Peter W.G. Boks, managing director, Saybolt International B.V; and Andre Pruniaux, senior vice president, Africa and Middle East, Cotecna Inspection SA.

If you would all stay standing, we will swear you in. If there is someone else who might respond to a question, I would like them to be able to be sworn in as well.

So we have David Smith, Peter Boks, and Andre Pruniaux. Thank you. And we swear in all our witnesses. If you'd raise your right hands, please.

[Witnesses sworn.]

Mr. SHAYS. Note for the record, our witnesses have responded in the affirmative. Gentlemen, thank you so much for your patience. And also, thank you for your cooperation. You all have been very cooperative. You all have tried to be consistent with your obligations that enable us to do our job as well, and we thank you for that.

David Smith, we are going to have you go first. I'll just go down and you'll need to bring that mic closer to you. Please bring it down a little further. And the lights on means your mic is on. Do you want to just tap it just to see? Thank you.

So what we'll do is, you have the floor for 5 minutes, and then we roll it over for another 5 minutes. After 10, I'd ask you to stop.

Mr. SMITH. Thank you Mr. Chairman.

Mr. SHAYS. Thank you.

STATEMENTS OF DAVID L. SMITH, DIRECTOR, CORPORATE BANKING OPERATIONS, BNP PARIBAS; PETER W.G. BOKS, MANAGING DIRECTOR, SAYBOLT INTERNATIONAL B.V; AND ANDRE E. PRUNIAUX, SENIOR VICE PRESIDENT, AFRICA AND MIDDLE EAST, COTECNA INSPECTION S.A

Mr. SMITH. Chairman Shays, members of the committee, I request that my written statement be submitted for the record.

Mr. SHAYS. And it will, without objection.

Mr. SMITH. Thank you. Before responding to any particular inquiries members of this committee may have, I would like to make a brief statement which summarizes the key points of my written statement to the committee.

My name is David Smith. Since September 2001, I have been employed by BNP Paribas, North America, where I serve as director of Corporate Banking Operations. In that capacity I have been responsible for overseeing the Bank's letter-of-credit processing operations, including those operations as they pertain to the Bank's agreement to provide banking services to the United Nations for the U.N. Oil-for-Food Program.

First, as to the selection of BNP, according to a report of the General Secretary dated November 25, 1996, the selection process

for the holder of the U.N. Iraq account began with the preparation of, "a working list of major banks in all parts of the world with the necessary credit quality ratings, strong capital positions, and capabilities to provide the services necessary for the account."

The report indicates that a short list of those banks, including BNP, were asked in June 1996 to submit written proposals to the U.N. for the provision of the required banking services. The U.N.'s request for proposals sought certain pricing information from each bank and inquired into each bank's capabilities to handle the business of the program's size.

The Bank understands that four major international banks submitted formal offers in response to the RFP. The General Secretary reported in 1996 that, "After careful consideration of the proposals received," BNP was selected on June 18, 1996 to be the holder of the U.N. Iraq account. Accordingly, a banking services agreement was executed by BNP and the United Nations after several weeks of negotiations.

The Bank believes that several factors resulted in BNP's selection by the United Nations, including the following: one, its large international presence; two, its significant position in the commodities trade finance business; three, its high credit rating; four, its strong capital position; five, its willingness to assume the credit risk of other banks by confirming the oil letters of credit to be issued for the benefit of the program; six, its competitive pricing; and seven, its substantial trade finance support operation, located in New York City, where the U.N. is headquartered.

Second, as to the services the Bank has provided to the United Nations, the role of the Bank under the banking services agreement has consisted of delivering nondiscretionary banking services to its customer, the United Nations. These services have related to both the oil and the humanitarian sides of the program. Generally on the oil side of the program, those services have involved the confirmation of letters of credit issued on behalf of U.N.-approved purchases of Iraq oil. Those letters of credit were issued by various banks for the benefit of the U.N. Iraq account.

When a bank confirms a letter of credit, it takes upon itself the obligation to pay the beneficiary, here the U.N. The Bank's confirmation of the oil letters of credit was done at the request of the U.N. It was performed in accordance with standard banking practices, letters of credit practices, with several additional controls imposed by the United Nations, as described in my written statement.

On the humanitarian side of the program, the Bank's services have involved the issuance of letters of credit at the direction of the U.N. for the benefit of U.N.-approved suppliers of goods to Iraq. Those letters of credit provided the necessary assurance to suppliers that they would receive payment for their goods once they had been delivered to Iraq in accordance with their contractual obligations.

The processing by the Bank was performed in accordance with standard letter-of-credit practice, with a number of additional controls, again as detailed in my written statement.

Significantly, the Bank has had no discretion over how money has been spent or invested under the program. The Bank did not

select the buyers of the oil, sellers of the goods, or the goods to be supplied.

Third, as to the Bank's legal and ethical obligations, the Bank's provision of services pursuant to the banking services agreement was licensed by the U.S. Department of Treasury, Office of Foreign Asset Control [OFAC]. Moreover, all services provided by the Bank under the agreement were performed within a framework designed by the U.N. under the agreement, the United Nations, a universally known international organization of sovereign states, was the Bank's sole customer.

As I have stated, all aspects of the transaction under the program, including the purchases of oil and the supplies of goods, as well as the nature, amount, and pricing of goods involved, were approved by the U.N. All letters of credit confirmed or issued by the Bank under the banking services agreement were governed by the Uniform Customs and Practices for Documentary Credits, a set of detailed procedures for letters of credit published by the International Chamber of Commerce.

Program transactions were also subject to U.S. regulatory requirements, including in particular the screening of any program participants against lists of specially designated nationals published by OFAC. There also were, as described in my written statement, a number of additional controls imposed by the U.N. that were unique to the program.

Notably, an article in Saturday's New York Times purports to quote from a briefing paper provided to members of this committee that suggests that the Bank was remiss because it "never initiated a review of the program or the reputation of those involved."

Any such suggestion misunderstands the nature of the Bank's role under its banking services agreement with the U.N. Under that agreement, the U.N. was the Bank's sole customer. The Bank reasonably relied upon the sanctions committee of the Security Council for its review and approval of both purchases of oil and the suppliers of goods. The Bank provided specified nondiscretionary services to the U.N. under the banking services agreement, and it was not the Bank's place to substitute its judgment for that of the sanctions committee regarding who would be approved by the U.N. to participate in the program.

Fourth, as to the unique challenges of the program, from a banking perspective the program has represented an enormously challenging and unique undertaking involving the process of over 23,000 letters of credit and the disbursement of billions of dollars for investment purposes at the direction of the U.N. Those investments have generated in excess of \$2.7 billion for the benefit of the program.

With the exception of a temporary backlog in processing of humanitarian letters of credit in mid-2000, the Bank believes that it has done a good job in handling the highly demanding banking assignment under a program of unprecedented scope and magnitude.

Finally, as to the design of the program, the Bank believes that the use of letters of credit provided the correct banking framework for the program. Although outside the scope of our responsibilities it appears, with the benefit of hindsight, that the program might have been better structured in other respects to minimize the risk

of abuse. In this regard, a well-managed competitive bidding process, both for the purchase of oil and for the sale of goods, might have been substituted for what was essentially a sole-source procurement process. This would have eliminated the Government of Iraq in the selection of prospective counterparties for U.N. approved Oil-for-Food transactions, and would have provided greater transparency regarding program participants. It might also have reduced the possibility that the program might not always have received the most favorable pricing.

On behalf of BNP Paribas, I thank the committee for this opportunity to provide this statement. I would be happy to respond to any questions members of the committee may have.

Mr. SHAYS. Thank you, Mr. Smith.

[The prepared statement of Mr. Smith follows:]

**BEFORE THE SUBCOMMITTEE ON NATIONAL SECURITY,
EMERGING THREATS, AND INTERNATIONAL RELATIONS
OF THE HOUSE COMMITTEE ON GOVERNMENTAL REFORM**

**Statement by David Smith on Behalf of BNP Paribas Regarding
The Bank's Role In The UN Oil-For-Food Program**

My name is David Smith. Since September 2001, I have been employed by BNP Paribas North America, where I serve as the Director of Corporate Banking Operations. In that capacity, I have been responsible for overseeing the Bank's letter of credit processing operations, including those operations as they pertain to banking services provided by the Bank to the United Nations in respect of the UN's Oil-For-Food Program. This statement responds to questions posed by Chairman Shays in his letter to the Bank dated September 23, 2004.

1. How Was BNP Selected by the United Nations?

The following is my understanding of how BNP was selected by the UN to provide banking services for the Oil-For-Food Program. You may recall that Resolution 986 of the UN Security Council gave the Secretary-General of the UN the responsibility of establishing a bank account for the deposit of funds generated by the sale of oil by Iraq. Notably, all of those oil sales were subject to the prior approval of the so-called "661" or "Sanctions" Committee of the Security Council. The account also was to be used for the payment for the purchase of goods by Iraq, which likewise

were subject to the prior review and approval of the Sanctions Committee. Pursuant to the Resolution, the Secretary-General was to select an international bank and negotiate the terms of the account pursuant to the Memorandum of Understanding between the UN and the Government of Iraq.

According to a report of the Secretary-General dated November 25, 1996, the selection process for the holder of the UN Iraq account began with the preparation of a "working list of major banks in all parts of the world with the necessary credit quality ratings, strong capital positions, and the capabilities to provide the services necessary for the account." The Report indicates that a short-list of those banks, including BNP, were asked in June 1996 to submit written proposals to the UN for the provision of the required banking services. The UN's Request For Proposals ("RFP") sought certain pricing information from each bank, and inquired into each bank's capabilities to handle business of the Program's size. The Bank understands that four major international banks submitted formal offers in response to the RFP.

The Secretary-General reported in 1996 that, "after careful consideration of the proposals received," BNP was selected on June 18, 1996 to be the holder of the UN Iraq Account. The Bank believes that several factors resulted in BNP's selection by the UN, including the following: (i) its large international presence; (ii) its significant position in the commodities trade finance business; (iii) its high credit

rating; (iv) its strong capital position; (v) its willingness to assume the credit risk of other banks by confirming the oil letters of credit to be issued for the benefit of the Program; (vi) its competitive pricing; and (vii) its substantial trade finance support operation located in New York City, where the UN is headquartered. Accordingly, after several weeks of negotiations, an agreement to provide banking services for the Program was signed by the UN and BNP on September 12, 1996.

2. What Has Been the Role of the Bank?

The role of the Bank under the Banking Services Agreement has consisted of delivering non-discretionary banking services to its customer, the UN. Those services have related both to the oil and humanitarian sides of the Program.

Generally, on the oil side of the Program, those services have involved the confirmation of letters of credit issued by various banks on behalf of UN-approved purchasers of Iraqi oil. When a bank confirms a letter of credit, it takes upon itself the obligation to pay the beneficiary, here the UN Iraq Account. The Bank's confirmation of the oil letters of credit thus allowed the UN to rely solely upon the credit quality of the Bank for payment.

The oil letters of credit under the Program conformed with standard practices governing letters of credit, with the following additional controls imposed by the UN: (i) each contract between the Iraqi State Oil Marketing Organization, or "SOMO," and a buyer had to be approved by the UN; (ii) the price of the oil was

established by a process approved by the UN; and (iii) the loading of the oil was supervised by an independent company appointed by the UN to ensure that the correct volume and grade of oil was loaded. At the payment stage, all shipping documents were presented to the Bank by the UN.

On the humanitarian side of the Program, the Bank's services to the UN under the Banking Services Agreement have involved the issuance of letters of credit at the direction of the UN for the benefit of UN-approved suppliers of goods to Iraq. Those letters of credit provide the necessary assurance to suppliers that they will receive payment for their goods once they have been delivered to Iraq in accordance with their contractual obligations.

As previously noted, the contract approval process took place under the supervision of the UN Sanctions Committee, on which all members of the Security Council were represented. A request by the Central Bank of Iraq for the issuance of a letter of credit could be processed by the Bank only after the UN had given its approval. Generally, the goods then would be shipped by the exporter. Once the goods arrived in Iraq, they were inspected by the independent inspectors appointed by the UN. The payment for these goods then could be processed by the Bank if the following three conditions were satisfied: (i) the shipping documents provided to the Bank under the letter of credit complied with the requirements of the letter of credit; (ii) the UN had produced a certificate confirming the arrival of the

goods in proper order, based upon the independent inspector's report; and (iii) the UN had approved the specific payment after notification from the Bank that proper documentation had been presented to it. The second and third of these controls went beyond standard practices for the handling of letters of credit, and were additional safeguards developed and implemented by the UN for the protection of the Program.

Significantly, the Bank has had no discretion over how money has been spent or invested under the Program. The Bank has had no involvement in arranging the relationship between the oil buyers and SOMO. Similarly, the Bank did not approve the supplies being purchased, the list of suppliers, or the supply contracts themselves.

It is important to point out that the Bank is not the only institution that has held funds for the Program. Other banks have been involved in holding such funds from the outset of the Program. Although 100% of the proceeds from the sale of oil initially were credited to the UN Iraq Account at the Bank, only 59% of those proceeds remained in that Account. The balance of those proceeds immediately were transferred to a UN account at JP Morgan Chase pursuant to instructions from the UN: 13% of the funds to be used by the UN to provide relief to the Kurdish provinces in Northern Iraq; 25% to be used by the UN to provide compensation to victims of the first Gulf War; and 3% to be used by the UN for weapons inspection and to defray the costs of administering the Program.

In practice, the UN has directed the Bank's investment of every penny in the 59% account. On a daily basis, the UN has compared the Bank's rates for these investments against those of other banks, and has directed the investment of all funds, including those that are required to be held in cash-equivalent investments at the Bank in order to collateralize letters of credit that have been issued to suppliers of UN-approved goods. Although the Bank is not responsible under the Banking Services Agreement for the monitoring or auditing of funds transferred from the 59% account at UN direction to other institutions for investment purposes, the Bank understands that all interest earned on funds in the 59% account has been reinvested and has been available for the purchase of additional UN-approved supplies.

In short, BNP Paribas' role under the Banking Services Agreement has been to confirm oil letters of credit, ensuring that the UN Iraq Account receives all of the proceeds from the sale of Iraq oil; to credit the UN Iraq account with the proceeds from UN-approved oil sales; to transfer certain of those funds pursuant to UN instructions; to invest the balance pursuant to UN directives; and to issue, process and pay humanitarian letters of credit at the direction of the UN, all in accordance with traditional trade finance practice and the specified protections of the Program.

3. **What Legal, Ethical and Due Diligence Procedures Was the Bank Obligated to Follow?**

As a preliminary observation, the services provided to the UN by the Bank under the Banking Services Agreement were licensed by the United States

Department of Treasury Office for Foreign Asset Control, or "OFAC." Moreover, all services provided by the Bank under the Program were performed within a framework designed by the UN and formalized via the Banking Services Agreement. Under that Agreement, the UN – a universally known international organization of sovereign States – was the Bank's sole customer. All aspects of the transactions under the Program, including the purchasers of oil and the suppliers of goods, as well as the nature, amount and pricing of the goods involved, were subject to prior review and approval by the Sanctions Committee of the UN Security Council.

All letters of credit confirmed or issued by the Bank under the Program complied with the Uniform Customs and Practices for Documentary Credits, a set of detailed procedures for letters of credit published by the International Chamber of Commerce. Program transactions also were subject to U.S. regulatory requirements, including in particular the screening of any Program participant against lists of specially designated nationals published by OFAC. There also were, as described above, a number of additional controls unique to the Program that were designed to minimize potential abuse.

4. **What Particular Challenges Has the Bank Encountered, and How Have Those Challenges Been Met?**

From a banking perspective, the Program has represented an enormously challenging and unique undertaking. The Bank is not aware of any program of comparable scope or magnitude.

Since the Program's inception, the Bank has processed over 23,000 letters of credit. Many of the letters of credit for the sale of UN-approved goods, which in the aggregate have totaled approximately \$40 billion, have been subject to multiple amendments, and have involved the examination by the Bank of massive amounts of documentation to determine compliance with the terms of the letters of credit. The files with respect to these transactions comprise an estimated five million pages of documents.

The Bank also has handled the disbursement of billions of dollars for investment purposes at the direction of the UN. To date, the interest earnings on the investment of funds deposited into the UN Iraq Account have been in excess of \$2.7 billion.

The Bank believes that it has performed its obligations under the Banking Services Agreement in a professional and ethical manner. However, there have been occasions when the Program suffered backlogs in the processing of letters of credit, which created some dissatisfaction on the part of our customer, the UN, as well as on the part of various Program participants and the Iraqi Government. Specifically, there was a sudden, three-fold increase in the volume and complexity of transactions for the supply of UN-approved goods under the Program around the time of the merger of BNP and Paribas in mid-2000, for which the Bank was not fully prepared from a staffing standpoint. Following the merger, however, the Bank

substantially reorganized and increased its staffing of the Program, from 25 to 90 employees during one 12 month period, and significantly enhanced its electronic systems for the processing of letters of credit under the Program. As a result of the Bank's commitment of resources, the processing of letters of credit from the height of the Program through its current wind-down phase has been greatly enhanced.

5. **How Might the Oil-For-Food Program Been Better Designed?**

The Bank believes that the use of letters of credit provided the correct banking framework for the Program. Although outside the scope of our responsibilities, it appears with the benefit of hindsight that the Program could have been better structured in other respects to minimize the risk of abuse. Thus, a well-managed competitive bidding process, both for the purchase of oil and the sale of goods, might have been substituted for what was essentially a sole source procurement process. This would have eliminated the role of the Government of Iraq in the identification of prospective counterparties for UN-approved oil and goods transactions. It also might have reduced the possibility that the Program might not always have received the most favorable pricing.

Subcommittee on National Security, Emerging Threats,
and International Relations,
Committee on Government Reform

Tuesday, October 5, 2004, 11:00 a.m.

**BNP Paribas
Documents**

AGREEMENT FOR BANKING SERVICES
PURSUANT TO SECURITY COUNCIL RESOLUTION 986 (1995)

AGREEMENT, dated as of 12 September, 1996 between THE UNITED NATIONS, an international intergovernmental organization having its Headquarters at New York, New York 10017 (hereinafter referred to as the "United Nations") and BANQUE NATIONALE DE PARIS S.A., a French banking corporation licensed by the State of New York, having offices at 499 Park Avenue, New York, New York 10022 (hereinafter referred to as the "Bank"). The United Nations and the Bank are hereinafter collectively referred to as the "Parties" and individually as a "Party".

WHEREAS, the Security Council of the United Nations, in its resolution 986 (1995) of 14 April 1995 (hereinafter referred to as "SCR 986"), authorized States, non/issuancing previous resolutions of the Security Council, to permit the import of petroleum and petroleum products originating in Iraq, including financial and other essential transactions directly relating thereto, subject to the provisions of SCR 986;

WHEREAS, in SCR 986, the Security Council requested the Secretary-General to establish an account for the purposes of SCR 986, and further required that payment of the full amount of each purchase of Iraqi petroleum and petroleum products be made directly by the purchaser in the State concerned into such account;

WHEREAS, pursuant to SCR 986, proceeds of the sale of Iraqi petroleum and petroleum products shall be used to meet the humanitarian needs of the Iraqi population and for other purposes as specified in SCR 986 and shall not be diverted from the purposes laid down in that resolution;

WHEREAS, a Memorandum of Understanding on the Implementation of SCR 986 was entered into by the Secretariat of the United Nations and the Government of Iraq on 20 May 1996 (hereinafter referred to as the "Memorandum of Understanding");

WHEREAS, the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait (hereinafter referred to as the "661 Committee") has issued procedures to be employed by it in the discharge of its responsibilities under Article 12 of SCR 986 (hereinafter referred to as the "661 Committee Procedures");

WHEREAS, pursuant to SCR 985 and the Memorandum of Understanding, the United Nations wishes to enter into arrangements with the Bank for the establishment of the account, and for the performance of various banking services described in this Agreement (hereinafter collectively referred to as the "Services"), such Services to be performed in conformity with the provisions of this Agreement;

WHEREAS, the Bank is in the business of performing, and has offered to perform, such Services;

WHEREAS, it is absolutely essential to the United Nations that the account and the funds and assets therein, and all transactions, data and information relating thereto, be secure from misuse and from unauthorized access, use, tampering or intrusion and that the Services rendered in connection with such account, funds, assets and transactions be reliable and secure;

WHEREAS, the account shall enjoy the privileges and immunities of the United Nations;

NOW, THEREFORE, the United Nations and the Bank hereby mutually agree as follows:

PART I: TERMS OF GENERAL APPLICATION

1.1 **Applicability:** The terms and conditions set forth in this Part I shall apply to and govern this Agreement in its entirety. In the event and to the extent of any conflict between the terms and conditions set forth in this Part I and any other provisions of this Agreement, the terms and conditions of this Part I shall prevail.

1.2 **Agreement Documents:** This document, including all of its Annexes, which are incorporated herein by reference, constitutes the entire Agreement (herein referred to as the "Agreement" or "this Agreement") between the United Nations and the Bank for the provision of the Services.

The Annexes to this Agreement, which constitute an integral part of this Agreement, are the following:

- Annex 1: SCR 986
- Annex 2: Memorandum of Understanding
- Annex 3: 661 Committee Procedures
- Annex 4: Schedule of Authorized United Nations Officials
- Annex 5: Schedule of Fees
- Annex 6: Schedule of Interest Paid on Daily Balances
- Annex 7: BNP Teletransfer Product and Maintenance Provisions
- Annex 8: BNP Teletransfer Product and Maintenance Provisions.

The procedures and requirements set forth in SCR 986, the Memorandum of Understanding and the 661 Committee Procedures continue essential and fundamental terms and conditions of this Agreement.

1.3 United Nations Iraq Account and Services.

1.3.1 The Bank shall open the account provided for in SCR 986 on behalf of the United Nations for the receipt of funds and for the making of payments pursuant to SCR 986.

1.3.2 The account, including any sub-accounts required for purposes of investing funds in the account pursuant to Part 4 of this Agreement, shall be designated the "United Nations Iraq Account" and shall contain only funds paid therein pursuant to SCR 986, investments pursuant to Part 4 of this Agreement and interest income earned by such funds. Such funds and investments shall be regarded as specifically-identified assets held by the United Nations pursuant to SCR 986.

1.3.3 The Bank shall administer the United Nations Iraq Account and perform the Services in full conformity with the terms and conditions of this Agreement.

1.3.4 The United Nations Iraq Account shall be advised as provided in paragraph 7 of SCR 986 and paragraph 14 of the Memorandum of Understanding. The Bank shall co-operate fully in the performance of such audits, and provide all necessary documentation to the United Nations and its auditors.

1.3.5 The Bank shall have no power or authority to pay, transfer, assign, hypothecate, negotiate, pledge or otherwise dispose of or deliver any funds or other assets from time to time held by the Bank pursuant to this Agreement, in the United Nations Iraq Account or otherwise, to any person or entity, whether Governmental or otherwise, except in strict

accordance with the express terms and conditions of this Agreement. The Bank shall have no rights in or to the funds or assets held by it pursuant to this Agreement, whether in the United Nations Iraq Account or otherwise, except as expressly provided in this Agreement.

1.3.6 The proceeds of the sale of Iraq's petroleum and petroleum products shall not be diverted from the purposes laid down in SCR 986.

1.3.7 The United Nations represents and warrants that, as specified in, and in accordance with, SCR 986, the Memorandum of Understanding and the 661 Committee Procedures: (i) it has the right to and control of funds in the United Nations Iraq Account, and (ii) it has the authority to give binding instructions to the Bank with respect to said funds, the Services, the United Nations Iraq Account and the Letters of Credit provided for in this Agreement.

1.4 Transmittal and Deductions. Transactions with respect to, and deductions from, the United Nations Iraq Account shall be only those authorized by the Security Council in and pursuant to SCR 986, by and pursuant to the Memorandum of Understanding and by and pursuant to this Agreement. All such transactions and deductions shall be made solely from funds in the United Nations Iraq Account pursuant to SCR 986 and the Memorandum of Understanding, and in accordance with the provisions of this Agreement.

1.5 Authorized United Nations Officials. Annex 4 sets forth the names and respective areas of authority of those individuals authorized to act on behalf of the United Nations pursuant to this Agreement. The United Nations shall also provide the Bank with specimen signatures for all such individuals. Any such signature shall be effective only if in writing (except as otherwise provided in provisions of this Agreement relating to electronic funds transfers) and signed by the requisite number of the aforementioned Authorized United Nations Officials as specified in Annex 4, or any amendment thereof as hereinafter provided, having the requisite authority. The list of Authorized United Nations Officials may be amended from time to time by means of a written document signed and dated by as

sources, provided that they are not in or acting on behalf of the Government of Iraq, or representing persons or entities in Iraq; governmental regulatory authorities and examiners, other participants in payment systems used by the Bank in providing the Services, and other financial institutions and third parties supplying information necessary for the Bank to provide the Services. The Bank shall refrain from any action which is inconsistent with the terms and conditions of this Agreement, whether express or implied, or which it knows or has reason to know may adversely affect the United Nations, and shall fulfill its commitments with the highest regard for its undertakings in this Agreement.

1.9 **Bank's Responsibility for Employees.** The Bank shall be responsible for the professional and technical competence of its employees and will select, for work under this Agreement, reliable individuals who will perform effectively in the implementation of this Agreement, and conform to a high standard of moral and ethical conduct.

1.10 **Assignment.** Neither Party shall assign, transfer, pledge or make other disposition of this Agreement or any part thereof or of any of such Party's rights, claims or obligations under this Agreement.

1.11 **Sub-Contracting.** In the event the Bank requires the services of sub-contractors to provide any services relating to this Agreement, the Bank shall obtain the prior written approval of the United Nations for all sub-contractors, which approval shall not be unreasonably withheld or delayed. Reasonable grounds for the United Nations to withhold its approval shall include, *inter alia*, that the engagement of a particular sub-contractor would be inconsistent with the purposes of SCR 986. The approval of the United Nations of a sub-contractor shall not relieve the Bank of any of its obligations under this Agreement. The intent of any sub-contract shall be subject to and in conformity with the provisions of this Agreement.

Authorized United Nations Official designated in Annex 4 as having the authority to do so. Such amendments shall be effective upon receipt of such document by the Bank. As used in this Agreement, the term "Authorized United Nations Official" means a United Nations Official designated in Annex 4 of this Agreement or any amendment thereof in accordance with this Article 1.5. The authority of any Authorized United Nations Official shall be only as set forth in the list of Authorized United Nations Officials or an amendment thereof as heretofore provided, and subject to any limitations and restrictions on such authority as may be set forth therein. The Bank shall comply with the security procedures set forth in this Agreement.

1.6 **Reports and statements of account.** The Bank shall provide such reports and statements of account with respect to balances in the United Nations Iraq Account and outstanding Letters of Credit as the United Nations may reasonably request, including without limitation, daily accountings of debits and credits to, and balance of, the United Nations Iraq Account, and daily reports of outstanding Letters of Credit issued, confirmed or advanced in accordance with this Agreement. Full transaction details shall be included regarding any and all debits and credits mentioned in the daily transaction reports.

1.7 **Legal Status.** The Bank shall be considered as having the legal status of an independent contractor *vis-à-vis* the United Nations. Neither Party's personnel or sub-contractors shall be considered in any respect as being the employees or agents of the other Party.

1.8 **Source of Instructions.** Except as otherwise provided in this Agreement, the Bank shall neither seek nor accept instructions from any authority external to the United Nations in connection with the performance of the Services. Notwithstanding the foregoing, it is understood and agreed that, except as otherwise provided in this Agreement, where necessary to carry out the operations involved in the performance of the Services, the Bank may from time to time act in accordance with procedures or accept information from the following

1.12 **Officials Not To Benefit.** The Bank warrants that no official of the United Nations has received or will be offered by the Bank any direct or indirect personal benefits arising from this Agreement or the award thereof. The Bank agrees that breach of this provision is a breach of an essential term of this Agreement.

1.13 **Indemnification: liability for loss of funds, etc.**

1.13.1 The Bank shall indemnify, hold and save harmless and defend, at its own expense, the United Nations, its officials, agents, servants and employees, from and against, and pay or reimburse each of the foregoing for, all suits, claims, proceedings, demands and liability of any nature or kind, including their costs and expenses, arising out of any breach of or failure to perform this Agreement or any negligence or willful misconduct of the Bank or its employees, agents, servants or sub-contractors in the performance of this Agreement. This provision shall also extend, *inter alia*, to claims and liability in the nature of worker's compensation and product liability.

1.13.2 In addition to and without limiting the foregoing, the Bank shall be liable for loss of or damage to funds or other property or assets held by it in connection with the performance of this Agreement, however caused by any breach of or failure to perform this Agreement or any negligence or willful misconduct of the Bank, its employees, agents, servants or sub-contractors, including but not limited to theft, misappropriation, fraud or misfeasance.

1.13.3 In the event of any claim by a third party against the Bank, its officials, agents, servants and employees, arising out of any breach of or failure to perform this Agreement or any negligence or willful misconduct of the United Nations or its employees, agents, servants or sub-contractors in the performance of this Agreement, the United Nations shall reimburse the Bank, exclusively from funds in the United Nations Iraq Account, for the Bank's reasonable costs in defending such claim. Such reimbursement shall include reasonable

attorneys fees provided that the Bank shall have obtained the prior consent of the United Nations for engaging the attorneys in question, such consent not to be unreasonably withheld. The United Nations shall have the right, at its sole option, to be represented in any action or proceeding by independent counsel of the United Nations' own choice, provided that the exercise of such right shall not affect the obligations of the Bank pursuant to this Article 1.13. The reasonable cost of such representation of the United Nations shall be covered from the United Nations Iraq Account.

1.13.4 The provisions of this Article 1.13 shall not lapse upon expiration or termination of this Agreement.

1.14 **Intellectual Property Indemnification.**

1.14.1 The Bank shall indemnify, hold and save harmless and defend, at its own expense, the United Nations, its officials, agents, servants and employees from and against, and pay or reimburse each of the foregoing for, all suits, claims, proceedings, demands and liability of whatever nature and kind, whether or not resulting from third party claims, including their costs and expenses, with respect to, based on, arising from or relating to allegations that the United Nations' use of any equipment, services, documentation or software provided or supplied by the Bank under this Agreement, separately or in combination with each other, whole or in part, constitutes an infringement of any patent, copyright or other intellectual property right, or misuse of any proprietary or trade secret information. Without limiting the generality of any of the foregoing, the Bank agrees to pay all litigation costs, attorneys fees, settlement payments and damages awarded or resulting from such suits, claims, proceedings, demands and liability.

1.14.2 The United Nations will promptly advise the Bank in writing of any such suit, claim, proceeding, demand or liability and will reasonably cooperate with the Bank, at the Bank's expense, in the defense or settlement thereof subject to the privileges and immunities

identify, segregate and hold funds as cash collateral in the United Nations Iraq Account as provided in Article 2.3.6, 2.3.7 and 2.3.8.

1.16.3 (a) The Bank shall take all reasonable steps to prevent the placement of any lien, attachment or other encumbrance on the United Nations Iraq Account or the funds therein, and to obtain the immediate removal of any such lien, attachment or encumbrance that has been placed thereon. The United Nations shall assist in such ways as it considers appropriate in preventing the placement or obtaining the removal of any such lien, attachment or other encumbrance, including assistance in upholding the privileges and immunities of the United Nations Iraq Account.

(b) Unless the lien, attachment or other encumbrance relates to any claim or demand arising from any act, omission or circumstances that would constitute a breach of or failure to perform this Agreement or any negligence or willful misconduct of the Bank, its employees, agents, servants or sub-contractors, or any claim or demand unrelated to this Agreement or the performance thereof, the Bank shall be entitled to reimbursement for its reasonable costs in preventing or obtaining the removal of such lien, attachment or encumbrance. Such reimbursement shall be payable by the United Nations exclusively from funds in the United Nations Iraq Account and shall include reasonable attorneys fees, provided that the Bank shall have obtained the prior consent of the United Nations for engaging the attorneys in question, such consent not to be unreasonably withheld. In addition, in the event that, due to the existence of such lien or attachment on the United Nations Iraq Account, the Bank is prevented from obtaining reimbursement for its payment of an LOC issued by it pursuant to Article 2.3 of this Agreement, the Bank shall be paid interest compensation, for the period of time that the Bank has been so prevented from being reimbursed due to such lien or attachment, provided that such interest compensation shall not exceed the amount of interest that the United Nations is entitled to earn, pursuant to Annex 6

hereto, on funds in the United Nations Iraq Account in the amount that the Bank has been so prevented from being reimbursed.

1.17 Use of Name, Emblem or Official Seal of the United Nations.

The Bank shall not advertise or, except as provided in Article 1.18 hereof, otherwise make public the fact that it is a contractor with the United Nations, nor shall the Bank, in any manner whatsoever, use the name, emblem or official seal of the United Nations, or any abbreviation of the name of the United Nations in connection with its business or otherwise.

1.18 Confidentiality and Non-disclosure.

1.18.1 Except as otherwise provided in this Article 1.18 or elsewhere in this Agreement, the Bank shall hold and keep in confidence all messages and other data and information received by it under this Agreement, or relating to any transaction involving the Bank or the United Nations Iraq Account or to funds or other assets held by the Bank pursuant to this Agreement, or relating to any of the Services performed by the Bank under this Agreement. Such messages, data and information will remain the property of the United Nations and, upon expiration or termination of this Agreement, will upon request be returned to the United Nations by the Bank; however, the Bank may retain copies thereof for its own records. The above-mentioned messages, data and information will not be used by the Bank for any purpose other than that of rendering the Services under this Agreement, nor will it or any part thereof be disclosed to third parties, by the Bank, its employees, servants, agents or sub-contractors, except as otherwise provided in this Article 1.18.

1.18.2 The Bank may not communicate at any time to any other person, entity, Government or authority external to the United Nations any information relating to this Agreement or the performance thereof known to it by reason of its association with the

United Nations which has not been made public except with the prior authorization of the United Nations; nor shall the Bank at any time use such information to private advantage. Notwithstanding the foregoing, where and to the extent necessary to carry out the operations involved in the performance of the Services, the Bank may from time to time communicate such information to the following entities or persons: relevant governmental regulatory authorities (subject to Article 1.18.4), other participants in payment systems used by the Bank in providing the Services, and other financial institutions and third parties as necessary for the Bank to provide the Services. In addition, the Bank may respond to inquiries regarding its role in, and published procedures for, implementing this Agreement from its customers or other parties interested in buying oil or selling humanitarian supplies under SCR 966, the Memorandum of Understanding and the 661 Committee Procedures.

1.18.3 The Bank may disclose confidential information referred to in Articles 1.18.1 and 1.18.2 in the following additional cases:

- (A) such information may be disclosed to such of the Bank's agents and representatives as need to know such information in connection with the Bank's performance under this Agreement;
- (B) subject to the privileges and immunities of the United Nations and the provisions of Article 1.18.4, such information may be disclosed to the extent required by mandatory provisions of applicable law in a country having jurisdiction over the Bank, provided that the Bank shall give the United Nations prior advance notice of such disclosure (except where the giving of such prior notice is legally prohibited);
- (C) subject to the privileges and immunities of the United Nations and the provisions of Article 1.18.4, and provided that the United Nations shall have given its consent, which shall not be unreasonably withheld, such information may be

disclosed to any person and in any proceeding necessary in the Bank's reasonable judgment to protect the Bank's interests in connection with any claim or dispute;

(d) such information may be disclosed to the extent that such information (i) becomes publicly available through no fault of the Bank, or (ii) is disclosed to the Bank free of any obligation of confidentiality by a third party who has the right to disclose the same; or

(e) such information may be disclosed at any time after five (5) years following the expiration or termination of this Agreement.

1.18.4 If any confidential information is sought by a Court or governmental agency having jurisdiction over the Bank to require such information, the Bank shall:

- (A) prior to disclosing such information, promptly notify the United Nations of such fact; provided, however, that the Bank shall not be obligated to notify the United Nations in the case of a subpoena served on the Bank, or where the Bank is otherwise prohibited by applicable law to which the Bank is subject, from disclosing that the information has been sought, or in the case of regular periodic inspections by bank examiners from government regulatory authorities having jurisdiction over the Bank;
- (B) inform the Court or regulatory agency that such information is privileged under the Convention on the Privileges and Immunities of the United Nations, as well as, in the United States, the International Organizations Immunities Act of the United States, Public Law 79-291, 29 December 1945; and

(c) in the event that such Court or regulatory agency still seeks such information, request that the United Nations be given the opportunity to present its position on the question to such Court or regulatory agency.

1.18.5 The obligations set forth in this Article 1.18 shall not lapse upon expiration or termination of this Agreement.

1.19 Force Majeure; Other Changes in Conditions.

1.19.1 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Bank shall give notice and full particulars in writing to the United Nations of such occurrence if the Bank is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Agreement. The Bank shall also notify the United Nations of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of this Agreement. Notwithstanding the foregoing, the Bank shall use its best efforts to avoid, minimize, mitigate or remedy as soon as possible, the consequences of such event, occurrence or change which caused such force majeure or interfered or threatened to interfere with the Bank's performance of its obligations under this Agreement. On receipt of the notice required under this Article, the United Nations shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Bank of a reasonable extension of time in which to perform its obligations under this Agreement.

1.19.2 If the Bank is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Agreement, the United Nations shall have the right to suspend or terminate this Agreement upon not less than seven (7) days prior written notice to the Bank.

1.19.3 Force majeure as used in this Agreement means acts of God, war (whether declared or not), invasion, revolution, insurrection or other acts of a similar nature or force; provided that such event renders the Bank wholly, or in part, unable to provide to its customers in general services of the nature of the Services to be provided under this Agreement and the Bank complies with the obligations set forth in Article 1.19.1.

1.20 Fees

1.20.1 In consideration of the complete and satisfactory performance by the Bank of the Services and other obligations under this Agreement, the Bank shall be paid the fees and charges set forth in Annex 5. The fees and charges set forth in Annex 5 as payable from the United Nations Iraq Account are the only fees and charges payable by the United Nations under this Agreement.

1.20.2 The Bank shall submit invoices with supporting documentation on a monthly basis for fees, charges and all other payments due to the Bank under this Agreement to the United Nations Treasury, Attention: Deputy Treasurer, Room S-2770, New York, N.Y. 10017. However, invoices and supporting documentation for Letter of Credit fees shall be submitted at issuance of the Letter of Credit or as incurred. Invoices shall be paid as follows:

(a) Payment shall be made within thirty (30) days of receipt of the invoice by the United Nations, unless the United Nations disputes the invoice or a portion thereof. Such payment shall be made by means of an instruction by the United Nations to the Bank to debit the United Nations Iraq Account for the amount of the payment to be made against the invoice. With respect to disputes regarding only a portion of the invoice, the United Nations shall pay the Bank the amount of the undisputed portion within thirty (30) days. If a dispute regarding an invoice or a portion thereof has been received in favour of the Bank, the United Nations shall pay the Bank expeditiously.

If the dispute is resolved in favour of the establishment of the United Nations to the refund, and if the United Nations has not withheld the disputed amount pursuant to paragraph (d), above, the Bank shall expeditiously refund such disputed amount or portion thereof to the United Nations Iraq Account.

(f) The United Nations and the Bank shall consult in good faith to promptly resolve outstanding issues with respect to any disputed invoice or any dispute regarding a claim by the United Nations to a refund. Should such a dispute not be resolved within thirty (30) days after written notification that the United Nations intends to dispute an invoice or that the Bank intends to dispute a refund, as the case may be, such dispute will be resolved according to the terms of Article 1.23 of this Agreement ("Settlement of Disputes").

1.21 Term and Termination

1.21.1 This Agreement will enter into force as of the date when both Parties have signed this Agreement (herein referred to as the "Effective Date"), with each of the Services to be performed by the Bank under this Agreement commencing on a date mutually agreed upon by the Parties. This Agreement will continue in effect for a period of six (6) months from the date when the United States Office of Foreign Assets Control has issued the necessary license to the Bank (the "Initial Term") unless sooner terminated as provided in this Agreement. This Agreement may be renewed, at the sole option of the United Nations, on the same terms and conditions hereof, for an additional period of six (6) months, by means of a written notification of such renewal by the United Nations to the Bank not later than ten (10) days prior to the expiration of the Initial Term. The United Nations may request a renewal of this Agreement after the expiration of the first six-month renewal period heretofore referred to, for one or more additional successive periods of six (6) months each, by so notifying the Bank in writing not later than thirty (30) days prior to the expiration of such first six-month renewal period or a successive renewal period. Any

(b) Without prejudice to the United Nations' rights under paragraph (c) of this Article 1.20.2, the United Nations shall notify the Bank within thirty (30) days of its receipt of an invoice if the United Nations intends to dispute the invoice or any portion thereof. Such notification shall include a brief explanation of the reasons why the United Nations disputes the invoice.

(c) Each invoice paid by the United Nations shall be subject to a post payment audit by the United Nations' auditors or its authorized agents. The Bank shall refund to the United Nations Iraq Account any amounts shown by such audits to have been unauthorised or not in accordance with this Agreement, within thirty (30) days of its receipt of a claim by the United Nations to such refund, provided that the United Nations shall obtain such refund during the term of this Agreement or during a period of one (1) year following the expiration or prior termination of this Agreement.

(d) The Bank shall notify the United Nations within thirty (30) days of its receipt of the United Nations' claim to a refund if it intends to dispute the refund or any portion thereof. Such notification shall include a brief explanation of the reasons why the Bank disputes the refund. If the Bank disputes only a portion of such refund, it shall refund the amount of the undisputed portion within thirty (30) days. In the event that the Bank fails to make, or disputes, a refund or a portion thereof, the United Nations may withhold the amount in question from further amounts payable to the Bank under this Agreement.

(e) In the event that the Bank disputes a refund or a portion thereof, the amount withheld pursuant to paragraph (d), above, shall be identified, segregated and held in the United Nations Iraq Account pending the resolution of such dispute. If the dispute is resolved in favour of the Bank, the United Nations shall pay the disputed amount, from the amount identified, segregated and held in the United Nations Iraq Account, by the Bank debiting such amount from the United Nations Iraq Account.

renewal of the Agreement after the expiration of the aforementioned first six-month renewal period shall require the written consent of the Bank, which consent shall not be unreasonably withheld.

1.21.2 Notwithstanding anything contained in Article 1.21.1, and without prejudice to any other right or remedy the United Nations may have under this Article 1.21 or otherwise under this Agreement, this Agreement may be terminated in whole or in part, upon the following terms:

(A) The United Nations may terminate this Agreement at any time upon written notice to the Bank in the event that the Bank fails to perform any of its obligations hereunder or breaches any representation or warranty made herein and such failure to perform or breach is not cured within thirty (30) days after receipt of written notice thereof; and

(B) The United Nations may terminate this Agreement upon not less than thirty (30) days prior written notice to the Bank, in the event of a change of control of the Bank. For the purpose of the foregoing, "change of control" means (A) directly or indirectly a sale, transfer or other conveyance of all or substantially all of the assets of the Bank to any "person" or "group" (as such terms are used for purposes of Sections 13(G) and 14(G) of the Securities Exchange Act of 1934 of the United States, as amended (the "Exchange Act"), whether or not applicable), as an entirety or substantially as an entirety in one transaction or series of related transactions, (B) any "person" or "group" (as such terms are used for purposes of Sections 13(G) and 14(G) of the Exchange Act, whether or not applicable), is or becomes the "beneficial owner" (as that term is used in Rules 13d-3 and 13d-5 under the Exchange Act, whether or not applicable, except that a person shall be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of

more than 30% of the total voting power of all voting stock then outstanding of the Bank; or (C) during any period of 24 consecutive months, individuals who at the beginning of such period constituted the Board of Directors of the Bank (together with any new directors whose election by each Board or whose nomination for election by the shareholders of the Bank was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Bank then in office.

1.21.3 The United Nations may, without prejudice to any other right or remedy it may have under this Article 1.21 or otherwise under this Agreement, terminate this Agreement forthwith upon any of the events listed below upon written notice to the Bank:

- (1) in the event of any material adverse change in the Bank's financial condition, including without limitation, any down-grading of the Bank's individual credit rating by IBCA to lower than "C";
- (2) if a trustee, conservator, committee, liquidating agent or governmental authority shall be appointed for the Bank to take possession of or any substantial part of the business or assets of the Bank or if bankruptcy or other proceedings shall be commenced for any such purpose;
- (3) if the rights, privileges and franchises of the Bank shall be declared forfeited by any governmental authority or a proceeding is commenced for such purpose, and such declaration or proceedings adversely affect or could adversely affect the performance by the Bank of the Services, or any Service, under this Agreement;

(g) If the shareholders of the Bank affirmatively vote to place the Bank into liquidation or proceedings are commenced for such purpose;

(h) If a government authority shall bring a suit against the Bank pursuant to a banking or other regulatory statute and said suit adversely affects, or could adversely affect, the performance by the Bank of the Services, or any Service, under this Agreement; or

(i) If the transaction of the usual business of the Bank is suspended for any reason, or if a committee of any creditors or a liquidating agent is appointed to operate such business.

1.21.4 The United Nations may, without prejudice to any other rights or remedy it may have under this Article 1.21 or otherwise under this Agreement, terminate this Agreement forthwith at any time, upon written notice to the Bank, pursuant to a decision to that effect by the Security Council, or should the mandate of the United Nations under SCR 984 be curtailed or terminated, or should a decision of the Security Council render the United Nations Iraq Account or the Services, in the sole opinion of the United Nations, unnecessary.

1.21.5 The Bank may terminate this Agreement at any time upon written notice to the United Nations in the event that the United Nations fails to perform any of its obligations hereunder or breaches any representation or warranty made herein and such breach is not cured within ninety (90) days after receipt of written notice hereof; provided, however, that the Bank shall have no right to terminate this Agreement during the initial six-month term hereof.

1.21.6 In the event of any termination, no payment shall be due to the Bank except for services performed in conformity with the express terms of this Agreement.

1.21.7 Upon any termination of this Agreement, (i) all Services pursuant to this Agreement shall automatically and simultaneously terminate, (ii) the United Nations shall immediately return to the Bank all documentation and materials that remain the property of the Bank and were provided to the United Nations by the Bank in connection with any Service; and (iii) the Bank shall deliver to the United Nations, as instructed in writing by two Authorized United Nations Officials and having appropriate authority, all funds and other property held by the Bank pursuant to this Agreement. However, sufficient funds (including funds that, pursuant to Article 2.3.6, 2.3.7 and 2.3.8, are to be identified, segregated and held in the United Nations Iraq Account as cash collateral) shall remain in the United Nations Iraq Account to cover: (i) the reimbursement to be made to the Bank for its payment of any then unpaid outstanding Letters of Credit issued by it pursuant to Article 2.3 of this Agreement, (ii) any reimbursement then due to the Bank pursuant to said Article 2.3 for Letters of Credit issued and paid by it, (iii) any then outstanding fees payable to the Bank from the United Nations Iraq Account duly incurred under this Agreement prior to such termination, (iv) any reimbursement then due to the Bank pursuant to Articles 1.16.3 and 1.23.3, (v) any amount of fees in dispute identified, segregated and held in the United Nations Iraq Account pursuant to Article 1.20.2(a), pending the final resolution of such dispute, and (vi) the amount referred to in Article 1.34 as such amount is reduced in accordance therewith. The amount of funds necessary for the foregoing purposes shall be determined by consultations between the United Nations and the Bank. The provisions of this Agreement shall survive as necessary to apply in respect of such funds for as long as the funds remain in the United Nations Iraq Account. The Bank shall, pursuant to instructions in writing by two Authorized United Nations Officials as aforementioned, deliver to the United Nations funds that remain in the United Nations Iraq Account for the purpose of covering the reimbursement to be made to the Bank for its payment of unpaid outstanding Letters of Credit as hereinafter provided as each such Letter of Credit expires without being paid, and all remaining funds in the United Nations Iraq Account shall be delivered to the United Nations pursuant to such instructions in writing when all such outstanding Letters of Credit have either expired or have been paid and such payments have been reimbursed to the Bank,

and all of the other aforementioned reimbursements and payments due to the Bank have been paid.

1.21.8 Nothing in this Article 1.21 or elsewhere in this Agreement shall obligate the United Nations to use any amount or quantity of the Services or any of them, or to guarantee a minimum usage of the Services or any of them. Subject to the conditions in this paragraph, nothing shall restrict or limit the right of the United Nations to withdraw or transfer all or any part of the funds or other assets held or administered by the Bank, pursuant to instructions in writing by two Authorized United Nations Officials having the requisite authority. It is a condition to any withdrawal that such withdrawal shall not exceed the amount of Available Funds as defined in Article 2.3.5. The United Nations shall provide the Bank with two (2) Business Days (as defined in Article 3.1.3) prior notice in the case of any withdrawal or transfer of all or substantially all of the funds or other assets held in the United Nations Iraq Accounts, except for transfers or withdrawals provided for or contemplated by SCR 986 and the Memorandum of Understanding.

1.22 Non-Exclusivity.

The United Nations reserves the right at any time, including but not limited to during the term of this Agreement or any extension thereof, to enter into any agreements or arrangements with any other entity or entities for any of the Services as necessary to carry out its mandated activities. In the event that the United Nations enters into such agreements or arrangements, it shall so inform the Bank in writing for information purposes only. The United Nations shall incur no liability to the Bank by virtue of its entry into such agreements or arrangements.

1.23 Settlement of Disputes.

1.23.1 Amicable settlement. The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the Parties.

1.23.2 Arbitration. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, unless settled amicably under Article 1.23.1 within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining and the directions contained in this Article 1.23.2. The arbitrators selected shall have a working knowledge of banking practices of major international commercial banks, including the Services. The arbitration shall take place in New York City, New York. In connection with the interpretation and application of this Agreement, the arbitrators shall apply (subject to Article 2.1.3) the substantive law of the State of New York relating to banking services and practices in the nature of the Services, except to the extent that such law is inconsistent with the privileges and immunities of the United Nations or SCR 986. The arbitral tribunal shall have no authority to award punitive damages. The arbitral tribunal shall have authority to award such interest as it considers appropriate in accordance with the UNCITRAL Arbitration Rules. The Parties shall be bound by the arbitration award rendered in accordance with such arbitration as the final adjudication of any such dispute, controversy or claim.

1.24 Privileges and Immunities.

1.24.1 Nothing in or relating to this Agreement, including, but not limited to, the reference to New York law in Article 1.23, shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, its programmes, funds or offices, whether under the Convention on the Privileges and Immunities of the United Nations, the International Organizations Immunities Act of the United States, Public Law 79-291, 29 December 1945, or otherwise, and no provision of this Agreement shall be interpreted or applied in a manner, or to an extent, inconsistent with such privileges and immunities.

1.24.2 The United Nations Inq. Account shall enjoy the privileges and immunities of the United Nations referred to in Article 1.24.1 and those specified in SCR 986, including full immunity from any attachment, lien or other encumbrance against such Account or any funds or investments (pursuant to Part 4 of this Agreement) therein.

1.25 Tax Exemption.

1.25.1 Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, inter alia, that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognise the United Nations exemption from such taxes, duties or charges, the Bank shall immediately consult with the United Nations to determine a mutually acceptable procedure.

1.25.2 Accordingly, the Bank shall not include in its fees any amount representing such taxes, duties or charges, unless the Bank has consulted with the United Nations before the payment thereof and the United Nations has, in each instance, specifically authorized the Bank to pay such taxes, duties or charges under protest. In that event, the Bank shall

provide the United Nations with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

1.25.3 The Bank shall be entitled to reimbursement for its reasonable cost of the manually agreed procedure referred to in Article 1.25.1 to contest or avoid such taxes, duties and charges. Such reimbursement shall be payable by the United Nations exclusively from funds in the United Nations Inq. Account. Such reimbursements shall include reasonable attorneys fees provided that the Bank shall have obtained the prior consent of the United Nations for engaging the attorneys in question, such consent not to be unreasonably withheld.

1.26 Notices. Except as otherwise provided in this Agreement, any and all notices permitted or required hereunder shall be in writing and delivered by hand, transmitted by telecopier with transmittal receipt, or sent via certified or registered mail, return receipt requested, to the parties at the addresses hereafter stated or such other addresses as the Parties may specify in writing:

If to the United Nations: The United Nations
New York, New York 10017
Attention: The Deputy Treasurer
Fax: (212) 963-2086

If to the Bank: Banque Nationale de Paris
Commodities & Trade Finance
499 Park Avenue
New York, New York
Attention: Eva Millas Russo
Fax: (212) 412-9898
or (212) 412-9707

If to the Central Bank of Iraq
(pursuant to Article 1.2): As specified in writing by the United Nations

Notices delivered by hand or by telecopier shall be deemed received upon receipt (in the case of telecopier transmission as evidenced by and on the date and at the time indicated in the telecopier transmittal confirmation), and those sent by certified or registered mail shall be deemed received as evidenced by and on the date indicated in the return receipt signed by the recipient.

1.27 **Licenses, Approvals and Other Clearances.** The Bank shall be responsible for obtaining all licenses, approvals and other clearances from governmental or other authorities necessary for the performance of its obligations under this Agreement. The obtaining of the necessary licenses from the United States Office of Foreign Assets Control (OFAC) shall be a condition precedent to the performance of the Services by the Bank. The Bank agrees to use its best efforts to obtain such OFAC license as soon as possible after the execution of this Agreement, and the United Nations shall assist in that respect as appropriate. If the necessary OFAC license is not issued within twenty (20) days after the Effective Date as defined in Article 1.21.1, the United Nations shall be entitled to terminate this Agreement forthwith by written notice to the Bank.

1.28 **Obedience of the Law.** The Bank shall comply with the laws, ordinances, rules and regulations applicable to it bearing on the performance of its obligations under the Agreement.

1.29 **Authority to Modify.** Only the Under-Secretary-General for Administration and Management of the United Nations (reference to whom in this Article and in Article 1.30 shall include the Official of the United Nations acting on his behalf in his absence) is

authorized to agree on behalf of the United Nations to any modification of or change in this Agreement, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Bank. Accordingly, no modification or change in this Agreement shall be valid and enforceable against the United Nations unless provided by an amendment to this Agreement signed by the Bank and the Under-Secretary-General for Administration and Management of the United Nations, and no waiver shall be valid or enforceable unless express and in writing signed by the Under-Secretary-General for Administration and Management of the United Nations. The Under-Secretary-General for Administration and Management of the United Nations may delegate to another Official of the United Nations any authority herebefore provided in this Article 1.29. Such delegation of authority shall be by means of a written document signed and dated by the Under-Secretary-General for Administration and Management of the United Nations. No modification or change in this Agreement shall be valid and enforceable against the Bank, and no waiver by the Bank shall be valid and enforceable, unless such modification, change or waiver is express and in writing signed by the Bank.

1.30 **Cooperation.** The Bank agrees that at any time (whether before or after the United Nations has given notice of termination), upon request by the Under-Secretary-General for Administration and Management of the United Nations, it will cooperate fully with the United Nations in facilitating the provision of banking services relating to the subject matter of this Agreement by another financial institution, including the transfer of any database or other information developed by the Bank relating to the United Nations Iraq Account and the Services. Notwithstanding the foregoing, the Bank shall not be obligated to make any disclosure which would be prohibited by any legally binding agreement to which the Bank is a party on the Effective Date; provided, however, that the Bank shall promptly notify the United Nations of any disclosure which is so prohibited and consult with the United Nations with a view towards arriving at a mutually agreeable solution. The Under-Secretary-General for Administration and Management of the United Nations may delegate to another Official of the United Nations any authority herebefore provided in this Article 1.30. Such delegation

of authority shall be by means of a written document signed and dated by the Under-Secretary-General for Administration and Management of the United Nations.

1.31 **Breakdown, Disaster Recovery.** The Bank represents and warrants that it has in place and will maintain for the entire term and duration of this Agreement and any extension thereof disaster recovery procedures which will be promptly implemented in the event of a partial or total failure, breakdown or impairment of the Bank's computer or other data processing, data transmission or communications systems, from any cause whatsoever, affecting performance of this Agreement. In such event, the Bank will use its best efforts to avoid any interruption of the Services, and to limit such interruption to the shortest practicable time. The Bank will periodically, at least annually, update and test the operability of its disaster recovery procedures and, upon request by the United Nations, provide the United Nations with a current written copy of such procedures and certify to the United Nations that such procedures are fully operational. The Bank shall be excused from implementing its disaster recovery procedures as a result of a force majeure event if that event prevents the Bank from implementing such procedures, provided that it has used its best efforts to avoid, minimize, mitigate or remedy as soon as possible the consequences of such event and implement such procedures. The Bank further represents and warrants that it has in place and will maintain for the entire term and duration of this Agreement and any extension thereof suitable arrangements to safeguard against the destruction, loss or alteration of messages, data or other information or communications, including but not limited to messages, data, information and communications relating to the United Nations Iraq Account, the funds and assets therein, the Services, and transactions relating to the foregoing.

1.32 **Miscellaneous.**

1.32.1 No failure on the part of either Party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial

exercise by either Party of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right.

1.32.2 In the event that any one of the provisions of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

1.33 This Agreement constitutes the entire agreement of the parties with respect to the Services (except as otherwise expressly provided herein) and supersedes and replaces any previously made proposals, representations, warranties or agreements, express or implied, either oral or in writing, between the Parties.

1.33 **Liability of the United Nations.** Any obligation or liability of the United Nations under or in connection with this Agreement shall be covered exclusively from, and shall be limited to, funds in the United Nations Iraq Account.

1.34 **Reserve.** Notwithstanding any other provision of this Agreement, there shall remain in the United Nations Iraq Account at all times a sum of \$100,000, subject to the receipt of funds into the United Nations Iraq Account in at least such amount, which may be used only to provide reimbursement to the Bank pursuant to Articles 1.16.3 and 1.25.3; provided that if the United Nations withdraws funds in the United Nations Iraq Account pursuant to Articles 1.21.7 or 1.21.8, such required amount shall be adjusted in an appropriate manner as agreed between the United Nations and the Bank after consultations between them.

1.35 **Representations by the Bank and the United Nations.** Each of the Bank and the United Nations represents and warrants to the other that this Agreement (i) has been duly authorized, executed and delivered by it and (ii) constitutes a legal, valid and binding

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acted upon it, the Bank shall assist and co-operate with the United Nations in good faith in attempting to deal with or resolve these circumstances.

2.2 Purchases of Iraqi Petroleum and Petroleum Products

2.2.1 Upon receipt of an LOC issued by a bank on behalf of a State or national petroleum purchaser (hereinafter referred to as a "Purchaser") for the purchase of Iraqi petroleum or petroleum products (any such issuing bank hereinafter referred to as a "Purchaser's Bank"), and in cases where the Bank issues an LOC directly as the Purchaser's Bank on behalf of its customer (as provided in Article 2.2.8 below), the Bank shall comply with the procedures and requirements set forth in this Article 2.2. Such procedures and requirements shall also apply, *mutatis mutandis*, in respect of amendments to LOCs. The LOCs referred to in this Article 2.2 are LOCs for the purchase of Iraqi petroleum and petroleum products.

2.2.2 The Bank shall immediately verify that the beneficiary of each LOC is the United Nations, as the holder of the United Nations Iraq Account in accordance with SCR 986, the Memorandum of Understanding and the 661 Committee Procedures, and that each LOC contains provisions to the following effect:

- (a) Provided all terms and conditions of this Letter of Credit are complied with, proceeds of this Letter of Credit will be irrevocably paid into the "United Nations Iraq Account", account number 0200-201732-001-08, with Banque Nationale de Paris, S.A., New York branch; and
- (b) All charges within Iraq are for the account of the Seller, whereas all charges outside Iraq are to be borne by the Purchaser; and
- (c) This Letter of Credit is not assignable and not transferable.

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agreement of it, enforceable in accordance with its terms, subject to the privileges and immunities of the United Nations.

PART 2. LETTERS OF CREDIT

2.1. General

2.1.1 The Bank undertakes to provide the Services set forth in this Part 2 with respect to Letters of Credit (hereinafter referred to as "LOCs") in accordance with SCR 986, the Memorandum of Understanding, the 661 Committee Procedures and the terms and conditions of this Agreement.

2.1.2 The Bank recognizes that the implementation of SCR 986 and the Memorandum of Understanding requires that purchases of Iraqi petroleum and petroleum products and exports to Iraq of humanitarian supplies, except for purchases made directly by the United Nations Inter-Agency Humanitarian Programme, be paid for through LOCs.

2.1.3 LOCs referred to in this Agreement shall conform with and be governed by the Uniform Customs and Practices for Documentary Credits (1993 Revision) International Chamber of Commerce Publication No. 500, and any revisions thereof, (hereinafter referred to as the "UCP"). Accordingly, the UCP shall be incorporated into the text of each LOC issued or confirmed by the Bank. The Parties agree that nothing in this Agreement is intended to be inconsistent with the UCP.

2.1.4 No approval or instruction received by the Bank from an Authorized United Nations Official having the requisite authority with respect to the issuance, confirmation, advice or amendment of an LOC, or instruction with respect to discrepancies, may be revoked after such approval or instruction has been acted upon by the Bank. However, should circumstances cause the United Nations to seek to modify or revoke an approval or instruction after the Bank has

United Nations (unless the Bank has been authorized by the Deputy Treasurer to communicate directly with the Overseas), and shall draw the attention of the Overseas to any lack of conformity of the LOC with the requirements of this Agreement. If the Overseas of the 661 Committee, through such a United Nations Official, inform the Bank in writing that the LOC complies with the information given by the Purchaser in its approved application for the purchase of Iraqi petroleum and petroleum products, the Bank shall add its confirmation to the LOC provided that the criteria hereinafter set forth are met: (i) the bank issuing the LOC has an individual ISCA credit rating of C or better; if the LOC is for a maximum amount, the following additional criteria shall apply: (ii) the credit limit established by the Bank in the ordinary course of its business and then in effect for the country where the bank issuing the LOC is located would not be exceeded by confirming the LOC, and (iii) the credit limit established by the Bank in the ordinary course of its business and then in effect for the country where the bank issuing the LOC is located would not be exceeded by confirming the LOC. Notwithstanding the foregoing, the Bank may confirm an LOC even if one or more of the foregoing criteria are not met. The Bank shall confirm the LOC as provided herein even if the LOC is not for a maximum amount unless the Bank, in its sole discretion, determines that it can confirm an LOC issued by the issuing bank in question only if the LOC is for a maximum amount. Under no circumstances shall the Bank add its confirmation to the LOC unless the Bank has been informed by the Overseas of the 661 Committee that the LOC complies with the information given by the Purchaser in its approved application for the purchase of Iraqi petroleum and petroleum products. In the event that the Overseas of the 661 Committee so inform the Bank, they shall also confirm to the Bank that the contract for the purchase of Iraqi petroleum and petroleum products conforms to the standard form of contract for the purchase of Iraqi petroleum and petroleum products referred to in Article 2.2.4 or indicate any departure therefrom (which may not include departures from the provisions referred to in Article 2.2.4(a) and (b)), and an Authorized United Nations Official having the requisite authority will provide the Bank with the following information concerning said contract: contract number, quality, quantity, date of loading, vessel and pricing mechanism. When the Bank has added its confirmation to an LOC, it shall advise the LOC directly to the

2.2.3 If the LOC is to be confirmed by the Bank in for a maximum amount, such LOC must provide that invoices for the purchase price of the petroleum or petroleum products exceeding the total amount or balance available under the LOC are acceptable, provided that: (i) the quantity of petroleum or petroleum products invoiced and shipped, as per the bill of lading, does not exceed the total quantity of petroleum or petroleum products authorized to be shipped under the LOC; (ii) the beneficiary agrees in writing to release the documents presented under the LOC to the buyer or the issuing bank of the LOC against payment of only the amount available for payment under the LOC; and (iii) the invoice otherwise complies with the terms and conditions of the LOC.

2.2.4 The United Nations shall provide the Bank with a copy of the standard form of contract to be used for purchases of Iraqi petroleum and petroleum products. Such standard form contract shall contain provisions to the following effect:

(a) The parties hereto agree that payment of the LOC contemplated hereunder shall be made to the United Nations, as holder of the United Nations Iraq Account, account number 0200-201752-001-08, at Banque Nationale de Paris, S.A., New York Branch;

(b) The Letter of Credit to be issued under this contract shall be issued by a bank that meets criteria that have been established for the confirmation of the Letter of Credit by Banque Nationale de Paris, S.A., in an Agreement for Banking Services pursuant to Security Council resolution 986 (1995), entered into between Banque Nationale de Paris, S.A. and the United Nations.

2.2.5 When transmitting the LOC to the Bank, the issuing bank must certify that it has obtained any necessary governmental authorization for the issuance of the LOC.

2.2.6 The Bank shall immediately transmit a copy of the LOC received by it from the Purchaser's Bank to the Overseas of the 661 Committee, through the Deputy Treasurer of the

2.2.9 Documents to obtain payment of the LOC shall be presented to the Bank at the address set forth below, or at such other office of the Bank as the Bank and the United Nations may mutually agree:

Banque Nationale de Paris, S.A.
Trade Finance Services
Attn: Harold Lehmann
New York Office
200 Liberty Street
World Financial Center
Tower A
New York, New York 10281-1062.

2.2.10 The proceeds of each LOC shall be paid only into the United Nations Iraq Account and shall be held strictly in accordance with the terms and conditions of this Agreement.

2.2.11 The Bank hereby undertakes not to sell, assign or transfer any LOC to any person or entity, whether governmental or otherwise.

2.2.12 All charges within Iraq are to be borne by the seller of the Iraqi petroleum or petroleum products, and all charges outside Iraq are to be borne by the purchaser of such products, and such charges are not to be covered from the funds in the United Nations Iraq Account.

2.2.13 The provisions of this Article 2.2.13 apply in the case of an LOC for a maximum amount. In the event that the invoiced purchase price of the Iraqi petroleum or petroleum products exceeds the maximum amount of the LOC, and the bank that issued the LOC issues an amendment to the LOC to cover the excess purchase price, the Bank shall transmit a copy of such amendment to the LOC to the Overseers of the 661 Committee in accordance with Articles 2.2.6 and 2.2.7. If the Overseers approve the amendment to the LOC, the Bank shall

United Nations and, for information purposes only, forward a copy thereof to the Central Bank of Iraq for the purpose of advising the Iraqi State Oil Marketing Organization (SOMO).

2.2.7 Should the Bank refuse to add its confirmation to the LOC in accordance with Article 2.2.6, it shall so inform the Overseers of the 661 Committee, through the Deputy Treasurer of the United Nations (unless the Bank has been authorized by the Deputy Treasurer to communicate directly with the Overseers), giving the reasons for such refusal, at the time it transmits the copy of the LOC for their review. If so requested by the United Nations, the Bank shall consult with the United Nations regarding the reasons for such refusal. However, the Bank shall not be required to give reasons for its determination, pursuant to Article 2.2.6, that it can confirm an LOC issued by its issuing bank only if the LOC is for a maximum amount. The Bank shall not refuse to confirm an LOC if it has not so notified the Overseers of the 661 Committee before it has determined, in accordance with Article 2.2.6, whether it will add its confirmation to the LOC; however, such determination will be made without delay.

2.2.8 The Bank may issue LOCs directly as the Purchaser's Bank on behalf of its customers who are approved purchasers of Iraqi petroleum and petroleum products. Such LOCs shall comply, mutatis mutandis with all provisions of this Agreement, including, but not limited to, the requirements relating to prior review and approval by the 661 Committee of LOCs issued in connection with purchases of petroleum and petroleum products and those relating to the contents of the LOC. However, no confirmation by the Bank of such an LOC issued by it shall be necessary.

add its confirmation thereto, provided that the criteria set forth in Article 2.2.6 would be met. If such criteria would not be met, the Bank shall nevertheless make a good faith effort to determine that it is in a position to confirm the amendment to the LOC. If the Bank is still unable to confirm the amendment to the LOC, it shall so inform the Overseers of the 661 Committee in accordance with Article 2.2.7 at the time it transmits the copy of the amendment to the LOC to them for their review, and, if requested, consult with the United Nations as provided in Article 2.2.7. Under no circumstances shall the Bank add its confirmation to the amendment to the LOC unless the Bank has been informed by the Overseers of the 661 Committee that they have approved the amendment. When the Bank has added its confirmation to the amendment to the LOC, it shall advise the amendment directly to the United Nations and, for information purposes only, forward a copy thereof to the Central Bank of Iraq for the purpose of advising SOMO. If an amendment to the LOC is not issued or is not confirmed by the Bank, the right of the beneficiary of the LOC (the United Nations, as holder of the United Nations Iraq Account) to draw the full amount of the LOC in accordance with its terms shall not be prejudiced thereby.

2.3 Exports to Iraq of humanitarian and other supplies pursuant to SCR 986.

2.3.1 The Bank undertakes to be the issuing bank for LOCs for purchases by the Government of Iraq of humanitarian and other supplies pursuant to SCR 986. In performing such services, the Bank shall comply with the procedures and requirements set forth in this Article 2.3. The LOCs referred to in this Article 2.3 are LOCs for such purchases of humanitarian and other supplies.

2.3.2 The Central Bank of Iraq will forward to the Bank requests from the appropriate Iraqi Government entities to open irrevocable, non-transferable, non-assignable (except to the supplier's bank for the repayment of financing for the purchase of the humanitarian supplies) LOCs for the account of the Iraqi purchaser in favour of the supplier. Such requests shall provide for payments from the United Nations Iraq Account. Only the United Nations has the

authority to give binding instructions to the Bank concerning such LOCs. When the Bank receives such a request, it shall immediately forward it to the Deputy Treasurer of the United Nations for approval. Except for LOCs described in Article 2.3.8, the approval shall contain stipulations to substance as follows: (a) approval is given to open the LOC; (b) the Bank is authorized to identify, segregate and hold in the United Nations Iraq Account as cash collateral the amount that the Bank would be required to pay under the LOC and the amount of its fees related to the LOC that are payable from the United Nations Iraq Account pursuant to this Agreement, and, if applicable, the additional amount provided for in Article 2.3.7 to cover potential currency exchange losses in the purchase by the Bank of non-United States dollar currency for the payments of LOCs denominated in such currency; and (c) the Bank shall be reimbursed from the United Nations Iraq Account, in accordance with the terms and conditions of this Agreement, for its payments under the LOC, provided that such payment has been made in full conformity with the terms and conditions of the LOC and all documents presented for payment are in conformity with the requirements of the LOC. Upon receipt of such approval in writing from the Deputy Treasurer of the United Nations or another Authorized United Nations Official having the requisite authority, the Bank shall issue the LOC in accordance with such approval.

2.3.3 The requirements set forth below shall apply to LOCs covering purchases of humanitarian and other supplies:

- (a) The Bank shall be reimbursed, in accordance with the terms and conditions of this Agreement, for any payment by the Bank of LOCs issued by it only from funds in the United Nations Iraq Account;
- (b) If documents presented to the Bank under the LOCs issued by the Bank are in conformity with the terms and conditions of the LOCs, the Bank shall be authorized to make payment under the LOCs;

(c) If documents are presented to the Bank which are not in conformity with the LOCs issued by it, the Bank shall request written instructions from the Deputy Treasurer of the United Nations. The Bank shall follow all such instructions issued by an Authorized United Nations Official having the requisite authority.

2.3.4 The LOC shall require as condition for payment of the LOC the submission to the Bank of the following documents:

- (a) the customary commercial documentation,
- (b) a copy of the 661 Committee's letter stating that the exporter is eligible for payment from the United Nations Iraq Account,
- (c) a confirmation by the Secretary-General's designees of the arrival of the exported goods in Iraq, and
- (d) any required governmental license or equivalent authorizing the export.

The Bank shall effect payment under any LOC only if all the documents listed above and stipulated in the LOC are presented to it and if all other terms and conditions of such LOC are complied with. When specified in the contract and the exporting documents, partial payments can be made in the full amount that correspond to actual shipment deliveries to Iraq, provided that arrivals of such actual deliveries are confirmed in accordance with this Agreement. Documentary discrepancies can be waived only by an Authorized United Nations Official having the requisite authority.

2.3.5 (a) As used in Article 2.3 and elsewhere in this Agreement, the term "Available Funds" means the funds in the United Nations Iraq Account at any given time net of the aggregate of the following amounts: (i) the amounts then identified, segregated and held in the

United Nations Iraq Account as cash collateral pursuant to Article 2.3.6, 2.3.7 and 2.3.8, (ii) the amounts referred to in Article 1.34, subject to adjustment as provided therein, (iii) any amount of fees to disburse then identified, segregated and held in the United Nations Iraq Account pursuant to Article 1.20.2(c), (iv) any reimbursements then due to the Bank for its reasonable costs pursuant to Articles 1.16.3 and 1.25.3 and (v) any then outstanding fees payable to the Bank from the United Nations Iraq Account duly incurred under this Agreement for which amounts are not identified, segregated and held in the United Nations Iraq Account.

(b) The amounts of cash collateral identified, segregated and held in the United Nations Iraq Account pursuant to Articles 2.3.6, 2.3.7, and 2.3.8 shall be adjusted accordingly as and when an LOC expires to the extent that it is unpaid, the Bank is reimbursed pursuant to this Agreement for payments made by it under its LOC, the Bank is paid its fees related to LOCs that are payable from the United Nations Iraq Account pursuant to this Agreement or adjustments are made to the additional amounts of cash collateral referred to in Article 2.3.7. Similarly, the amounts of fees in dispute identified, segregated and held in the United Nations Iraq Account pursuant to Article 1.20.2(c) shall be adjusted accordingly as and when disputes concerning such fees are resolved and payment or refunds of such fees are made in accordance with the resolutions of such disputes.

2.3.6 LOCs will be available for payment only at the Bank and shall provide for payment only from the United Nations Iraq Account. Except in the case of LOCs described in Article 2.3.8, the Bank shall not issue an LOC unless there are sufficient Available Funds in the United Nations Iraq Account to cover such LOC and the fees of the Bank related thereto that are payable from the United Nations Iraq Account pursuant to this Agreement. Also except in the case of LOCs described in Article 2.3.8, concurrently with the issuance of an LOC, the Bank is authorized to identify, segregate and hold in the United Nations Iraq Account as cash collateral the amount that the Bank would be required to pay under the LOC and the amount of its fees related to the LOC that are payable from the United Nations Iraq Account pursuant to this Agreement. The Bank is authorized to debit from the amount identified, segregated and

for payment of the LOC in accordance with the provisions of Article 2.3.6 and 2.3.7. Should the aggregate cash collateral identified, segregated and held in the United Nations Iraq Account to cover reimbursement to the Bank for its payment of a particular non-United States dollar-denominated LOC be less than the amount in United States dollars necessary to purchase the non-United States dollar currency to pay the LOC, adjusted on a mark-to-market basis, by more than five per cent (5%), additional cash collateral, in an amount equal to five per cent (5%) of the amount originally identified, segregated and held as cash collateral to cover reimbursement to the Bank for its payment of the LOC, will be identified, segregated and held in the United Nations Iraq Account. For any additional five per cent (5%) increase in the amount in United States dollars necessary to purchase the non-United States dollar currency to pay the LOC, adjusted on a mark-to-market basis, the amount identified, segregated and held in the United Nations Iraq Account shall be increased by an additional five per cent (5%) increment as heretofore provided. Conversely, such additional cash collateral shall be returned to Available Funds as and to the extent that the amount in United States dollars necessary to purchase the non-United States dollar currency to pay the LOC becomes fully covered without such additional cash collateral. The above-described mark-to-market calculations will be performed daily based on the Exchange Rate quotations for the prior business day as quoted in the Wall Street Journal. The foregoing arrangements shall be subject to such other or additional terms as may be agreed in writing between the Bank and the United Nations.

2.3.8 The Bank shall issue LOCs in respect of the purchase of parts and equipment essential for the safe operation of the Kirkuk-Yammutait pipeline without their being sufficient Available Funds in the United Nations Iraq Account, provided the approval of the Authorized United Nations Official having the requisite authority contains stipulations along the following lines: (a) approval is given to open the LOC; (b) upon receipt of Available Funds in the United Nations Iraq Account in an amount sufficient to reimburse the Bank for any payment to be made under the LOC and the amount of the fees relating to the LOC that are payable from the United Nations Iraq Account pursuant to this Agreement, the Bank shall identify, segregate and hold such amount in the United Nations Iraq Account as cash collateral; (c) the Bank is authorized

held in the United Nations Iraq Account as cash collateral as heretofore provided the amount necessary to reimburse itself for any amount paid by it under the LOC, provided that such payment has been made in full conformity with the terms and conditions of the LOC and all documents presented for payment are in conformity with the requirements of the LOC, or an Authorized United Nations Official having the requisite authority has waived a discrepancy pursuant to Article 2.3.3(c). If such amount identified, segregated and held in the United Nations Iraq Account as cash collateral is not sufficient to provide full reimbursement to the Bank for its payment under the LOC, the Bank may, after consultation with the United Nations, debit from Available Funds such additional amount as is necessary to provide such full reimbursement. The Bank's fees related to the LOC that are payable from the United Nations Iraq Account pursuant to this Agreement shall be invoiced to and paid by the United Nations from the United Nations Iraq Account in accordance with Article 1.20.

2.3.7 LOCs provided for in this Article 2.3 will normally be denominated in United States dollars. In the event that an LOC denominated in another freely convertible currency is requested and approved pursuant to this Agreement, purchases of the non-United States dollar currency in which payment of such LOC is to be made shall be covered from funds from the United Nations Iraq Account in accordance with the provisions of this Article 2.3.7. If such purchases of non-United States dollar currencies are made by the Bank: (i) such purchases shall be made on a spot basis at the time the terms and conditions for payment of the LOC have been met, as an exchange rate mutually agreed between the United Nations and the Bank; (ii) the Bank shall be authorized to identify, segregate and hold in the United Nations Iraq Account as cash collateral, in addition to the amount identified, segregated and held in the United Nations Iraq Account referred to in Article 2.3.6, an amount, equal to five per cent (5%) of the amount that the Bank would be required to pay under the LOC, to cover potential currency exchange losses in the purchase by the Bank of the non-United States dollar currency with which payment of the LOC is to be made; and (iii) the Bank shall be authorized to debit from the amount identified, segregated and held in the United Nations Iraq Account as cash collateral pursuant to Article 2.3.6 and this Article 2.3.7 the full cost of the purchase of the non-United States dollar currency

to debit from such cash collateral the amount necessary to reimburse itself for any payment under the LOC, provided that such payment has been made in full conformity with the terms and conditions of the LOC and all documents presented for payment are in conformity with the requirements of the LOC, and provided further that an Authorized United Nations Official having the requisite authority has approved such payment. The LOC shall include the following conditions in addition to those set forth in Article 2.3.4:

- (a) the Bank shall not be required to make any payment under the LOC unless and until the United Nations Iraq Account contains Available Funds in an amount sufficient to reimburse the Bank for such payments and any fees that are payable from the United Nations Iraq Account pursuant to this Agreement relating thereto; and
- (b) the Bank shall not make any payment under the LOC unless the Authorized United Nations Officials having the requisite authority approve such payment.

Upon receipt of Available Funds in the United Nations Iraq Account in an amount sufficient to reimburse the Bank for any payment to be made under an LOC described in this Article 2.3.8 and in related fees that are payable from the United Nations Iraq Account pursuant to this Agreement, the Bank shall request approval from the Deputy Treasurer of the United Nations to identify, segregate and hold such amount in the United Nations Iraq Account as cash collateral. The Bank is authorized to debit from such amount identified, segregated and held in the United Nations Iraq Account as cash collateral the amount necessary to reimburse itself for any amount paid by it pursuant under the LOC, provided that such payment has been made in full conformity with the terms and conditions of the LOC and all documents presented for payment are in conformity with the requirements of the LOC, or an Authorized United Nations Official having the requisite authority has waived a discrepancy pursuant to Article 2.3.3(e), and provided further that an Authorized United Nations Official having the requisite authority has approved such payment. If such amount identified, segregated and held in the United Nations Iraq Account as cash collateral is not sufficient to provide full reimbursement to the Bank for

in payment under the LOC, the Bank may, after consultation with the United Nations, debit from Available Funds such additional amount as is necessary to provide such full reimbursement. The Bank's fees related to the LOC that are payable from the United Nations Iraq Account pursuant to this Agreement shall be invoiced to and paid by the United Nations from the United Nations Iraq Account in accordance with Article 1.20.

PART 3. PROCESSING OF NON-ELECTRONIC FUNDS TRANSFER INSTRUCTIONS

3.1.1 Delivery of Non-Electronic Transfer Instructions: From time to time, two of the Authorized United Nations Officials having the requisite authority may deliver or transmit to the Bank's offices at 499 Park Avenue, New York, New York, to the attention of Eva Millas Russo, Commodities & Trade Finance, or to such other address or such other Officer of the Bank as the Bank may specify by written notice to the United Nations, non-electronic funds transfer instructions with respect to the United Nations Iraq Account in any of the following forms (each being hereinafter referred to as "Non-Electronic Funds Transfer Instructions"):

- (a) one or more written funds transfer instructions, signed by two such Authorized United Nations Officials, in such form as may be mutually agreed upon in writing by such Authorized United Nations Officials and an Officer of the Bank;
- (b) funds transfer instructions delivered by means of facsimile transmission confirmed by a transmittal receipt and signed by two such Authorized United Nations Officials.

3.1.2 Notwithstanding the foregoing, the Bank shall not accept any Non-Electronic Funds Transfer Instructions from any Authorized United Nations Officials unless there are sufficient Available Funds (as defined in Article 2.3.5) in the United Nations Iraq Account as of the date of such Instructions to cover the amount of any such transfer, provided, however, that the Bank shall accept a Non-Electronic Funds Transfer Instruction to make payments from funds

identified, segregated and held in the United Nations Iraq Account pursuant to this Agreement for purposes for which such funds have been so identified, segregated and held.

3.1.3 Upon receipt by the Bank of proper Non-Electronic Funds Transfer Instructions, as provided above, but subject to verifying the authenticity thereof in accordance with Article 3.2, the Bank shall transfer funds in the amount and manner specified in such Non-Electronic Funds Transfer Instructions to the designated payee and, thereupon, debit the United Nations Iraq Account. If such proper Non-Electronic Funds Transfer Instructions are received by the Bank (A) prior to 10:00 a.m. Eastern Time on any day on which commercial banks and foreign exchange markets settle payments in New York (hereinafter referred to as a "Business Day"), such transfer shall, subject to such verification, be made on such Business Day, or (B) after 10:00 a.m. Eastern Time on any Business Day, the Bank shall, subject to such verification, use its best efforts to effect such transfer as of the same Business Day, but in any event no later than the next succeeding Business Day; provided that if such transfer has been designated as urgent by an Authorized United Nations Official having the requisite authority, the Bank shall use its best efforts to effect such transfer as of the same Business Day.

3.2 Security Procedures. The Bank shall verify the authenticity of all Non-Electronic Funds Transfer Instructions as follows:

- (A) Upon receipt of Non-Electronic Funds Transfer Instructions as the Bank's Commodities & Trade Finance Desk, the Bank shall check all signatures and make a call-back to an Authorized United Nations Official having the requisite authority, preferably an Authorized United Nations Official who did not sign the Non-Electronic Funds Transfer Instructions, to verify the instructions given therein.
- (B) The Bank shall then transmit the Non-Electronic Funds Transfer Instructions to its Collateral Control Section within the Trade Finance Services Department to verify sufficient cash balances in the United Nations Iraq Account from which payment under

the Non-Electronic Funds Transfer Instructions can be made in accordance with Article 3.1.2. The Trade Finance Services Department will set aside the required funds and notify the Commodities & Trade Finance Desk that sufficient funds exist to make the payment.

- (C) The Bank shall then transmit the Non-Electronic Funds Transfer Instructions to its Funds Transfer Department for processing via its payment system.
- (D) The Commodities & Trade Finance Desk will have set up a zero transaction and a zero overdraft limit on the United Nations Iraq Account. Consequently, the Funds Transfer Department will call the Commodities & Trade Finance Desk to verify again that the transfer can be released.
- (E) Upon approval from the Commodities & Trade Finance Desk, the Bank will release the transfer.
- (F) The United Nations will follow up by sending the original hard-copy request to the Bank as confirmation.

3.3 General Provisions Regarding Non-Electronic Funds Transfer Instructions. The United Nations shall be bound by any Non-Electronic Funds Transfer Instructions, whether or not actually authorized, if, but only if, they were issued in its name, confirmed on their face with the requirements of Article 3.1, and purported to be issued by Authorized United Nations Officials having the requisite authority to give such Non-Electronic Funds Transfer Instructions and such instructions were accepted in good faith by the Bank and in compliance with the security procedures set forth in Article 3.2. The security procedures and other terms specified herein shall also apply to amendments and cancellations of Non-Electronic Funds Transfer Instructions. It is understood that these security procedures are designed to verify the authenticity of, and not to detect errors in, Non-Electronic Funds Transfer Instructions.

4.3 Interest Rates. Interest rates payable on investments of funds in the United Nations Iraq Account shall be based on the interest rate formulas set forth in Annex 6.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates hereinafter specified.

BANQUE NATIONALE DE PARIS, S.A. THE UNITED NATIONS

By: [Signature] Name: Joseph E. Connor
By: [Signature] Name: [Blank]
Title: General Manager and Chief Executive Officer, MBG of National Group
Title: [Blank]
Date: 12/1/86 Date: 12-9-76

By: _____
Name: _____
Title: _____
Date: _____

PART 4. INTEREST PAID ON BALANCES

4.1 Instructions. The Bank shall act on the instructions from the Authorized United Nations Officials having the requisite authority with respect to investments of funds in the United Nations Iraq Account for the purpose of earning interest. Such investments shall only be in the form of overnight or other short term interest-bearing investments and shall be specifically identified as assets of the United Nations Iraq Account. The Bank shall place the funds in sub-accounts of the United Nations Iraq Account for the purpose of such investments.

4.2 Investments of Cash Collateral. The Bank shall place amounts identified, segregated and held in the United Nations Iraq Account as cash collateral pursuant to this Agreement in an overnight investment sub-account of the United Nations Iraq Account separate from other investment sub-accounts of the United Nations Iraq Account.
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ANNEX

UNITED NATIONS

Security Council

Distr.
General

S/RES/66 (1991)
14 April 1991



RESOLUTION 66 (1991)

Adopted by the Security Council at its 3538th meeting, on 14 April 1991

The Security Council,

Reminding its previous relevant resolutions,
Concerned by the serious nutritional and health situation of the Iraqi population, and by the risk of a further deterioration in this situation,

Convinced of the need as a temporary measure to provide for the humanitarian needs of the Iraqi people until the fulfilment by Iraq of the relevant Security Council resolutions, including notably resolution 661 of 3 April 1991, allow the Committee established by resolution 661 to the extent necessary to ensure the implementation of those resolutions, in accordance with the provisions of those resolutions,

Convinced also of the need for equitable distribution of humanitarian relief to all segments of the Iraqi population throughout the country,

Maximizing the commitment of all Member States to the sovereignty and territorial integrity of Iraq,

Acting under Chapter VII of the Charter of the United Nations,

1. Authorizes States, notwithstanding the provisions of paragraphs 3 (a), 3 (b) and 4 of resolution 661 (1991) and subsequent relevant resolutions, to permit the import of petroleum and petroleum products, including refined petroleum products, to Iraq, provided that such imports are directly related to the production of petroleum and petroleum products in Iraq, and that such imports are subject to the following conditions:

(a) Approval by the Committee established by resolution 661 (1991), in order to ensure the transparency of such transactions and its monitoring by the other provisions of this resolution, after submission of an application by the

State concerned, subject to the agreement of Iraq, for each proposed purchase of petroleum and petroleum products, including details of the purchase price at fair market value, the export route, the opening of a letter of credit payable to the account to be established by the Secretary-General for the purpose of the purchase of such petroleum and petroleum products, and any other directly related financial or other essential transactions;

(b) Payment of the full amount of such purchases of Iraqi petroleum and petroleum products to the account established by the Secretary-General into the account to be established by the Secretary-General for the purpose of this resolution;

2. Authorizes Turkey, notwithstanding the provisions of paragraphs 3 (a), 3 (b) and 4 of resolution 661 (1991) and the provisions of paragraph 3 above, to permit the import of petroleum and petroleum products, including refined petroleum products, to Iraq, provided that such imports are directly related to the production of petroleum and petroleum products in Iraq, and that such imports are subject to the following conditions, verified as reasonable by the independent inspection agents referred to in paragraph 6 of resolution 661 (1991):

(a) The import of such petroleum and petroleum products through the Kirkuk-Turkish pipeline in Turkey authorized by paragraph 3 above;

(b) The import of such petroleum and petroleum products through the Iraq-Turkish pipeline in Turkey authorized by paragraph 3 above;

3. Further decides that the remaining paragraphs of this resolution shall come into force forthwith;

4. Requests the Committee established by resolution 661 (1991) to monitor the sale of petroleum and petroleum products to be exported by Iraq via the Kirkuk-Turkish pipeline from Iraq to Turkey and from the Iraq al-Basra oil pipeline from Iraq to Kuwait, and to report to the Secretary-General on the progress of its work, and to submit to the Secretary-General, who will keep the Committee informed of the amount of petroleum and petroleum products exported from Iraq after the date of entry into force of paragraph 1 of this resolution, and will verify that the purchases are made in accordance with the conditions set out in paragraph 1 of this resolution, and that, for the purposes of the arrangements set out in this resolution, the larger share of the petroleum and petroleum products is shipped via the Kirkuk-Turkish pipeline and the remainder if exported from the Iraq al-Basra oil pipeline;

7. Requests the Secretary-General to establish an account for the purposes of this resolution, to be used for the payment of the amounts to audit it, and to keep the Government of Iraq fully informed;

8. Decides that the funds in the account shall be used to meet the humanitarian needs of the Iraqi population and for the following purposes, and requests the Secretary-General to use the funds deposited in the account:

(a) To finance the export to Iraq, in accordance with the procedures of the Committee established by resolution 61 (1980), of medicines, health supplies, foodstuffs, and materials and supplies for essential civilian needs, as referred to in paragraph 8 of resolution 61 (1980);

(b) To finance the export of goods in at the request of the Government of Iraq;

(c) To transfer to the United Nations Fund the same percentage of the funds deposited in the account as that decided by the Council in paragraph 2 of resolution 705 (1981) of 18 August 1981;

(d) To meet the costs to the United Nations of the independent inspection agency established by resolution 61 (1980) and the activities associated with implementation of this resolution;

(e) To meet the current operating costs of the Special Commission, pending section C of resolution 61 (1980);

(f) To meet any reasonable expenses, other than expenses payable in Iraq, which are determined by the Committee established by resolution 61 (1980) to be directly related to the export by Iraq of petroleum and petroleum products permitted under paragraph 1 above or to the export to Iraq, and activities

directly necessary therefor, of the parts and equipment permitted under paragraph 1 above;

(g) To make available up to 10 million United States dollars every 30 days from the account to be used for the payment envisaged under paragraph 8 of resolution 718 (1982) of 3 October 1982;

9. Authorizes States to permit, notwithstanding the provisions of paragraph 2 (c) of resolution 61 (1980):

(a) The export to Iraq of the parts and equipment which are essential for the safe operation of the Minam-thamrallah pipeline system in Iraq, subject to the conditions established by the Committee established by resolution 61 (1980) of such export contracts;

(b) Activities directly necessary for the exports authorized under subparagraph (a) above, including financial transactions related thereto;

10. Decides that, since the costs of the exports and activities authorized under subparagraph (a) above, including financial transactions related thereto, and by paragraph 11 of resolution 718 (1982) from being met from funds frozen in accordance with these provisions, the cost of such exports and activities may, until such time as the account is established for the purposes of this resolution, be met from the account established for the purposes of this resolution;

11. Requests the Secretary-General to report to the Council 30 days after the date of the adoption of this resolution, and again prior to the end of the period of 180 days referred to in paragraph 10 above, on the basis of consultations with the Government of Iraq, on whether Iraq has ensured the equitable distribution of medicines, health supplies, foodstuffs, and materials and supplies for essential civilian needs, as referred to in paragraph 8 of this resolution, and on Iraq's capacity to export sufficient quantities of petroleum and petroleum products to produce the sum referred to in paragraph 10 above;

12. Requests the Committee established by resolution 61 (1980), in close coordination with the Government of Iraq, to continue to take the steps necessary to implement the arrangements in paragraphs 1, 2, 4, 8, 9 and 10 of this resolution and to report to the Council 30 days after the date of entry into force of this resolution, and thereafter at intervals of 30 days of the initial 180 day period on the implementation of those arrangements;

13. Requests the Secretary-General to take the actions necessary to ensure that the arrangements referred to in paragraphs 1, 2, 4, 8, 9 and 10 of this resolution are implemented, and to report to the Council on the progress of any necessary arrangements or agreements, and to update him to report to the Council when he has done so;

Memorandum of Understanding between the Secretary-General of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 661 (1980)

Section I

General provisions

1. The purpose of this Memorandum of Understanding is to ensure the effective implementation of Security Council Resolution 661 (1980) (hereinafter the "Resolution").
2. The Distribution Plan referred to in paragraph 1 (a) (ii) of the Resolution, which has to be approved by the Secretary-General of the United Nations, constitutes an important element in the implementation of the Resolution.
3. Nothing in the present Memorandum should be construed as infringing upon the sovereignty or territorial integrity of Iraq.
4. The provisions of the present Memorandum apply strictly and exclusively to the implementation of the Resolution and, as such, in no way create a precedent. It is also understood that the arrangements provided for in the Memorandum is an exceptional and temporary measure.

Section II

Distribution Plan

1. The Government of Iraq undertakes to effectively guarantee equitable distribution to the Iraqi population throughout the country of medicine, health supplies, foodstuffs, clothing, footwear, and other essential commodities. It will also ensure that humanitarian supplies purchased with the proceeds of the sale of Iraqi petroleum and petroleum products.
2. This and the Government of Iraq shall prepare a Distribution Plan which is to be approved by the Secretary-General of the United Nations. The Distribution Plan shall be prepared in accordance with the provisions of the Resolution and shall be submitted to the Secretary-General of the United Nations for approval. The Distribution Plan shall be submitted to the Secretary-General of the United Nations for approval. If the Secretary-General is satisfied that the

plan adequately ensures equitable distribution of humanitarian supplies to the Iraqi population throughout the country, he will so inform the Government of Iraq.

9. It is understood by the parties to this Memorandum that the Secretary-General will not be in a position to report as required in paragraph 13 of the Resolution unless the plan prepared by the Government of Iraq meets with his approval.
10. Once the Secretary-General approves the plan, he will forward a copy of the Distribution Plan to the Secretary-General of the United Nations for approval. The Secretary-General will also inform the Security Council of his approval concerning the situation between Iraq and Kuwait (hereinafter the 661 Committee) for information.

11. After the plan becomes operational, each party to the present Memorandum may suggest to the other for its consideration a modification to the plan if it believes that such adjustment would improve the equitable distribution of humanitarian supplies and their adequacy.

Section III

Establishment of the escrow account and audit of that account

12. The Secretary-General, after consultations with the Government of Iraq, will establish an escrow account with the United Nations Bank for International Cooperation (hereinafter the "Iraq Account"). The Secretary-General will appoint a member of the Board of Auditors to be the Secretary-General's representative on the account with the bank and will keep the Government of Iraq fully informed of his actions in discharging the bank and operating the account. The Secretary-General will also ensure that the account is operated in accordance with the relevant financial regulations and rules of the United Nations.
13. The Iraqi authorities shall designate a senior banking official to liaise with the Secretary-General of the United Nations on all banking matters relating to the "Iraq Account".
14. In accordance with the United Nations financial regulations, the "Iraq Account" will be audited by the Board of Auditors who are external independent public auditors. As provided for in the Regulations, the Board of Auditors will submit an annual report to the Secretary-General of the United Nations. Such reports will be submitted by the Board to the Secretary-General who will forward them to the 661 Committee and to the Government of Iraq.
15. Nothing in this Memorandum shall be interpreted to create a liability on the part of the United Nations or to constitute an endorsement of the plan or any aspect acting on its behalf pursuant to the provisions of the Resolution.

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Section XV
Sale of petroleum and petroleum products originating in Iraq

15. Petroleum and petroleum products originating in Iraq will be exported via the Kirkuk-Yamruq pipeline through Turkey and from the Mina al-Bahr oil terminal. The 661 Committee will monitor the exports through Turkey and Turkey will be required to issue a certificate of origin for each consignment of petroleum products. The certificate of origin will be issued by an additional amount of oil, as foreseen in the Resolution and in accordance with procedures to be established by the 661 Committee. The arrangement between Iraq and Turkey regarding the use of Turkish oil installations has been provided to the 661 Committee.

17. Bulk export of petroleum and petroleum products originating in Iraq shall be approved by the 661 Committee.

18. Detailed provisions concerning the sale of Iraqi petroleum and petroleum products are contained in Annex II, which constitutes an integral part of this Memorandum.

Section Y
Procurement and confirmation procedures

19. The purchase of medicines, health supplies, foodstuffs, and materials and equipment for the health services of Iraq shall be carried out in the country, as referred to in paragraph 20 of resolution 661 (1991), subject to paragraph 20 below, be carried out by the Government of Iraq, will follow normal commercial practice and be on the basis of the relevant resolutions of the Security Council and procedures of the 661 Committee.

20. The purchase of humanitarian supplies for the three northern Governments of Akrah, Sulaim and Bushayyah, as provided for in the Distribution Plan, will be carried out in accordance with Annex I.

21. The Government of Iraq will, except as provided for in paragraph 20, contract directly with suppliers to arrange the purchase of supplies, and will continue the appropriate contractual arrangements.

22. Each export of goods to Iraq shall be at the request of the Government of Iraq pursuant to paragraph 6 (a) of the Resolution. Accordingly, normally all goods to be exported under the Resolution to the 661 Committee for appropriate action according to IIA procedures. It is understood that payment of the supplier from the "Iraq Account" can take place only for items purchased by Iraq pursuant to the Resolution. In the event of a humanitarian crisis, applications for the export of additional items may be submitted to the 661 Committee for its consideration.

23. As noted above, the 661 Committee will take action on applications for the export of goods to Iraq in accordance with its existing procedures subject to future modifications. The 661 Committee will inform the Government of Iraq, requesting it to provide the Secretary-General of the actions taken on the requests submitted.

24. After the 661 Committee has taken action on the applications for export in accordance with its procedures, the Committee will inform the bank holding the "Iraq Account" to open irrevocable letters of credit in favor of the "Iraq Account". Such requests shall be referred by the bank holding the letter of credit by the letter requesting for approval of the opening of the "Iraq Account" upon presentation of credit-conform documents. The bank holding the letter of credit shall be required to submit to the 661 Committee the bank order established by the 661 Committee, including to be determined by the procedures referred to in paragraph 18 below. The United Nations, advised by the agents of the Government of Iraq, shall determine the clauses to be inserted in all purchase orders. All charges incurred in connection with the opening of the "Iraq Account". All charges outside Iraq are for the account of the beneficiary.

25. The arrival of goods in Iraq purchased under the plan will be confirmed by independent inspection agents to be appointed by the Secretary-General. The Secretary-General will, until the independent inspection agents provide the concerned have arrived in Iraq.

26. The independent inspection agents may be stationed at relevant Iraqi entry points, customs areas or other locations. The functions set out in paragraph 27 of this Section can be performed at the discretion of the Secretary-General. The agents will be designated by the United Nations after consultation with the Government of Iraq.

27. The independent inspection agents will confirm delivery to Iraq of the goods. They will prepare the appropriate documentation, such as bills of lading, the 661 Committee, will prepare or sign manifests, and the documents issued by the authority to perform duties necessary for the movement of goods, including inspection, sampling, and, when necessary, laboratory testing.

28. The inspection agents will report all irregularities to the Secretary-General and to the 661 Committee. If the problem is related to the Government of Iraq (e.g., non-authorized goods), the 661 Committee and the Government of Iraq will be notified. If the problem is related to the independent inspection agents will hold the shipment in question pending guidance from the 661 Committee.

35. The objectives of the United Nations observation process shall be:

- (a) to confirm whether the equitable distribution of humanitarian supplies to the Iraqi population throughout the country has been ensured;
- (b) to ensure the effectiveness of the operation and determine the adequacy of the available resources to meet Iraq's humanitarian needs.

OBSERVATION PROCEDURES

36. In observing the equitable distribution and its adequacy, United Nations personnel will use, *inter alia*, the following procedures:

Food items

37. The observation of the equitability of food distribution will be based on information obtained from local markets throughout Iraq, the Iraqi Ministry of Trade, the information available to the United Nations and its specialized agencies, and the reports of the United Nations observation teams. The observation teams will also include the quantity and prices of food items imported under the sanction.

38. To provide regular updated observation of the most pressing needs, a survey undertaken by United Nations agencies in cooperation with the appropriate Iraqi ministries will serve as a basis for the continuing observation of nutritional status of the population of Iraq. This information will take account of public health data generated by the Ministry of Health (MHI) and the relevant United Nations agencies.

Medical supplies and equipment

39. Observation regarding distribution of medical supplies and equipment will focus on the existing distribution and storage system and will involve visits to hospitals, clinics as well as medical and pharmaceutical stores. The health facilities visited will also be visited by health specialists from UNICEF and surveys by relevant United Nations agencies.

Water/sanitation supplies and equipment

40. Observation of distribution of water/sanitation supplies and equipment will focus on the determination that they are used for their intended purposes. Observations will include the availability of water supply, the condition of water-treatment plants, the availability of water quality control checks by water and sanitation facilities by representatives of relevant United Nations agencies. In this regard the United Nations will rely on all relevant indications.

29. As regards the export to Iraq of parts and equipment which are essential for the safe operation of the circuit-breaker pipeline system in Iraq, the Government of Iraq should ensure that the necessary arrangements are made for the supply. Such requests will be considered for approval by the Committee in accordance with its procedures.

30. In the 461 Committee has approved a request in accordance with paragraph 29, the provisions of paragraph 34 shall apply. However, since the supplier can expect payment against future oil sales, as stated in paragraph 10 of the Resolution, the proceeds of which are to be deposited in the "Iraq account" of the United Nations, the Government of Iraq should ensure that the necessary arrangements are made for the payment of the "Iraq account" by the United Nations Secretariat approves the payment.

31. The requirement of substantiated confirmation of arrival provided for in this section shall apply also to the parts and equipment mentioned in paragraph 29.

Section VI

Distribution of humanitarian supplies purchased under the Distribution Plan

32. The distribution of humanitarian supplies shall be undertaken by the Government of Iraq in accordance with the provisions of paragraph 10 of Section 11 of the present Mandate. The Government of Iraq will keep the United Nations observation personnel informed about the implementation of the plan and the activities that the Government is undertaking.

33. The distribution of humanitarian supplies in the three northern Governorates of Mosul, Erbil and Sulaymaniyah shall be undertaken by the United Nations Inter-Agency Humanitarian Programme on behalf of the Government of Iraq under the Distribution Plan with due regard to the sovereignty and territorial integrity of Iraq in accordance with Annex 1.

Section VII

Observation of the equitable distribution of humanitarian supplies and determination of their adequacy

GENERAL PROVISIONS

34. The United Nations observation process will be conducted by United Nations personnel in Iraq under the overall authority of the Department of Humanitarian Affairs. The United Nations observation teams shall apply to the distribution of humanitarian supplies financed in accordance with the procedures set out in the resolution.

Other materials and supplies

41. With reference to materials and supplies which do not fall within the three areas indicated above, in particular those needed for the rehabilitation of infrastructure essential to east humanitarian needs, the Committee will focus on the following: (a) the identification of the materials and supplies which are needed in accordance with the distribution plan and that they are used for their intended purposes, and on the determination of whether these materials and supplies are adequate or necessary to meet essential needs of the Iraqi population.

COORDINATION AND COOPERATION

42. The United Nations observation activities will be coordinated by the Department of Humanitarian Affairs at United Nations Headquarters in New York. Observation will be undertaken by United Nations personnel, in concert with the Iraqi authorities, in order to ensure that the activities are carried out in accordance with the practical requirements. The Government of Iraq will be consulted in this regard.

43. The Iraqi authorities will provide to United Nations personnel the assistance required to facilitate the performance of their functions. United Nations personnel will coordinate with the Iraqi competent authorities.

44. In view of the importance of the functions which United Nations personnel will perform in accordance with the provisions of this Section of the Memorandum, such personnel shall have, in connection with the performance of their functions, the same freedom of movement, freedom of communication and freedom of access to the Iraqi authorities concerned, and the possibility to make such contacts as they find essential.

**SECTION VIII
PRIVILEGES AND IMMUNITIES**

45. In order to facilitate the successful implementation of the Resolution the following provisions concerning privileges and immunities shall apply:

(a) officials of the United Nations and of the Specialized Agencies performing functions in connection with the implementation of the Resolution shall enjoy the privileges and immunities applicable to them under Articles V and VII of the Convention on the Privileges and Immunities of the United Nations. The provisions of the Convention concerning the Privileges and Immunities of the Specialized Agencies to which Iraq is a party;

(b) independent inspection agents, technical experts and other specialists appointed by the Secretary-General of the United Nations or by heads of the specialized Agencies concerned and performing functions in connection with

the implementation of the Resolution, whose names will be communicated to the Government of Iraq, shall enjoy the same privileges and immunities as those provided to experts on mission for the United Nations or for the Specialized Agencies under Article VI of the Convention on the Privileges and Immunities of the United Nations or the relevant Annexes of the Convention on the Privileges and Immunities of the Specialized Agencies respectively;

(c) persons performing contractual services for the United Nations in connection with the implementation of the Resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities referred to in sub-paragraph (b) above concerning experts on missions appointed by the United Nations.

46. In addition, officials, experts and other personnel referred to in paragraph 45 above shall have the right of unimpeded entry and exit from Iraq and shall be issued visas by the Iraqi authorities promptly and free of charge.

47. It is further understood that the United Nations and its Specialized Agencies shall enjoy freedom of entry into and exit from Iraq without delay or restriction, and shall be permitted to transport their personnel, equipment and supplies, temporarily, import such equipment free of customs or other duties.

48. Any issue relating to privileges and immunities, including safety and protection of the United Nations and its Specialized Agencies, shall be governed by the provisions of this Section which shall be governed by paragraph 45 of the Resolution.

**SECTION IX
CONSULTATIONS**

49. The Secretariat of the United Nations and the Government of Iraq shall, if necessary, hold consultations on how to achieve the most effective implementation of the present Memorandum.

**SECTION X
FINAL CLAUSES**

50. The present Memorandum shall enter into force following signature, on the day when paragraphs 1 and 2 of the Resolution become operational and shall remain in force until the expiration of the 180 day period referred to in paragraph 3 of the Resolution.

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English
Page 13

1. Pending its entry into force, the Memorandum shall be given by the United Kingdom and the Government of Iraq provisional effect.

signed this 26th day of May 1986 at New York in two originals in English.

For the United Kingdom
(Signed) Hans CORNELIS
Ambassador Plenipotentiary
of the United Kingdom
to the Iraqi Council

Annex I

1. In order to ensure the effective implementation of paragraph 4 (b) of the Resolution, the following arrangements shall be made for the supply of the Iraqi population with the necessary food and medicine. These arrangements shall be implemented with due regard to the sovereignty and territorial integrity of Iraq, and to the principle of equitable distribution of humanitarian supplies throughout the country.

2. The United Nations Inter-Agency Humanitarian Programme shall collect and analyze pertinent information on humanitarian needs in the three northern Governorates. On the basis of this information, the United Nations shall coordinate with the Government of Iraq and subsequent incorporation in the distribution plan. In preparing estimates of food needs, the Programme will take into consideration all relevant circumstances, including the impact of the drought on the population and the need for rehabilitation in order to ensure equitable distribution. Specific rehabilitation needs in the three northern Governorates shall receive the necessary attention.

3. Within a week following the approval of the Distribution Plan by the Secretary-General, the Programme and the Government of Iraq will hold discussions to enable the Programme to determine how the procurement of humanitarian supplies for the three northern Governorates by undertakes most favourable terms. The bulk purchases by the Government of Iraq of standard food commodities and medicines may be the most cost-effective means of procurement. Other materials and supplies for essential civilian needs, especially agricultural equipment, shall be procured through the United Nations system in view of technical aspects related to their proper use.

4. To the extent that purchases and deliveries are made by the Government of Iraq, the amount of the United Nations Programme account for the amount corresponding to the cost of the delivered goods will be debited from the amount allocated to the Programme from the 'Iraq Account'.

5. Humanitarian supplies destined for distribution in the three northern Governorates shall be delivered by the Programme to warehouses located within Iraq or the Programme, such supplies can also be delivered by the Government of Iraq or the Programme, as appropriate, to warehouses in Iraq and Kuwait. The Programme shall ensure that the supplies are distributed in a timely and equitable manner, and shall ensure the prompt payment and administrative arrangements to enable the safe and quick transit of such supplies to the three northern Governorates.

6. The Programme shall be responsible in the three northern Governorates for the safe handling, transport, distribution and coordination of equitable distribution of humanitarian supplies. The Programme will keep the Government of Iraq informed on the implementation of distribution.

7. Whenever possible and cost-effective, the Programme shall use appropriate local distribution mechanisms which are comparable to those existing in the rest

/...

/...

of Iraq in order to effectively reach the population. Recipients under this arrangement will pay a fee for internal transportation, handling, and distribution as in the rest of the country. The programme shall ensure that the beneficiaries are not in need of supplementary food. The programme shall be self-sustainable and will help the Government of Iraq informed.

6. The Programme will observe that humanitarian supplies are used for their intended purposes and that the beneficiaries are not being diverted to the black market. The Programme will report to the Department of State and the United Nations Headquarters in New York and the Government of Iraq any violation observed by the Programme.

Annex II

1. The State concerned or, if the 661 Committee so decides, the national petroleum purchaser authorized by the 661 Committee, shall submit to the Committee for review and approval the application for purchase of petroleum products, domestic consumption, and purchase of Iraqi petroleum and petroleum products, (hereinafter referred to as "petroleum products") for the purpose of the programme authorized by the Government of Iraq of the Iraqi State Oil Marketing Organisation (hereinafter referred to as "OSMO") on behalf of the Government. Such authorization shall be given by sending a copy of the contract to the 661 Committee. The application shall include details of the purchase price to be paid to the "Iraq Account", and other necessary information required by the Committee. The sale of petroleum and petroleum products shall be covered by contractual documents. A copy of these documents shall be included in the information provided to the 661 Committee together with the application for forwarding to the relevant independent inspection agent in the following information: quantity and quality of petroleum and petroleum products, duration of contract, credit and payment terms and pricing mechanism. The pricing mechanism for petroleum should include the following points: market crude oil and type of concessions to be used, adjustments for transportation and quality, and pricing dates.

2. Irrevocable confirmed letters of credit will be opened by the oil purchaser's bank with the irrevocable undertaking that the proceeds of the letter of credit will be paid directly to the Iraq Account. The following clauses will have to be inserted in each letter of credit:

" Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be irrevocably paid into the 'Iraq Account' via Bank."

" All charges within Iraq are to be borne by the beneficiary's account, whereas all charges outside Iraq are to be borne by the purchaser."

3. All such letters of credit will have to be directed by the purchaser's bank to the bank named in the application with a copy of the letter of credit and forwards it to the Central Bank of Iraq for the purpose of advising OSMO.

4. The sale of petroleum and petroleum products originating in Iraq will be monitored by United Nations independent oil experts appointed by the Security Council. The oil will be carried out by independent inspection agents at the loading facilities at Ceyhan and Mina al-Bakr and, if the 661 Committee so decides, at the pipeline unloading station at the Iraq-Turkey border, and would include quality and quantity verifications. They would submit the findings after they have been approved, and report to the United Nations. The relevant contract has been approved, and report to the United Nations.

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English
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5. The United Nations will provide monthly reports from SOMO on the actual volume and type of petroleum products exported under the relevant sales contracts.

6. The United Nations Secretariat and SOMO shall maintain continuing contact and in particular United Nations oil experts shall meet routinely with SOMO representatives to review market conditions and oil sales.

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Letter dated 20 May 1984 from the Head of Delegation
of Iraq addressed to the Legal Counsel

In reference to the memorandum of understanding signed today and as I advised you during the discussion that a letter would be sent to you concerning the position of Iraq as to the cost of production and transportation of oil inside Iraq, I state below Iraq's position, which I request that you include in the official record of our discussion:

The Iraqi delegation explained during the discussion that the cost of production and transportation of petroleum including expenses in local currency, is currently estimated at US\$ 2.25 per barrel. Such cost had to be deducted from the price as proposed through the production and export of extra barrels of oil. The Iraqi delegation stated that the cost of production and transportation referred to above would be deposited in the Iraq account to be utilized for the import of spare parts and other items necessary for the maintenance and sustaining of production and transportation operations as is the established practice in the oil industry, otherwise production and transportation operations could be hindered and eventually come to a halt.

Nevertheless, and in order to facilitate the conclusion of this memorandum of understanding, the Iraqi delegation agreed not to insist on the acceptance of its position by the United Nations Secretariat delegation at this stage and to continue to discuss in a separate letter addressed to the Head of the Delegation of the United Nations Secretariat for consideration in any future discussion.

Although the matter is not discussed, the Iraqi delegation wishes to state that the route for Iraqi petroleum export could be via the Syrian Arab Republic.

(SIGNED) Ambassador A. Amir MUHAMMAD
Head of the Delegation of Iraq



M E M O R A N D U M

Date: May 4, 2003
To: Dominique Remy
From: Pierre Vignas
Copy: Lincoln Pylton

Re: Chronology of Oil For Food Program Banking Events

Please find attached here below a synopsis of events that were significant for BNP/BNP Parties:

- June 3, 1996 Request for Proposal of this date sent to BNP.
- June 7, 1996 BNP response to RFP sent to UN Treasury under competitive bidding procedure.
- June 18, 1996 Notification that BNP won the bid sent to Pierre Schneider by UN Controller.
- Sept. 12, 1996 Agreement For Banking Services (ABS) signed by UN and BNP after six weeks of negotiation. Valid until March 26, 1997. Along with BNP Paribas, Chase has managed the various accounts which represented 47% of the funds at that time (now it is 41%).
- Dec. 10, 1996 Phase I begins, first oil cargo loaded.
- Dec. 27, 1996 UN allows BNP to sell risk participations in confirmations of oil LCs opened by Turkish banks.
- Jan. 17, 1997 Amendment no. 1 to ABS signed changing authorized signatories.
- Feb. 14, 1997 First humanitarian LC issued by BNP.
- Several amendments to ABS and renewal of several phases in between.
- Dec. 12, 1999 Phase VII begins.
Examination to ABS signed by UN with validity until Sept. 27, 2000.
- During 2000 Diversification of funds at banks selected by UN begins (Deutsche Bank, HypoVereinsbank, BBVA, CA).
- June 9, 2000 Phase VIII begins.
- Sept. 27, 2000 Examination to ABS signed by UN with validity until March 26, 2001.

Nov. 13, 2000 Amendment no. 4 to ABS signed adding Euro Sub-Account and format of all LCs, now to be demonstrated in future.

Dec. 5, 2000 Phase IX begins.

Dec 19 2000 Letter from the Permanent Representative of Iraq to the UN Security Council relating some operational issues and insisting on a diversification of the banking activities

Jan 9, 2001 Letter from the Iraqi Ministry of Foreign Affairs to the UN General Secretary stating him about serious operational issues

Jan 18, 2001 Letter from the UN Under Secretary General to the Iraqi Minister of Foreign Affairs explaining the operational situation and suggesting to Iraq to deploy in NY a representative of CBI in order to resolve practical issues

Mar. 28, 2001 Extension to ABS signed by UN with validity until Sept. 24, 2001.

Mar. 30, 2001 Request for Proposal of the date sent to BNPP for diversification of letter of credit business and new pricing. Sent by Joseph Connor, Under-Secretary-General, Department of Management.

Apr. 27, 2001 RFP bid for diversification of letters of credit sent to UN with validity of June 30, 2001.

In between extensions of phase, amendment to our ABS, renewals of our bid under the RFP

Oct. 26, 2001 Letter received from UN Procurement Division rejecting all proposals and indicating that the UN would enter into negotiated agreements directly with each of the invited bidders, the pricing to be matched being in practice the one submitted by BNP Paribas in the 1st round (including BNPP's pricing was being the lowest one).

Nov. 16, 2001 RFPs-311 and RFPs-312 regarding diversification of oil and humanitarian letters of credit sent to BNPP. Sent by UN Procurement Division.

Nov. 28, 2001 RFPs bids sent to UN with validity of Jan. 31, 2002 (after clarification and re-adjustments by the UN of several points that were not properly addressed by the UN in its RFP).

Dec. 1, 2001 Phase XI begins.

Jan. 9, 2002 RFPs-330 for "best and final offer" regarding diversification of humanitarian LCs sent to BNPP by UN Procurement Division. It was stated that one of the intended recipients did not receive the solicitation RFPs-312.

Jan. 22, 2002 Response to RFPs-330 sent to UN with a validity of April 23, 2002.

Jan. 2002 BNP Paribas informed (unofficially) that several bidders short-listed for the 1st round have either decided not to bid finally or have been not retained by the UN after round 1 of 2.

Feb. 4, 2002 Letter from UN regarding RFPs-311, 312 and 330 indicating that the UN intends to enter into direct negotiations for award of contracts for both OH letters of credit and Humanitarian letters of Credit.

Feb. 2002 Several meetings between UN and CBI in Baghdad regarding the banking side of the Program, this leading to some changes decided by the UN as for the handling of document documents presented for payment, notably expired LCs

Feb. 25, 2002 Extension to ABS signed by UN with validity until Dec. 31, 2002.

May 2002 RUP Paribas informed by the UN that the all LCs will be split as an equal bank between 2 banks (BNPP and CBI) and that the UN will be doing follow-up between 4 banks (BNPP, CBI, DB and BVA) on an equal basis that had to be defined; all this was going to be implemented gradually by May and June 2002 subject to an agreement between the UN and the Iraqi Government on the practical implementation of the diversification

May 30, 2002 Phase XII begins.

October, 2002 Deutsche Bank had finalized the documentation in order to start the issuance of Humanitarian LCs with the upcoming start of Phase XIII : DB credit rating downgraded by Fitch IBCA and informed by the UN it could not issue LC as long as its "individual rating" would be C or below.

Dec. 5, 2002 Phase XIII begins.

Apr. 2, 2003 Extension to ABS signed by UN with validity until Dec. 31, 2003.

Apr. 4, 2003 Amendment no. 8 to ABS signed covering changes resulting from Resolution 1472 (and 1476), UN now assuming the role of the applicant, i.e. Iraqi buyers, for an interim period until June 3rd.

BHGA-002-0653
CONFIDENTIAL

BHGA-002-0652
CONFIDENTIAL

ECKP Americas
UN Oil For Food
April 7, 2004

**A Brief Report and Update on the Bank's Side
of the United Nations Oil For Food Program**

End of the Historical Involvement of the Bank in the United Nations Oil For Food Program

The UN Oil For Food Program was established by the UN in 1996. It was established out of the desire to alleviate the suffering of the Iraqi people arising from the sanctions that were imposed on Iraq immediately after Iraq's invasion of Kuwait. The Program permitted Iraq to sell oil but only so long as the proceeds were used to purchase humanitarian goods and services for the Iraqi people. The program was administered by the UN (through a subsidiary humanitarian goods and services trust fund). As the Program progressed, the list of authorized humanitarian goods was expanded to include other goods approved by the UN.

All oil revenues arising from the sale of Iraqi oil under the Program were to be deposited to a UN bank account to be established by the UN as an international bank. Of these revenues, 41% were to be used to purchase food, medicine and other humanitarian goods by the Iraqi Government under the control of the UN. The remaining 59% of the oil revenues was allocated to the UN Compensation Fund for damages from the First Gulf War (CFW), to agencies for the Northern Part of Iraq under the control of the UN, and to the UN Oil For Food Program. The UN Oil For Food Program was administered by the UN Secretary General through its specific "Subcommittee on the UN Oil For Food Program". In connection with the Program, BNP was selected in 1996 by the UN to hold the escrow account and issue or confirm the letters of credit related to the importation of goods under the CFP program through a competitive bidding process involving (on one knowledge) approximately 20 banks, five of them being then-listed on the basis of qualitative criteria (credit rating, international network, capacity in trade finance, etc) and pricing.

The UN opened an escrow account at BNP (and which the proceeds of the oil sales under the Program were deposited) and selected BNP to handle the documentary credit requirements of the Program. From the Program's inception, 41% of the oil proceeds were immediately transferred by the UN to the UN's account at JF-Hugobon-Cham, the remaining 59% balance was held at BNP to secure BNP's issuance of letters of credit in favor of the Program. At the end of the Program, a statement of the 59% oil sales needed as collateral was held (order to de-ventilate) one letter by BNP pending issuance of humanitarian letters of credit by BNP.

For the documentary part, the role of the selected bank was twofold: 1) confirm L/C's issued by the issuer of the L/C's and 2) issue humanitarian L/C's on behalf of the UN in favor of suppliers of goods to Iraq. BNP handled the first transaction in December 1996.

BHGA-002-0057
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3) Issues of Oil For Food on BNP's Side

All bills received by BNP Parcibas are commensally receivable and its remuneration is made by either the exporter of humanitarian supplies (15 top bill) or by the oil buyer (11 top bill). This is rather modest compared to normal commercial rates, considering the L/C's that are issued by the UN. The UN's involvement in the program was limited to the issuance of L/C's and the collection of the proceeds of the sale of Iraqi oil at the delivery point and the other documents of the L/C.

There is, in general, an enormous amount of work involved in issuing or confirming and negotiating L/C's under the Program. As an order of magnitude, the amount of work involved in issuing and confirming L/C's under the Program is estimated to be 10 times that of a normal commercial L/C. In the same vein, there were several significant additional issues that the bank had to deal with in the course of the program. The UN's involvement in the program was limited to the issuance of L/C's and the collection of the proceeds of the sale of Iraqi oil at the delivery point and the other documents of the L/C. The UN's involvement in the program was limited to the issuance of L/C's and the collection of the proceeds of the sale of Iraqi oil at the delivery point and the other documents of the L/C.

BNP Parcibas had originally obtained a "cash management" fee to the UN, but this has been waived when the same work required to bill the UN becomes more burdensome than the modest fee was actually worth. At the same time, the UN's treasury department is sophisticated and deals with multiple banks on a daily basis (see the foreign exchange rate that remains stable). BNP Parcibas is from a more global standpoint, BNP Parcibas is the worldwide leader bank in the oil business, its operations in the main metropolitan being significant. The CFP has certainly brought an additional expertise into the bank as well as more knowledge of the operations of the UN. The UN's involvement in the program was limited to the issuance of L/C's and the collection of the proceeds of the sale of Iraqi oil at the delivery point and the other documents of the L/C.

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As mentioned above, all transactions were governed by UCP 500 documentary rules but there were also some extra requirements:

- f) the price of the oil was established by the UN Sanctions Committee in NY after recommendation from UN Oil Movement that was issued in a formal approval,
- g) on the ground, the lifting of the oil was controlled by Seybold (an independent company) and known in the industry, which was approved by the UN, which had to issue a certificate of release of the oil.
- h) a set of documents (consentment by an exporter of goods for payment had to include two specific documents:
 - a letter from the UN Sanctions Committee approving the contract
 - a Confirmation of Arrival issued by the UN on the basis of an inspection report upon the oil being received at the port of destination by the independent company.

Finally, all decisions in terms of cash-management were made by the UN Treasury Department. From a US regulatory standpoint, all OGP transactions went screened through the Office for Foreign Assets Control (OFAC).

To summarize, the banking side of the OGP was isolated from the contract negotiation and UN Oil Movement and was fully controlled by the UN Treasury Department. Additional checks on the ground, if placed at its center the UN Treasury Department, which was the decision-maker overall and on a daily basis, this being in addition to, the usual US light regulatory context.

The consolidation of BNP Paribas NY

Up until 2000, the bank had dedicated some Front-Office and Back-Office resources to the OGP Program. With the consolidation of the OGP Program in 2000 (around mid-2000), the bank massively re-organized and increased in order to meet the challenge: new managers, additional staff (from 23 up to 90 in 12 months), and IT systems.

This allowed the bank to deliver a good quality of service to exporters and to the UN. In particular, the commitment of the bank was to guide, throughout of transactions, a central point for all players. Meanwhile the bank expanded their Customer Service Unit, up to 14 employees, in order to handle inquiries from exporters. This has been appreciated in the market.

Our relationship with the UN

Over the last seven years, under the OGP Program, BNP Paribas has overall enjoyed a relatively good relationship with the UN, its client. This was achieved in spite of the "construction of the Program" which at times left the bank in the arising among political and commercial players with divergent interests. In addition, the complexity of the UN organization has to be taken into account.

There were some frictions at times, notably in 2000 for various reasons. Since then, the relationship with the UN and its decision-makers has significantly improved, the UN appreciating the high level of service we have consistently delivered to them. And all this in a context of high volumes.

It must be noted that BNP Paribas has never been involved in the commercial discussions/negotiations between Iraqi counter-parties and buyers of oil or suppliers of goods. BNP Paribas was not aware of the terms of the humanitarian contract, the bank dealing exclusively with letters of credit, which remain an operating tool distinct and independent from the underlying commercial contract according to UCP 500 rules (which have been applied by the UN to the OGP Program).

In late 2000, when the Iraqi government agreed with the UN to switch from USD to EUR for the oil sales, it was also decided that the custody of the 50% escrow account funds (in excess of the amount needed to secure outstanding humanitarian letters of credit) should be diversified. Deutsche Bank, HypoVereinsbank, BBVA, and Credit Agricole have participated over time in the 50% side of this escrow account. The amount remained with Deutsche Bank until the end of 2001. After that, all BNP Paribas held over time, between 50% and 55% of the total funds managed by the UN under the Program.

In terms of cash-management, the bank has indeed been in competition with top players in the industry, the UN Treasury Department and the UN Oil Movement. The escrow account was managed by the UN Treasury Department on the escrow account has been managed by the UN in the OGP fund. Foreign Exchange transactions were also concluded at the discretion of the UN (the oil revenues were in EUR since the end of 2000), while a large portion of the OGP expenses were USD-based, BNP Paribas being one of the banks dealing FX with the UN.

Subsequently the UN Treasury Department launched a Request for Proposal early 2001 in order to diversify the documentary part of the Program. In April 2002, after three successive rounds of competition, four banks (CSEF, Deutsche, BBVA, and BNP Paribas) were finally selected for the documentary part of the OGP Program. BNP Paribas being best bidder and "virtually" retained for approximately half of the total operation. The UN has entered in re-entrance agreements with banks and for reasons unknown that we never implemented the second step of the re-entrance.

In short, under a competitive bidding process organized by the UN, BNP Paribas was selected by the UN in 1996 to handle the documentary transactions involving Iraq under OGP. During the Program, a large part of the OGP funds were held by other banks.

Which measures were implemented in order to control the Program?

As a general comment, all actions by BNP Paribas took place within a framework designed by the UN General Secretariat on behalf of the Security Council and formalized via the banking contract banking the UN and BNP Paribas.

In addition to the fact that the bank, as is usual in the trade business, was not party to the commercial negotiations between Iraq and its counter-parties, all the operations were tightly controlled by the UN organization, the OGP Program was tightly controlled on the banking side, indeed the lengthy and cumbersome banking process set up by the UN has been a constant complaint over time from traders and exporters from all over the world, the bank being under the spotlight due to the application of these rules designed by the UN.

In order to ensure and process any banking transaction—any oil L/C confirmation, any oil L/C negotiation, any issuance, amendment, or payment of any humanitarian L/C—BNP Paribas systematically required formal approval from the UN. Any other specific request from the Central Bank of Iraq was systematically submitted to the UN for instruction. In addition, the UN L/C's were not transferable and the possibility of assignments of proceeds was significantly restricted.



MEMORANDUM

Date: May 7, 2003
To:
From: Evi Milas Rusco
Copy:
Re: Chronology of Oil For Food Program Banking Events

Under the United Nations Office of the Iraq Programme website (www.un.org/daio/office/background/chron.htm) is a chronology of the Oil For Food Program Events. In addition to that chronology, below is a synopsis of events that were significant to BNP/BNP Parties.

- June 3, 1998 Request for Proposal of the date sent to BNP.
June 7, 1998 BNP response to RFP sent to UN Treasury under competitive bidding procedure.
June 11, 1998 UN award letter issued to BNP.
Sept. 12, 1998 Agreement For Banking Services signed by UN and BNP after 46 weeks of negotiation. Valid until March 28, 1999.
Dec. 10, 1998 Phase I begins, first oil cargo loaded.
Dec. 27, 1998 UN allows BNP to set the participations in confirmations of oil LCs opened by Turkish banks.
Jan. 14, 1999 UN allows BNP to set the participations in confirmations of oil LCs opened by Turkish banks.
Feb. 14, 1997 First humanitarian LC issued by BNP.
May 13, 1997 Amendment nos. 2 and 3 to ABS signed changing authorized signatories and oil LC pricing. (Signed by BNP July 28, 1997).
June 8, 1997 Phase II begins.
Aug. 26, 1997 Extension to ABS signed by UN with validity until March 28, 1998.
Dec. 5, 1997 Phase III begins.
Mar. 25, 1998 Extension to ABS signed by UN with validity until Sept. 26, 1998.
May 25, 1998 Extension to ABS signed by UN with validity until Sept. 26, 1998.
Nov. 26, 1998 Extension to ABS signed by UN with validity until March 28, 1999.
May 25, 1999 Extension to ABS signed by UN with validity until Sept. 27, 1999.
Sept. 23, 1999 Extension to ABS signed by UN with validity until March 27, 2000.
Dec. 12, 1999 Extension to ABS signed by UN with validity until March 27, 2000.
During 2000 Diversification of funds at banks selected by UN begins.
June 6, 2000 Phase VIII begins.
Sept. 27, 2000 Extension to ABS signed by UN with validity until March 28, 2001.
Nov. 13, 2000 Amendment no. 4 to ABS signed adding Euro Sub-Account and format of oil LCs, now to be

In the post-war context, in particular, given the sense of emergency and the involvement of many new players such as different UN agencies (UNICEF, UNDP, WHO, etc.) the role of the UN Treasury and the UN Bank has been particularly significant. The UN Treasury and the UN Bank have been particularly active in the post-war context, in particular, given the sense of emergency and the involvement of many new players such as different UN agencies (UNICEF, UNDP, WHO, etc.) the role of the UN Treasury and the UN Bank has been particularly significant.

P. A. challenging the overall good relationship with the UN.

Current situation of the Oil For Food Program and its immediate evolution

The Oil For Food Program was officially terminated on November 31, 2003. Through the deadline has passed, the UN Bank has continued to operate under the joint control of the UN and the Condition Provisional Authority (CPA). As far as the bank is concerned, it has continued to issue and amend humanitarian Letters of Credit related to priority concerns related by the 14-point group consisting of the UN, the CPA and the seven Iraq ministries in order to meet the urgent needs of the Iraqi population. On the other side, the activity on the oil export side cannot start until the end of April.

Currently and until those LCs are fully drawn, the exposure will continue to slip aside to Iraq in order to ensure those "priority" humanitarian LCs on the books, \$4.5Bn. of those \$6Bn. existing between now and the end of this year. The bulk of the current LCs are issued in the amount of 2000 (US \$) and the current bank account is 30 staff (vs. 50 prior to the war).

Recent Fed requests for information

The New York Fed has recently requested specific information relating to the Oil For Food Program and we are in the process of complying with those requests.

In conclusion, BNP Paribas has brought a positive and decisive contribution to the banking of the Oil For Food Program. Our clients, to meet its challenges over the past seven years, particularly in the difficult post-war context of this year. We are now at a crossroads in light of the (below) winding-down of the Program and its coming handover to the political power in Iraq.

FERRY VETTER

- Dec. 6, 2000 denominated in Euros.
- Dec. 26, 2001 Phase IX begins.
- Mar. 26, 2001 Extension to ABS signed by UN with validity until Sept. 24, 2001.
- Mar. 30, 2001 Request for Proposal of this date sent to BNPP for diversification of letter of credit business and new RFP bid sent by Joseph Connor, Under-Secretary-General, Department of Management.
- Apr. 27, 2001 Extension of RFP bid sent to UN with validity of July 31, 2001.
- June 28, 2001 Extension of RFP bid sent to UN with validity of July 31, 2001.
- July 4, 2001 Phase X begins.
- July 31, 2001 Extension of RFP bid sent to UN with validity of August 31, 2001.
- Aug. 24, 2001 Extension of RFP bid sent to UN with validity of Sept. 30, 2001.
- Sept. 24, 2001 Extension of RFP bid sent to UN with validity of Oct. 31, 2001.
- Oct. 26, 2001 Extension to RFP bid sent to UN with validity of Nov. 30, 2001.
- Nov. 16, 2001 Letter received from UN Procurement Division rejecting all proposals and indicating that the UN would enter into negotiated agreements directly with each of the invited bidders.
- Nov. 29, 2001 RFPs-S11 and RFPs-S12 regarding diversification of oil and humanitarian letters of credit sent to BNPP.
- Dec. 1, 2001 RFPs-S11 and RFPs-S12 sent to UN Procurement Division.
- Dec. 1, 2002 RFPs bid sent to UN with validity of Jan. 31, 2002.
- Dec. 9, 2002 RFPs-S30 for "test and final offer" regarding diversification of humanitarian L/Cs sent to BNPP by UN Procurement Division. It was stated that one of the invited recipients did not receive the letter.
- Jan. 22, 2002 Response to RFPs-S30 sent to UN with a validity of April 23, 2002.
- Feb. 9, 2002 Letter from UN regarding RFPs-S11, S12 and S30 indicating that the UN intends to enter into direct negotiations for award of contracts for both Oil letters of credit and Humanitarian letters of credit.
- Feb. 25, 2002 Separately, ABS signed by UN with validity until Dec. 31, 2002.
- May 30, 2002 Phase XII begins.
- Dec. 5, 2002 Extension to ABS signed by UN with validity until Dec. 31, 2003.
- Apr. 2, 2002 Amendment no. 3 to ABS signed covering changes resulting from Resolution 1472, UN now assuming the role of final bidder for an 18-month period.
- Apr. 4, 2003

BHCA-002-0065
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STATUS

In light of recent anti-French sentiment arising from the Iraq situation and an underlying and misleading NSIC story on RNP Purchases and its role in the UN Oil for Food Program, we have prepared the following statements which may be used for employee inquiries and conversations with concerned clients.

Anti-French sentiment

- RNP Purchases employ over 10,000 people in the U.S.
- RNP Purchases provides a broad range of financial products and services to a significant number of US corporations, including some of the largest US corporations. By doing so, RNP Purchases provides financing and other support to the US economy.
- RNP Purchases is a publicly traded company operating in the private sector whose shareholders reside in locations across the globe.

UN Oil For Food Program

- The United Nations Oil for Food Program is an established humanitarian aid program for the Iraq people created by the unanimous action of the UN Security Council, and thus specifically endorsed by the United States, one of the five permanent members.
- RNP Purchases was chosen by the UN to provide banking services for the Oil for Food Program through a competitive bidding process. There are several other banks involved in the Program.
- RNP Purchases' participation in the United Nations Oil for Food Program was authorized by the US Government. (It added - through the US Department of Treasury Office of Foreign Assets Control - OFAC).
- The United Nations approves and conditions any and all purchases made for humanitarian aid for the people of Iraq under the Oil for Food Program.
- If values - RNP Purchases' role is limited to providing financial services to its client, the United Nations has no role in the selection, approval or distribution of the products or goods that are delivered to Iraq under the Program.
- Today (2/20/03), the US has reiterated its endorsement of the UN Oil for Food Program as a means to provide humanitarian relief to the Iraqi people.
- For further information on the UN Oil For Food Program, please visit the UN's website at: <http://www.un.org/Depts/dp/food/round/food-sheet.html>

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Mr. SHAYS. Mr. Boks.

Mr. BOKS. Mr. Chairman and distinguished members of the subcommittee, my name is Peter Boks. I am an executive of Saybolt International which is headquartered in The Netherlands, just outside of Rotterdam. Thank you for inviting me to discuss with the subcommittee today the role of Saybolt International in the administration of the United Nations Oil-for-Food Program. Having submitted a more complete statement for the record, I will discuss my brief oral remarks on our principal responsibilities; namely, the monitoring of oil exports under the Oil-for-Food Program.

Mr. Chairman, please bear with me that English is not my native language. So excuse me if things are unclear.

Mr. SHAYS. Let me assure you that we hear you very well, and we appreciate you are speaking in English.

Mr. BOKS. Thank you. Saybolt won its contract with the United Nations in 1996 through a competitive bid process. Under that contract and multiple extensions, Saybolt deployed teams of inspectors selected on the basis of their prior experience in the industry. Oil inspectors were screened by Saybolt, approved by the United Nations, trained and briefed for this assignment and required to certify compliance with Saybolt's code of conduct.

Under its contract with the United Nations, Saybolt's responsibility was to monitor the quality and quantity of oil exports from the two authorized Oil-for-Food export points, the offshore platform in Al-Bakr and the port of Ceyhan in Turkey, along with the remote monitoring station on the Iraq-Turkey pipeline near Zakho, close to the northern border with Turkey.

The monitoring procedures follow: First, the United Nations oil overseers would review and approve contracts and letters of credit negotiated between the Iraqi oil company SOMO and the buyers of Iraqi oil. Coordinating through a common data base shared by Saybolt and the United Nations, Saybolt would monitor the quantity and quality of oil, pursuant to the approved contracts at the two authorized export points and report confirming figures to the United Nations.

Also important were the limits of Saybolt's responsibilities. Saybolt had no responsibility, for example, with respect to the underlying contracts which were negotiated directly between the seller and buyer and reviewed by the United Nations. Saybolt had no control over the moneys that were involved in the underlying transactions—that was a matter for the sellers, buyers, and the United Nations—nor did Saybolt itself buy or sell Iraqi oil.

Finally, from time to time, we reported irregularities that we observed to the United Nations or the Multilateral Interception Force. Saybolt had no responsibility for monitoring oil exports from any locations other than the three locations specified in its contract. In performing their responsibilities, Saybolt inspectors typically operated in remote locations in inhospitable work environments. Some days, for example, the isolated Mina Al-Bakr platform was without electricity or water and sometimes during heat that exceeded 110 degrees. U.N. audits and reports confirmed the harsh working conditions and risk to personal safety. The entire program was also characterized by highly charged, political interests and sensitivities.

The simultaneous operation of the humanitarian Oil-for-Food Program and a comprehensive U.N.-imposed sanctions regime created a variety of practical and logistical complications affecting everything from obtaining visas to paying for basic necessities.

The job of monitoring authorized oil exports was also made more challenging by the poor state of the oil industry infrastructure and the deficiencies in equipment and technology in Iraq. Even before the program began, Saybolt informed the United Nations of problems with the metering equipment at each of the three sites. At Mina Al-Bakr, the Iraqi failure to install, repair, or calibrate metering equipment meant there were no counterpart measurements to cross-check against ship measurements at the point of loading on the Mina Al-Bakr platform.

In the absence of calibrated metering equipment, Saybolt used the best alternative techniques accepted and widely used in the industry. Specifically, in the absence of metering, inspectors relied on calibration charts, vessel experience factors, and shipboard measurements to determine the quantity of oil loaded onto vessels, a methodology that the United Nations expressly accepted.

Monitoring loadings without access to reliable meters is accepted industry practice but is less accurate than metering at loading points. Although falsification of calibration charts and VEF data is rarely an issue, the possibility exists. To avoid such a problem, Saybolt originally recommended that the volume of oil be measured at the foreign point offloadings, as well as at the loading points of Mina Al-Bakr and Ceyhan. For whatever reasons, his recommendation was not adopted.

In January 1999 following discussions with the United Nations, Saybolt began requiring that each master sign a statement certifying the accuracy of the records provided to Saybolt. The United Nations was informed of this procedure and supported its recommendation. Over 7 years, Saybolt inspectors monitored more than 2,600 loadings involving a total of approximately 3.4 billion barrels of crude oil. Over that period of time, very few irregularities occurred. Two instances of loading excess quantities of oil, the unauthorized topping off, occurred in 2001, both involving the same vessel, the same vessel charter. Saybolt promptly investigated these incidents, made written and personal reports to the United Nations, and put in place additional safeguards to prevent any similar abuses in the future. Thereafter, Saybolt encountered no recurrences of the incidents experienced in 2001.

Looking back on the program and the variety of challenges it faced, we can now identify the ways that the monitoring of oil exports under the Oil-for-Food Program might have been strengthened. These include requiring accurate metering equipment, the continued presence of at least one U.N. official at each loading location, incorporating from the outset various safeguards that Saybolt developed during the course of the program, and monitoring mechanisms for detecting unauthorized exports from other than the two U.N.-approved export points. More broadly, it now appears in hindsight that the ability for Iraq to contract directly with buyers of oil and sellers of goods introduced a significant opportunity for abuse. And to the extent that the member states of the United Nations disregarded or systematically violated the U.N. embargo against

Iraq, that conduct obviously undercut fundamentally the objectives of the Oil-for-Food Program which was conceived to be an exception to the embargo.

Saybolt and its professionals performed a difficult job under very difficult circumstances in Iraq. While not without blemishes, the monitoring of oil was done professionally over an extended period of time. I am happy to discuss that project with you today and to help extract from their experience any lessons which may be of value in conducting humanitarian programs in the future.

Mr. SHAYS. Thank you, Mr. Boks.

[The prepared statement of Mr. Boks follows:]

Testimony of Peter W. G. ~~Smith~~, Managing Director, Saybolt International B.V.
Before the House Committee on Government Reform Subcommittee on National Security,
Emerging Threats, and International Relations
October 5, 2004

Mr. Chairman, distinguished members of the Subcommittee,

Thank you for inviting me to speak before the Subcommittee today on the role of Saybolt International B.V. ("Saybolt") in the administration of the United Nations Oil-for-Food Program ("the Program") that operated in Iraq between 1996 and 2003. As a senior executive and manager of Saybolt, now and during that time, I am familiar with our role in the Program, which included monitoring the export of oil from specified locations in Iraq and, to a lesser extent, monitoring spare parts and equipment imported into Iraq for use in the oil industry. In addition, Saybolt coordinated studies that oil industry experts conducted on Iraqi oil production and infrastructure.

I will focus my remarks on the areas that your invitation asked me to address. The first area is Saybolt's contracts with the United Nations. I will discuss how Saybolt won the contracts, the scope of the contracts, and how they compare with other contracts into which Saybolt typically enters. The second area is the legal, ethical, and due diligence procedures that Saybolt followed. The third area is the challenges that Saybolt faced in carrying out contractual obligations. I will discuss those challenges, and how both Saybolt and the United Nations addressed them. Finally, I will discuss what steps could have been taken, in my opinion, to make the Program as a whole more effective at preventing manipulation by the Iraqi government.

I. BACKGROUND ON SAYBOLT'S CONTRACTS WITH THE UNITED NATIONS

How Saybolt Won the Oil-for-Food Contract

Saybolt was selected as the independent oil inspection agent of the United Nations through a competitive bid process that was initiated by a request-for-proposal ("RFP"). The sixth paragraph of U.N. Security Council Resolution 986 (1995) directed the U.N. Secretary General to appoint agents to assist the Committee established by U.N. Security Council Resolution 661 (the "661 Committee") with the task of monitoring the quantity and quality of exports of Iraqi oil under the U.N. Oil-for-Food Program. Pursuant to that authority, on June 11, 1996, the Commodity Procurement Section of the U.N. Procurement and Transportation Division issued a RFP, which included a request for provision of independent oil inspection agents.

We viewed the U.N. RFP as a good business opportunity to apply our almost 100 years of experience in inspection and analytical testing of petroleum products to a prestigious international project. We were also pleased that we would be contributing our know-how to a major program designed to serve the urgent humanitarian needs of the Iraqi people. Accordingly, on June 17, 1996, we submitted our Proposal to provide oil export inspection services. After some discussion of our proposal and a preliminary fact-finding mission, on November 29, 1996, Saybolt and the United Nations entered into a contract (the "First Contract" or "1996 Contract") with an initial term of six months, subject to extensions of six-months each, at the sole discretion of the United Nations.

After the First Contract was extended for a total of slightly more than three years, another RFP process was initiated. In that process, we submitted our Proposal on February 11, 2000, and on May 29, 2000, the United Nations formally accepted that proposal and entered into a new contract with Saybolt that governed Phases VII through XIII of the Program (the "Second Contract" or "2000 Contract").

Unique Features of the Oil-for-Food Contract

The contract under which Saybolt provided inspection services to the United Nations was in many respects a standard commercial contract, with a few notable differences.

First, our role was substantially different than the role we play in most of our commercial contracts. It is standard industry practice, and common practice for Saybolt, to be retained jointly by both buyers and sellers of oil. In this instance, however, we acted as independent inspectors verifying the quantity and quality of oil on behalf of a third party. Though we acted as monitors for the United Nations, I should point out that we were never involved in the transfers of funds related to oil purchased in the Program.

Second, there were significantly more third parties that had institutional or political interests or sensitivities in the performance of our contract with the United Nations than we encounter in other transactions. We were monitored and reviewed by the U.N. Security Council, other organs of the United Nations, and U.N. member states, most notably Iraq. As a result, the professionalism of our inspectors was particularly important to the performance of our duties.

Third, the negotiation process for this contract was different than what we encounter in other contexts. Saybolt typically negotiates the specific terms of contracts with clients. However, in this instance, the terms of the contract were dictated by the United Nations. Because of the importance of the project and our desire to ease the humanitarian crisis in Iraq, we were willing to agree to the terms specified by the U.N.

The Role of Saybolt in the Oil-for-Food Program

Saybolt performed two functions in the Program. First, Saybolt acted as a monitor. This monitoring role initially applied only to exports of crude oil from two export points authorized under the Program. Our monitoring responsibilities were later extended to include monitoring of imports of oil industry spare parts. Second, Saybolt coordinated three studies of the Iraqi oil industry by a group of experts called for under resolutions of the U.N. Security Council. Saybolt carried out each of these activities pursuant to contracts with the United Nations.

Saybolt was responsible for monitoring the quantity and quality of Iraqi crude oil loaded onto vessels from the Mina Al-Bakr offshore terminal in southern Iraq and from the port of Ceyhan in Turkey. These two locations were the only locations where Saybolt was asked to monitor the export of Iraqi oil to buyers, and they were the only authorized ports for export of oil under the Program. Saybolt was also responsible for monitoring the flow of oil near Zakho, along the Iraq-Turkey pipeline by which Iraqi oil was delivered to the Ceyhan port. Saybolt

began monitoring in 1996, after it received a Request to Commence Mobilization from the United Nations dated November 29, 1996.

Almost a year-and-a-half after Saybolt began monitoring oil exports from these locations, the United Nations awarded Saybolt a contract for additional inspection work related to the Program. Saybolt was asked to submit a proposal to monitor the storage, delivery, and utilization of spare parts that Iraq began to import for the purpose of maintaining and developing the Iraqi oil industry. Saybolt's proposal was accepted in a June 1998 amendment to the First Contract.

Beginning in 1998, Saybolt also coordinated the preparation of expert reports on the Iraqi oil industry called for by U.N. Security Council resolutions. The United Nations hired Saybolt to coordinate a study by a group of experts under U.N. Security Council Resolution 1153 (1998). The purpose of this study was to assess Iraqi oil production and transportation capacity, and necessary monitoring. In 2000, Saybolt was hired to coordinate another group of experts study, as called for under U.N. Security Council Resolution 1284 (1999). The purpose of this study was to review plans to import spare parts and equipment for the Iraqi oil industry, and their possible impact on production of Iraqi oil. In 2001, Saybolt was hired a third time to coordinate a study of the Iraqi oil industry by a group of experts under U.N. Security Council Resolution 1330 (2000). The purpose of this study was to evaluate in further detail proposed expenditures on equipment and spare parts for the Iraqi oil industry.

In 2003, following the overthrow of Saddam Hussein, the oil monitoring program ended. At that point, Saybolt had acted as the United Nations monitor for almost seven years, and had monitored more than 2600 loadings totaling approximately 3.4 billion barrels of oil over the life of the Program. As the program was being dismantled, the Second Contract was partially suspended on April 17, 2003, and was formally terminated by the United Nations on June 4, 2003.

II. DUE DILIGENCE PROCEDURES FOLLOWED BY SAYBOLT

Saybolt instituted several procedures to ensure fulfillment of our contract with the United Nations. These include the screening of inspectors, the sharing of information in real time with the United Nations, and ongoing internal monitoring of Saybolt operations in Iraq.

Employee Screening and Training

Saybolt inspectors were experienced in monitoring, and they received training designed to assist them in carrying out their duties as inspectors for the United Nations. As required by contract, individuals nominated to work as inspectors for Saybolt were approved by the United Nations. The United Nations reviewed their credentials. Before being deployed, the inspectors received extensive briefings in Rotterdam. They received comprehensive materials detailing their responsibilities. In addition, each member of Saybolt's team in the Program was required to certify that he had read and understood Saybolt's code of conduct.

Databases to Share Information with United Nations

Throughout the Program, Saybolt, like the United Nations, utilized a commercially-available electronic online database to ensure that each vessel loading was supported by a contract and a letter of credit that were approved by the Oil Overseers of the United Nations. Through this database, we provided information to the United Nations regarding each loading on a real-time basis.

On-site Monitoring by Saybolt Management

Our office in Rotterdam communicated directly with the team members stationed in Iraq and Turkey, as well as with the United Nations, on a daily basis. Through the database, our office in Rotterdam could ensure that actions taken in the field conformed to the terms of the contracts and letters of credit approved by the U.N. Overseers. There was an overall project coordinator located in our office in Rotterdam who carefully reviewed each contract and letter of credit approved by the U.N., and he instructed the inspectors as to which loadings were authorized and for what amount.

On several occasions, the Saybolt contract administrator in Rotterdam made visits to Iraq to coordinate and monitor the inspection activities. He made visits to the Ceyhan operation and later, as the Team Leader on three projects in 1998, 2000, and 2001, visited all Saybolt operations in Iraq. As the volume of oil export operations increased, and Saybolt began monitoring imports of spare parts, Saybolt also appointed a country manager, based in Baghdad, to oversee both the oil and spare parts monitoring operations. This manager routinely visited Saybolt operations at Zakho in the north of Iraq and the Saybolt operations at Mina Al-Bakr.

III. ADDRESSING CHALLENGES SAYBOLT FACED IN IRAQ*Facing Operational Difficulties Within Iraq*

In performing their duties, Saybolt inspectors were often subjected to personal risks. Nearby military operations and violent attacks were not uncommon. As we have all seen in news reports from that time, Iraq did not always welcome the United Nations or its contractors. Iraq initially resisted the very idea of an Oil-for-Food Program. This political friction between Iraq and the outside world made our task especially delicate, because we were associated with the United Nations in the eyes of Iraqis. Coping with these physically and mentally challenging working conditions required courage and professionalism on the part of inspectors.

Difficult living conditions in Iraq often made performing daily tasks quite a challenge. The state of the Iraqi infrastructure was far worse than even we expected from our preliminary fact-finding missions. At the isolated, remote locations where our inspectors carried out their mission, it was often difficult to achieve the basic necessities -- food, electricity, water, transportation, and housing. Telecommunications equipment was primitive. Some days, we had neither electricity nor water at the Mina Al-Bakr terminal. The harsh conditions in Iraq were noted in the reports to the United Nations and were confirmed by a United Nations Iraq-Kuwait Observation Mission ("UNIKOM") safety audit of the Mina Al-Bakr operations in April 1999. On some occasions, our inspectors at Mina Al-Bakr were stranded at the terminal without

electricity and without water. Mina Al-Bakr also had frequent air conditioning outages, leaving inspectors exposed to heat that sometimes reached 130 degrees for long periods at a time. Because of the high cost of placing telephone calls from Iraq, communications between our inspectors and their families were limited.

On the subject of difficulties we encountered in Iraq, I should note that we also struggled to arrange reliable, affordable transportation to and from the Mina Al-Bakr terminal, as we were dependent on aged transportation vessels to go to and from that terminal. Standard tasks became complex because we were operating in an environment subject to multilateral sanctions. It was not a simple process to obtain travel visas for our personnel going into Iraq, to clear our equipment through customs without unreasonable delay, to provide transportation within Iraq, or to arrange the means for our employees to pay for their basic living expenses while in Iraq.

Development of Method to Calculate Loading Quantities In Absence of Reliable Meters

The poor state of the Iraqi infrastructure not only impacted our employees, but it impacted our monitoring methods. As explained above, Saybolt's principal responsibility was to monitor the quality and quantity of oil loaded onto vessels at Mina Al-Bakr and Ceyhan. From the very beginning of the Program, Saybolt encountered difficulties in persuading the Iraqis to install and repair metering equipment at the Ceyhan and Mina Al-Bakr sites. When we arrived in Iraq, neither location had metering equipment calibrated to accurately measure how much oil was loaded onto the vessels. We informed the United Nations of this problem even before the Program began through our preliminary fact-finding report.

In the absence of metering equipment, Saybolt applied the best alternative method. This method, which is commonly used within the industry, used the capacity and calibration charts of the vessel in order to determine how much oil was loaded into the vessel. To determine how much oil was loaded onto a vessel, a Saybolt inspector would, prior to loading, measure the on-board quantity ("OBQ") of the vessel. Then, after loading, Saybolt would measure the ullage (the amount by which the vessel tank falls short of being full) and the temperature of the oil. Saybolt inspectors compared this data with the calibration tables to determine how much oil had been loaded onto the vessel.

The vessel calibration charts, however, sometimes were not accurate. For example, if a vessel hull had been scraped and dented inwards, the overall capacity of the vessel would be reduced. Repairs to the vessel could likewise change the overall capacity of the vessel. In addition, vessels sometimes accumulate residue from previous loadings, which changes the capacity of the vessel. Each vessel keeps a record of the variances from its calibration tables, when compared with the volume measured when the oil was offloaded. This record becomes the "vessel experience factor" ("VEF"). The VEF for a vessel is based on the average comparison between ship measurement and shore measurement for the last 10 voyages. The use of a vessel calibration chart and the VEF is an internationally recognized method for determining the quantity of oil loaded onto a vessel in the absence of calibrated shore tanks and/or meters. We followed the procedures set forth by the American Petroleum Institute and the Institute of Petroleum.

A weakness in using the calibration tables and the VEF of a vessel is that inspectors must rely on the records provided by the master of each vessel. Such records could possibly be manipulated without the knowledge of the inspectors.

At Ceyhan, any significant manipulation of the system was detectable because of the ability to compare the shore-tank measurement with the amount of oil reportedly loaded onto the vessel. Although the shore-tank measurements were not sufficiently accurate to be used as the primary means of measurement, they were a cross-check making it possible to uncover major inaccuracies.

At Mina Al-Bakr, the infrastructure deficiencies made it more difficult to detect manipulation. Shore tank measurements were not available. The shore tanks were severely damaged during the Iran-Iraq War, and then further damaged during the first Gulf War. The shore tanks that existed were not re-calibrated. The metering system at the loading site was not repaired sufficiently to ensure accurate measurements. Therefore, the inspectors were necessarily dependent upon the calibration tables and VEF data provided by vessel masters.

Saybolt attempted to address this problem in several ways. When the contract with the United Nations was first negotiated, Saybolt recommended that the volume of oil loaded onto vessels be measured with reference to the volume of oil measured at the port of discharge in addition to the loading port. This suggestion was not implemented. In addition, at the outset of the Program, Saybolt requested that the metering facilities at Ceyhan and Mina Al-Bakr be repaired and recalibrated. However, the meters, which were owned by the Iraqis, were not recalibrated. The contract between the United Nations and Saybolt specified the method of using the VEF of the vessel in order to determine the measurements, which, as noted, is the industry standard for measuring loadings of oil in the absence of calibrated metering equipment and/or shore tanks.

In January 1999, following discussion with the United Nations, Saybolt instituted a procedure to attempt to address the potential inaccuracy of the VEF based measurement system. The master of each vessel was required to sign a statement certifying the accuracy of the records provided to Saybolt. The United Nations was informed of this procedure and supported its implementation.

Adapting Inspection Procedure to Enhance Ability to Detect Topping Off

As noted above, the absence of meters was one of the most significant challenges Saybolt faced during the Program, inhibiting our ability to detect measurement discrepancies or unauthorized loadings at those locations. Despite our close monitoring of oil exports at Mina Al-Bakr, in early October 2001, we learned that the captain of the vessel Essex had alerted the U.N. and U.S. authorities that there had been two incidents of unauthorized "topping off" of the Essex at the Mina Al-Bakr terminal after Saybolt inspectors had completed their inspections of the Essex. Documents subsequently provided to Saybolt by the United Nations and others indicate that in May and August 2001, the State Oil Marketing Organization of Iraq ("SOMO") arranged to load on board the Essex vessel additional amounts of oil above and beyond that which was

approved by the SOMO contract with Ibex Energy France, the buyer of the oil loaded onto the Essex.

Saybolt immediately undertook an internal investigation to learn what happened and why, and it cooperated fully with other investigations of these incidents, providing extensive documentation to investigators. I headed our internal investigation. With respect to both incidents, we conducted extensive interviews of our staff, including our Team Leader on the Mina Al-Bakr platform, and reviewed all available documentation. Our investigation found no evidence that any of our employees were aware of the additional unauthorized loadings prior to the report by the Essex captain. We detailed our findings and the bases for our conclusions in a report that I personally presented in mid-October 2001 to the U.N. 661 Committee. That report is included in the documents previously provided to this Subcommittee. Our investigation of these incidents also attempted to determine whether there might have been incidents of topping off in addition to the two reported by the Essex captain. For all of the reasons detailed in our report, we concluded that it was extremely unlikely that this occurred.

Immediately after learning of the Essex captain's report, Saybolt put in place additional procedures to minimize the likelihood that such incidents could recur. As an interim measure, I instructed all team members at Mina Al-Bakr to remain on board vessels until they left port to ensure that there were no additional loadings. After further review, we put in place a procedure under which Saybolt employees sealed the valves on the vessel after loading was complete whenever the vessel did not leave the port immediately after loading for whatever reason. The seals contained numbers, which we noted. Before the vessel left the port, we returned to the vessel to inspect that the seal was still in place and that it was the same seal number. We are unaware of any topping off incidents that happened after we instituted these additional procedures.

Staffing for Spare Parts Monitoring

We also faced significant challenges in implementing our monitoring role in the spare parts side of the Program. Saybolt's contract with the United Nations authorized the employment of six monitors in the country who worked to verify the arrival and end-use of the spare parts that were purchased. Given the number of spare parts imported into Iraq under the Program, and the distance between locations to be monitored, it was impossible to closely monitor all spare parts at all locations. We communicated to the U.N. that we were not able to physically inspect all spare parts that arrived, and we informed them that additional staff would be required in order to be able to monitor the end-uses of the parts effectively. We also requested that our monitors be stationed throughout the country. However, the Iraqi government insisted that the monitors be stationed only in Baghdad, and the U.N. relented to this pressure.

IV. HOW THE PROGRAM COULD HAVE BEEN CONSTRUCTED DIFFERENTLY

Your invitation to testify today asked for our insights as to how the Program might have been constructed to better prevent Iraqi manipulation. I understand that others far more expert than I in the structuring of multilateral sanctions regimes have testified before you on this very point. Please allow me to preface my response by explaining that Saybolt is in the oil inspection business, and not the business of second-guessing the architects of the Oil-for-Food Program.

From first-hand experience, I know how complex and tumultuous the environment was in Iraq, and I can assure you that we collaborated with the United Nations, the U.S.-led Multilateral Interception Force ("MIF"), and Iraqi authorities to implement the best possible monitoring system, given the state of the infrastructure we encountered in Iraq. Nonetheless, in the spirit of joining a good faith dialogue, and with the benefit of hindsight, I can offer a few suggestions.

First, obtaining commitments to repair the necessary infrastructure could have strengthened the program. At various times during the Program, problems with the metering systems at Mina Al-Bakr, Zakho, and Ceyhan were brought to the attention of Iraqi authorities. Yet the meters were never brought into working condition. I do not know whether this is because Iraq was not permitted to import the necessary spare parts, or because Iraq was not forced to make the repairs as a condition of participating in the Program. Had these meters become functional and reliably accurate, our monitoring process would have been much less cumbersome and complex, and incidents such as the two 2001 Essex additional loadings could have been more easily detected.

Second, any attempt to monitor unauthorized exports of oil would have necessitated having monitors at other than the three export points authorized under the Program. As you know, Security Council Resolution 986 refers only to monitoring of oil exports through the Mina Al-Bakr terminal and the Iraq-Turkey pipeline. These were the only locations at which Saybolt was contracted to monitor oil exports. From prior testimony before this Subcommittee, we have heard reports of smuggling by roadways into Turkey, other offshore terminals in Iraq, or other cross-border pipelines. Had the scope of the monitoring mandate from the Security Council been broader, the United Nations and its inspection agents could have set up inspection checkpoints to detect illicit oil exports from these other locations.

Third, I think some U.N. official presence at the loading locations may have enhanced the likelihood of compliance with the Program. Saybolt is not a security organization and, in any event, represented a small fraction of those present at authorized export points. For example, at Mina Al-Bakr, there were some 80 Iraqis on the platform, and only a handful of Saybolt inspectors. Our role was as a monitor. When ships were loaded, our duty was to give the United Nations our best calculation as to how much oil was loaded onto the ship. When something went wrong, our duty was to tell the United Nations. Thus, rather than searching for smuggling, our role was to inform the United Nations of quantities leaving Iraq at the designated monitoring sites.

Thank you for your important work, and for the opportunity to address you today.

Subcommittee on National Security, Emerging Threats,
and International Relations,
Committee on Government Reform

Tuesday, October 5, 2004, 11:00 a.m.

Saybolt B.V. Documents



FAX

TO: UNITED NATIONS, NEW YORK
FAO: THE OVERSEERS
UNITED NATIONS, NEW YORK
FAO: MR BENON SEVAN

FROM: Graham Brett
Director
011-462218
011-462218

DATE: 29th May 1998

COPIES: MR P BOKS

REFERENCE: RESOLUTION 986 - "OIL FOR FOOD"
SUMMARY REPORTS:-

IV "Eco Africa" at Ceyhan
IV "Kraak" at Mina al-Bahr

TOTAL PAGES: 4 (three)

Please find attached our Summary Report covering the following loading:-

- 1) IV "Eco Africa" which completed loading at Ceyhan at 07:48 hrs 29/05/98 for the account of Tridigra and Tansoff. The overall quantity loaded was paper split by SOMO into two Bills of lading as follows:-
- 2) IV "Kraak" which completed loading at Mina al-Bahr at 08:55 hrs 29/05/98 for the account of Tridigra and Tansoff. The overall quantity loaded was paper split by SOMO into two Bills of lading as follows:-

	Tridigra	Tansoff	Total
Gross barrels	1,894,942	245,143	2,140,085
Nett barrels	1,893,995	245,000	2,138,995

Please note the loading of the vessel was stopped by shore requirements/SOMO. The overall quantity loaded is outside the approved LC approval of 2,300,000 barrels -5% = 2,185,000 barrels. This was advised to the vessel when vessel was stopped, who took no further action. The Tansoff "split" is for 100,000 nett barrels -5% exactly, and the Tridigra "split" of 1,893,995 nett barrels is 6,005 nett barrels short of 2,000,000 nett barrels -5% = 1,900,000.

Full details of the above loadings are now entered on to the UN Database.

Kindest regards,

Graham Brett

Graham Brett

MEMO: 27-AUG-97 14:42 SAYBOLT BUTROS CEVNIK TURK 00803220135867



Saybolt International B.V.
 Independent Inspectors
 Chemical Laboratories
 2000 AB Rotterdam
 The Netherlands
 Fax: (31) 10 4125600
 Tel: 2442 870 NL

Date: March 31, 1999
 Name: JAMES VERTUNE
 Location: MERS LIGHT CRUDE OIL
 Cargo: MERS LIGHT CRUDE OIL

STATEMENT OF FACTS

To: "E.O. Matar", ex. "JAMES VERTUNE"
 From: "E.O. Matar", M.A. & S.A.R.

Dear Sirs,

This is to advise you that we, acting on behalf of the United Nations, are in receipt of the following information to draw the attention of all parties to the following:

That there is insufficient information on board of the ship to allow for the M&I measurement of Mers Light Crude Oil. The reason for this is that the M&I measurement is not in accordance with the International Standards, Chapter 4 of the International Code of Practice for M&I measurement. The reason for this is that the M&I measurement is not in accordance with the International Standards, Chapter 4 of the International Code of Practice for M&I measurement.

Due to this fact an appropriate factor will not be applied to the ship measurement of Mers Light Crude Oil. This is in accordance with the International Code of Practice for M&I measurement. Furthermore, on behalf of our client, the United Nations, we reserve the right to refer to this matter at a later date.

Signed on behalf of Saybolt UK Team
 Accepted on behalf of "JAMES VERTUNE"
 Accepted on behalf of E.O.M.O. Iraq

21/03 '98 010 13:14 (12/03/98 04:11) 0007
 5016366



T.O. G. Brett

TO: SONO BAGDAD
 TO: SONO CEHNA
 CC: ROTAS

Timed : 27-08-98 at 15:00
 LETTER OF PROTEST

Dear Sirs,

The vessel "Mats" which has loaded for the account of Rosneft has a total capacity of 500,000 barrels +/- 2%. On completion of loading, the vessel was found to have a total quantity of 499,999 barrels. The reason for this is that the vessel has a total capacity of 500,000 barrels. The reason for this is that the vessel has a total capacity of 500,000 barrels.

If this transfer to shore is a requirement enforced by you, we, as monitors on behalf of the United Nations:

- 1) Reserve the right of our principal to refer to this matter at a later date, particularly in respect of any delays incurred.
- 2) Insist that any such transfer to shore is effected in such a way that the transferred cargo can be measured accurately and will not be degraded in quality in any way. The measurement of the Saybolt/UM monitor for the transfer of cargo to the Kirrikais pipeline, or another vessel, will not be acceptable.
- 3) We can accept the decision to discharge back into T 4

Yours faithfully,

Saybolt Int. - UN Team Cayman, Turkey. For: SONO
 Mr. M.S.A. Nazraq

[Signature]
 Head of British Team - Iraq

NOTE: THE QUANTITY CONFIRMED BY SONO IS IN ACCORDANCE WITH THE MEASUREMENTS MADE BY ROYAL TO COVER THE VALUE OF THE SAID CARGO.

5016366

OVERSEAS, The
 J.M. Repoluit, 965 - Oil For Food
 UN Operations
 P.O. Box

SAVBOLT NEDERLAND BV

Independent Inspectors
 Only American Service
 Chemical Laboratories
 Westport, N.Y. 10994



SAVBOLT

SUMMARY REPORT

Report No. : 2162/97
 Date : 27-08-97
 Vessel : HRETA
 Location : Cyprus
 Cargo : Liquid crude Oil

Final after party
 discharging

Vessel loaded	Bill of Lading	Difference	O/O
Met. Qty	Quantity	Quantity	
T.C.V. Barrels	592,528	2,646	.53
G.S.V. Barrels	489,230	354,592	.53
Gross Longton	67,284.819	348.99	.53
K.S.V. Barrels	66,132.43	2,448	.53
	501,751		

Vessel less O/R	Bill of Lading	Difference	O/O
Adjusted by V/R	Quantity	Quantity	
T.C.V. Barrels	499,879	0	0.00
G.S.V. Barrels	499,230		

O.B.Q. Barrels	Liquid Oil	Free Water	Total Volume
	111	0	2,121

Vessel Experience Factor Based on 2nd Average : 1.053
 S & M Volume o/o : .025

Vessel Tonnage	QMG	Vol. Loaded	Bill of Lading
Free Meter Bbls	655	135	135
Total Volume Bbls	777	777	135

N.O.R. Tendered 24-08-97 10:50
 Bill of Lading Issued 27-08-97
 Completed Loading 27-08-97 14:10
 Completed Lading 27-08-97 16:50

Sampling Description of the sample
 Sample taken : Yes
 Number of samples taken : 4
 S.M.S. 1238

Parameter	Value
Water Content	ASTM D 1298 16.00
Sediment by extraction	ASTM D 4066 .025
Viscosity at 30 °C	ASTM D 97 1.98
Flash in Crude	ASTM D 445 4.93
	ASTM D 3219

Remarks:
 CU Meters at 60 of Bill of Lading : 79,371.080
 CU Meters at 60 of Vessel : 79,194.190

For address
 Tel: (310) 481911
 Fax: (310) 451330
 The Netherlands

5016816

1000 1419 24 14/211 11:31 02 88 80/97



SAVBOLT

Saybolt International B.V.

Independent Inspectors,
 Chemical Laboratories.

P.O. Box 151,
 3000 AD Rotterdam
 The Netherlands
 Tel: (31) 10 4609911
 Fax: (31) 10 4830000
 Telex: 21042 879 NL

Date : June 14, 1998
 Vessel : HELLESPOINT ORPHEUM
 Location : Mina al Bakr Terminal, Iraq
 Cargo : Barrat Light Crude Oil

STATEMENTS OF FACTS

To : The master, "Balticport Orpheum"

Dear Sir,

In accordance with the letter of Credit issued by the United Nations on behalf of Receiver "Zarubetnad", the maximum quantity of oil to be loaded was 2,000,000 barrels plus 0%. This equals 2,100,000 barrels. This quantity was agreed with terminal personnel, UN monitors and ship personnel. The latter requested that loading would be terminated by means of ship stop.

However, after calculations were completed at end of loading of mentioned cargo there was found to have been a total of 2,116,048 barrels received on board.

This indicates that a quantity of 16,048 bbls U.S. bbls have been over-loaded at the time of discharge. It will be necessary to obtain an agreement from the bank to the letter of Credit. This matter may be considered in hand.

Signed on behalf of Saybolt UN team

Accepted on behalf of HELLESPOINT ORPHEUM

FOR RECEIPT ONLY
 AS CIP MINIMUM 2,138,000 BBLs

5019334



Saybolt International B.V.
 Independent Inspectors
 Chemical Laboratories

P.O. Box 151,
 3080 AD Rotterdam
 The Netherlands
 Tel: (31) 10 4609911
 Fax: (31) 10 4351000
 E-mail: info@saybolt.nl

Date : August 22, 1997
 Vessel : JAHRE VENTURE
 Location : Mina al Bahir Terminal, Iraq
 Cargo : Heavy Light Crude Oil

STATEMENT OF FACTS

To : The Master, m "JAHRE VENTURE"
 To : S.O.M.O. Mina al Bahir.

Dear Sirs,

This is to advise you that we, acting on behalf of the United Nations as their Inspectors and Monitor, wish to draw the attention of all parties to the following:-

The data is insufficient information on board of the ship to calculate and determine an accurate Vessel Experience Factor (VEF) as per the API Standard, Chapter 17 - Marine Measurement, Appendix C - Procedure for calculating vessel experience factor (VEF).

Due to this fact an experience factor will not be applied to ship's measurements when determining the Bill of Lading Quantity for the amount of Heavy Light Crude Oil loaded. Furthermore, on behalf of our client, the United Nations, we reserve the right to refer to this matter at a later date.

Signed on behalf of Saybolt UN Team

[Signature]
 Capt. Paul Edwards, Team Leader

Accepted on behalf of "JAHRE VENTURE"

Accepted on behalf of S.O.M.O. Iraq *[Signature]*
 Manager

[Signature]
 JAHRE VENTURE
 Team Representative

S021311

E-01.03
 C) CLOS ANALYSIS
 REPORT

Peer BaudSpreijdl.
 10/22/2002 08:58 PM
 To: www@saybolt.nl
 CC:
 Re:
 Subject: Audit recommendations

Dear Nelson,

How can I cope with people that do not understand what they are looking at and continuously mix up proposals and contracts.

The audit report on the agreement with S.O.M.O. mentioned in one of the early reports, the total contract value of USD 2,442,100,-. It should be taken into consideration that after obtaining more knowledge over time, we revised our budget and concluded a contract with the UN for 1998 with a contract value of USD 1,442,100,- per period of 10 days.

I will obviously provide you with a more detailed overview but need to let off steam after observing so much nonsense.

Please note that the final contract for the present contract specifies any and all contracts to come not understand the point the auditors make regarding the contract for 1998.

Apologies for being displeasable.

Kindest regards,
 Peter Boks

If you are satisfied with our services do not object. If you are not satisfied, please contact us at <http://www.saybolt.com/complaint.nsf/>

ALL OUR ACTIVITIES ARE COVERED BY UNDERWRITING. WE ASSUME NO LIABILITY FOR ACCIDENTS WITH OUR CODES OF PRACTICE. THE GENERAL CONDITIONS CAN BE DOWNLOADED FROM OUR WEBSITE. YOUR COMMENTS WILL BE SENT UPON REQUEST FREE OF CHARGE.

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considerable increased capital costs encountered since the contract inception, and the maintenance and transportation costs. I trust that the above clarifies the misunderstandings. Please do not hesitate to contact me if further explanation is required.

Yours sincerely,
Peter Wols.

Dear Mr. Sevan,
YOUR RECOMMENDATIONS
Your letter of October 21st, 2002, on the above matter is to hand and I would like to comment as follows.

It now becomes obvious that the authors' statements based on their misunderstanding of the documents that they seem to have at their disposal. Firstly, the "request for bid" calls for an all-inclusive price on a per/man per/day basis. There is no requirement to quote a cost for equipment. Indeed the RFP does not require any costs to be itemized. Initially, we were asked to submit a per/man/day for 12 men over a 240-day contract period. This submission was supported by documentation labeled "Tariff Structure" here as an "item selector" to assist in understanding how the costs of US\$ 230,000 against a man/day rate of US\$ 1,020 per day. Subsequently the RFP requirements were discussed and updated, resulting in man/day rates of US\$ 820, eventuating in a final agreed rate of US\$ 875 per additional amount for testing the quality of the crude oil reported.

The OIGS report, under Section D, Contract Issues, Para's 49 and 50, quite openly quotes from the "Tariff Structure" document (the provenance of which is not stated) that the man/day rate was set at US\$ 1,020 per day, and that the support to quote only a single per/man/per/day rate. Para 49 then proceeds to state that the authors' interpretation of the requirements was not accepted and simply applies this to the total contract cost to produce a percentage of 7.81.

In Para. 50 of the OIGS report this erroneous percentage has then been applied to the man/day rate (that was accepted at a later date) to give a figure of circa US\$ 55 per day and merely multiplied up to a cost over 9 phases, thereby constructing machinery.

As we have itemized a number of times before, there was no equipment cost involved. The authors have referred to the RFP and provided EXACTLY what was requested - nothing more and nothing less - a fully itemized per man per day cost for 14 men for a period of 6 months.

Then the OIGS report, in Para 51, states that 10 OIGS OPINION equipment should have been charged to the OIP as a one-time expenditure with an additional provision for maintenance of the equipment. The OIGS is entitled to an opinion on the matter, but it is not the authors' responsibility. On the other hand, and obviously cannot be retroactively applied to an existing legally constituted open tender contract.

The OIGS opinion also fails to embrace the fact that without a price increase (indeed a price reduction in later phases) Sapbit has continually replaced and updated equipment situated in Iraq and Turkey, notwithstanding the

publish it, however, you must also undertake to publish our comments therein, in no case, either as a separate report or as addendum thereto." Copy of the e-mail exchange of correspondence is attached as an annex to the present Note.

K.S.K

7. The audit objectives as stated in the Report are, *inter alia*, to assess OIP's management of the contract, determine if the contractor provides the required services in an economical, efficient and effective manner, and review the management of other services being provided by the contractor.

8. A review of the Report against the stated objectives of the audit would have to take into full consideration the context in which the contract was entered into. The contract was not executed in a vacuum. This particular contract is being carried out within a very rigorous sanctions regime and managed in a highly sensitive political environment. Any realistic assessment of the management of the contract would have to factor in these considerations. Yet, it would be difficult to see how the audit was conducted without taking full cognizance of either the legal or political context of the contract. There are many aspects of the programme as well as its implementation, management, resolutions and decisions of the Security Council and its Committee, which outside the political context may defy logic; however, as the Secretary-General has stated repeatedly regarding this programme, "We take our marching orders from the Security Council".

9. For example, in the introductory paragraph of the Executive Summary, it is stated that "OIP should have considered utilizing UN staff to perform the oil inspection services as an alternative to hiring a contractor, which would have resulted in substantial savings." Utilizing UN staff to perform the oil inspection services, as recommended by the auditors, would have been in line with the Security Council resolution 986(1995) and the Memorandum of Understanding between the Security Council, the United Nations and the Government of Iraq (MOU), on the implementation of the Security Council's resolution 986(1995) (S/1986/34). Annex II, paragraph 4, of the MOU expressly provides for independent inspection to monitor Iraqi oil exports. Consideration of savings was never the ultimate goal of the decision taken by the Security Council; rather, the goal was to ensure full and thorough inspection of oil exports and full compliance with the decisions taken by the Council.

10. Various amendments of the contract were undertaken in response to the requests of the Security Council and its Committee that required urgent action on the part of the Government. Furthermore, the established good working and highly professional relationship of the Government of Iraq with Seybold presented the United Nations with a considerable advantage, especially in the current context of Iraq's economic crisis. It is not surprising that the Committee, exceptionally in the granting of visas to the experts who had been invited to Iraq, would not have delayed in the granting of visas to the experts who had been invited to Iraq. Furthermore, it has been essential to ensure the confidence of not only of the Security Council members but also of the Government of Iraq regarding the impartiality of the work of the experts, as evidenced by the fact that we have had no difficulty in securing visas for one of the auditors from Seybold to visit Iraq on a regular basis, despite his nationality, which is British.

11. The decision to manage the contract by OIP at Headquarters rather than by UNORCI was in order not to unduly compromise the latter's work. The decision taken even before the establishment of OIP in October 1997. The same applies for the decision to contract OIP's services to the United Nations. To the extent possible, efforts have been made by OIP to ensure appropriate procedures that would ensure that the contractor fully discharges its contractual mandate in which the contract is being implemented. For example, it is common knowledge that oil exports are interrupted periodically. Prompt action taken by the Government of Iraq to suspend all oil exports for 30 days. Furthermore, the Government has refused to allow any additional contractor's staff to be stationed in Iraq on a term basis to cope with the work. It should be noted, however, that irrespective of the number of staff employed by the contractor, payments is effected only for the number provided for in the contract.

12. The contractor also provides expert advice to OIP in its day-to-day operations as well as in the Commission's work. In addition, the contractor provides technical support as well as parts and equipment provided under the contract. With regard to the status of the contractor's staff posted in Iraq, it is recommended to the auditors that they review the relevant provisions of the MOU, in particular Section VIII, concerning Privileges and Immunities, to ensure a full understanding of the range of services provided by the contractor would have established an appreciation of the background to the contract, the contract itself, and its management.

13. Although the auditors understand the visits to some of the locations where the independent inspection agents are located, they did not visit Miss al-Jaber to witness first-hand the very difficult and most demanding conditions under which her inspection agents operate, literally snowed on the oil platform which may collapse at any time. It is recommended that the auditors and OIP officials, sur with Seybold, headquarter there was no consultation between the auditors and OIP officials, sur with Seybold. Although the auditors held discussions with the contractor's team-leader in Iraq, they should have addressed their questions to Seybold headquarters, or at least through OIP, in order to receive a more authoritative responses.

14. Comments on specific audit findings and recommendations are proffered hereunder:

A: Monitoring of invoices payments and financial matters

Procedures have not been implemented to monitor invoice payments:

15. Paragraph 201 states that "a review of 19 monthly invoices and supporting documents found deficiencies in the information stated is ambiguity of the attendance record which reflected from arrival to departure of the auditors. Payments should only be made for remaining the locations in Iraq and Turkey."

-5-

21. Regarding the short striking of staff, as the invoice (June 29 May 1999) was based on staff as per the attendance sheet, an adjustment was required to the invoice for contract staff that were not on duty, as the invoice did not include any charge for an absent Skybolt staff member. As noted above, irrespective of the maximum number of oil spare parts inspectors allowed into Iraq, during the initial stages of that programme monitoring oil spare parts and equipment provided under the programme, the contractor only deployed number of staff (approximately 77) to the site. The contractor's report stated that the initial period of an obvious time delay in ordering and the actual arrival of the oil spare parts and equipment. It would, then, appear that the auditors did not differentiate between Skybolt responsibilities.

Communication charges by the Contractor have been excessive

22. Paragraphs 11 and 12 state that the tariff structure of the contract include communication expenses which is about 21 per cent of the total contract amount and that the Contractor did not provide for any requirement to justify the expenses incurred through the use of a satellite communication system (Satcom). The Report also states that the "UN did not consider alternative options such as using the UN telecommunication system, which would have reduced the contract amount significantly, apart from being transparent in terms of identification of all calls including personal calls."

23. The auditors did not seem to take into consideration the geography of Iraq, the location of the sites where the independent inspection agents are stationed, the logistics and difficulties, particularly political, which would have been involved in extending the UN telecommunication system to the sites. It would have been in mind that the United Nations has been operating in a very difficult environment with the contractor's equipment has been replaced and/or spare parts for existing UN communication establishment in Iraq.

24. Also, it must be borne in mind that it is essential that the independent inspection agents transmit their reports most expeditiously from the location where they are based, using communication equipment to the various Station units above. Furthermore, the fact that the Contractor's Skybolt staff were not allowed to use their own mobile phones (if any) such as the substitution communication for crude oil loadings, as well as communication with UN Headquarters, are appropriate. Finally, it should be noted that "on-line" costs was transgressed in the current contract, PDCOI 14/00, resulting in substantial savings on communication costs.

OIP needs to recover personal phone calls made by the Contractor's staff

25. Paragraph 14 states that Skybolt's "minimal policy is to allow each of its staff members their private telephone calls totalling up to 45 minutes per month. In Turkey, it was ascertained that staff members were not charged at all for personal calls, as these were not substantial in the Contractor's view. Since the total communication cost is included in the man-day cost structure, private telephone calls of the Contractor staff members are being charged to OIP."

26. The auditors seem to have confused the cost structure with the agreed billing procedure. As the contract is all-inclusive daily fee, the only mechanism for charging would be

-5-

16. Contract number PTD/127/0065-96 (the initial contract) determined the number of inspectors required at particular locations in Iraq and Turkey, and Article 7.1 provides for full payment for complete and satisfactory performance by the contractor of his obligations under the contract. In that regard, it could be argued that once the requirement of satisfactory performance has been met, the contractor is not liable for the attendance record because a non-issue. Nonetheless, since December 2000 the attendance record has shown "Personal Attendance on Location, from arrival to departure".

17. The Report also illustrates that the auditor did not have a full understanding of the contract and the method used in the preparation of invoices by Skybolt. This misunderstanding was compounded by an error being made in Skybolt's invoice which overcharged some \$70,000 for services provided during the period 29 May 1999 through 28 November 1999. The invoice was based on the attendance sheet, seemingly basing the Skybolt's billing was based on contracted staff levels and not on staff on site. The auditors have also confused the contracted number of inspectors for oil spare parts and equipment. There are slight and just life inspectors, as stated in paragraph 8 of the Report.

18. There is a historical procedure in the preparation of invoices in line with the contract-completed date of the current contract. The invoice always covers the period between the 25th day of the previous month until the 28th day of the month the invoice is prepared. Thus, the invoice prepared at the end of June covers the last few days of May until the 28th of June inclusive. Reference is made in this regard to Amendment No. 8 to contract PTD/127/0065-96, which covered the period 29 May 1999 through 28 November 1999, after which this invoice was prepared. The invoice for the period 29 May 1999 through 28 November 1999, after the other invoices issued for the month of June 1999. This irregularity does not seem to be any of the other invoices. No over billing occurred as a result of this split-month billing, except for the July 1999 bill that included "31 June 1999". This overcharge (17 Man days) will be deducted from a future payment. That the irregularity was not queried by OIP was because OIP understood very well the billing mechanism.

19. The lump sum payment method provided for in Contract PTD/127/0065-96 (the initial contract) was discontinued with effect from 28 May 1999 in the successor contract. The change was a consequence of Amendment 8 of the original contract.

Overpayment of monthly invoices needs to be recovered

20. Paragraph 10 states that the contractor had overcharged by approximately \$70,000, on short and excess stationing of staff. Except for the 1999 invoice where Skybolt billed for 31 June 1999, there did not appear to be any evidence of over billing. The invoices were in line with the attendance records. It would seem that the auditors have only indicated the first 28 days of the month in their attendance record, and ignored the 29th, 30th and 31st day of the previous month. In respect of the attendance record, the billing period was 29 May 1999 through 28 November 2001, where Skybolt billed for 421 days for Oil inspectors. In respect of the attendance sheet, as undercharged by one day, and June 1999, where a wrong code was used on the attendance sheet, although this did not have a financial consequence.

inventory system, and there had been no periodic checks on these assets as required by UN financial rules."

34. The contract is all-inclusive, that is to say, inclusive of the equipment purchased by the contractor. In this regard, the communication equipment, computers and software are not UN property, and therefore there is no corresponding requirement for an inventory.

Charges for additional services provided by the Contractor have been excessive and independently mentioned

35. Paragraph 11.24 states, *inter alia*, that OIP accepted cost proposals from the contractor for additional services "without any evidence of prior assessment of the reasonableness. Moreover, payment for these services had been made without documentation to support it's involving such as original bills for purchases, blank, vouchers, etc."

36. The auditors do not seem to have understood clearly the nature of the work of OIP and the very nature of the services requested by the Security Council and its Committee. The proposal referred to by the auditors was a proposal for additional services, as requested at the specific request of the Security Council within a very tight timeframe. The proposals by the contractor are "all-in", i.e., including all relevant personnel for technical activities and analysis, as well as for auxiliary services, such as report writing, presentation to the Security Council, etc. In addition to the demands by the Security Council, the Government of Iraq would also have to pay for the services of the contractor. The Contractor's proposal was an expense with Sybolit presented the United Nations with a considerable advantage, one that cannot be cost evaluated, and rendered the mission much more expeditious and effective.

37. It is also an erroneous assumption that OIP does not maintain comparative information on the "reasonableness" of proposals. OIP has always kept such information and has submitted it to the Security Council. The auditors' claim that OIP did not do so, thus has been able to discuss quickly with experts whether technical and financial proposals were reasonable.

38. Reverting the comment on the round-trip from Amman-Baghdad-Amman, it is noted that the budget were overpaid. Consequently, OIP is arranging a deduction of the overpayment, as appropriate.

39. The auditors do not seem to have taken into consideration the question of the time factor established by the Council and its Committee, which had to be taken into consideration in leading missions. Fortunately, Sybolit had and was able to provide experts immediately from having great technical capabilities in the area necessary to undertake such missions, as well as general in the region. Regarding the comments specifically on paragraphs 24 and 25, the "reasonableness" of the charges, it is essential to keep in mind that the contract was based on an "all-in" cost proposal. Furthermore, the contractor's proposals were fully considered by the OI

attendance on site of the contracted personnel and satisfactory performance of their duties.

27. The contract was awarded to Sybolit based on competitive tenders and there is no evidence that alleged communication costs for private calls were not OIP. The contract also mentioned that the State Oil Marketing Organization (SOMO) has paid for quite some time upon Sybolit's communication systems, particularly after the military action in 1998. All costs involved amounting to USD 6,000 per month were absorbed by the contractor (Sybolit).

28. However, the point raised in the Report regarding the cost structure could be utilized in the negotiations for the next contract.

Accommodation and local transportation charges included in man-day billing rate have been excessive

29. Paragraph 16.5 and 17 state, *inter alia*, that at Zabho and Minal-Bakar, the Government of Iraq had provided accommodation for the Contractor's staff, and at Zabho, SOMO had also provided two cars for local transportation.

30. With regard to questions related to costs for accommodation, transportation, communications, etc. in Iraq, it is well known that these costs are to be incurred in Iraq would have to be compensated, but under the restriction of sanctions, no such arrangements could be made within Iraq in any other currency but Iraqi dinars. This has led to special arrangements by the contractor, not just Sybolit, to ensure that these services, etc. are provided, as required.

Transport costs provided for in the Contract have been charged

31. Paragraph 18 states that "notwithstanding specific provisions in the Contract to the contrary, the contractor has provided for computer equipment for two spare parts inspectors at a cost of \$17,000 per month, as per the proposal of the Contractor, dated 19 September 2000, the cost of vehicles for transport was also authorized at \$39,000. In this regard, we note that the man-day rate provided for transport for two spare parts inspectors was given for amending the Contract to provide additional transport. This justification was not transparent and appeared to double charge the UN for these costs."

32. To facilitate the execution of the contract, it was decided that Sybolit could purchase three vehicles and operate them independently and the vehicles would be used only in the United Nations. Because of the urgency of the need, it was further decided to purchase vehicles that were immediately available, that happened to have different colors and prices.

Non-essential equipment purchased by the Contractor had not been adequately accounted for

33. Paragraph 24 states that "the UN had authorized the Contractor to purchase equipment including vehicles, and communication equipment like antennas, computers and software. We found that the equipment paid for by the UN did not have any UN asset number affixed and had never been inventoried by the UN. Furthermore, the equipment was not entered into OIP's

9.

The Contractor had not conducted "audit visits" as provided for in the Contract

40. Paragraph 26 states that although the contractor's proposal dated June 1996, provided for a contractor from Rotterdam to "audit" their operation in Iraq every six weeks, no audit had been conducted. On the assumption that the cost of the visits would have been included in the overall price proposed by the Contractor, the auditors consequently calculated 36 such missed visits.

41. This assumption is incorrect, as the technical head of the Iraq team for Sabyolt regularly undertakes missions to Iraq and the cost of these visits is included in the overall cost of the contract. In addition, regular "audit" visits are undertaken by OIP experts, particularly those involved in spare parts and equipment for the oil sector, as well as customs experts and the Oil Inspectorate. It is pointed out that it is more effective and efficient to have an overall team leader positioned in the field, rather than a number of experts who are only involved in an on-going basis of review and action, than only periodic "audit" visits, which are, after all, just visits.

Services provided by UNOHCI have not been adequately charged to the Contractor

42. Paragraphs 21 and 28 have been duly noted. As stated in paragraph 12 above, it may be useful for the auditors to review Section VIII of the MOU, concerning Privileges and Immunities.

B: Monitoring Contractor's performance

OIP officials charged with monitoring the Contractor had not made inspection visits to Iraq

43. Regarding the comment on paragraphs 29 and 30, it should be noted that the contract is being executed in a highly sensitive political environment. As has been already stated, in order not to compromise UNOHCI's mandate, it was decided to administer the contract from Baghdad. It is not unusual for the Contractor to have a large number of experts on a daily basis through Iraq, as well as other personnel with Sabyolt, the Oil Overseas, as well as the OIP group of experts on oil spare parts.

D: Contract Issues

Need to separate the cost of Contractor's equipment from the non-daily fee structure

44. In paragraphs 31 to 37 and the auditors' corresponding recommendations, the Report discusses the sort of equipment purchased under the contract with Sabyolt. While the comments are too vague to constitute a valid finding, it is clear that the auditors did not take into full consideration the ongoing maintenance, repair and replacement costs that are factored into the maintenance by Sabyolt. It is pointed out that the Contractor's equipment and maintenance requirements by Sabyolt are factored into the overall cost of the contract. It is noted that the auditors have in touch with Sabyolt's headquarters, they could have received the information regarding the cost of "lease of the equipment", as the auditors have put it.

Seriousity of CVs of Contract personnel have been ineffective

45. It would seem that the auditors did not fully understand the background of the issue of early pensioners. It was originally foreseen that the contractor would identify overseas. The idea was subsequently cast aside. In the selection of staff assigned to monitor the crude oil exports from Iraq, one clearly needs experienced and motivated individuals capable of working efficiently in the most serious conditions in Iraq.

46. It is also incorrect to state that CVs of contractor's personnel are not reviewed. Whenever Sabyolt sent a recommendation, it was reviewed by the appropriate staff at OIP and then forwarded to the Oil Overseas in OIP, for their comment. OIP has at times raised a number of queries with regard to candidates proposed by Sabyolt, for various reasons, including the candidate's language skills, and the selection of staff assigned to monitor the crude oil exports from Iraq, one clearly needs experienced and motivated individuals capable of working efficiently in the most serious conditions in Iraq. Candidates were withdrawn by Sabyolt following their discussion, and therefrom there was no need for "rejection" by OIP.

47. In the memorandum, dated 15 April 2002, addressed to the Executive Director of the Iraq Programme, transmitting the Report, the Director of the Iraq Programme, UNOHCI, has stated, *inter alia*, that OIP's "limited resources" (para. 48, 8, 16, 17 and 21) contained in the report, "in light of the introductory remarks above, as well as the comments on specific paragraphs, it will be necessary to review each of the recommendations as stated hereunder:

Recommendation 3: Establish a contract management unit in Iraq whose functions shall include: monitoring contractor's performance; monitoring contractor's attendance records; monitoring additional requests for equipment and services by the Contractor and providing input for evaluation of the services provided (AEU/04/0003).

48. The recommendation falls to take into consideration the fact that this would require additional resources in UNOHCI's mandate and would not necessarily be agreed to by the Government of Iraq. Furthermore, it should be borne in mind that UNOHCI is an integral part of OIP. We believe that the decision to manage the contract from Headquarters level was the right decision taken. We have the expertise within OIP at the Headquarters, including the Oil Overseas and the group of oil spare parts experts with whom Sabyolt has to work very closely, almost on a day-to-day basis.

Recommendation 4: OIP management should recover the overpayment of \$370,000 as indicated in Annex I, from the Contractor in subsequent billings (AEU/04/0004)

49. The recommendation should be further reviewed by OIOS. The \$370,000 seems to be significantly overstated. Ideally, Sabyolt's review of its invoices revealed undercharging of approximately \$19,000 that might avoid any overcharging.

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Recommendation 11: OIP management should establish an appropriate approval process for candidates proposed by the contractor in accordance with the contract (AFU/2006/001).

Recommendation 6: OIP management should in future contracts with the Contractor (or any other contractor) require the Contractor to submit a detailed report of the costs of the programme (including those on presentation of detailed documentation (e.g. invoices from service providers) (AFU/2006/006).

Recommendation 16: Implement procedures for providing urgently required services, which should include obtaining quotations from other suppliers; checking the reasonableness of quotations based on actual costs; and negotiating costs with the selected supplier (AFU/2006/016).

55. There are similarities between OIP and the contractor in the selection of candidates. However, consideration will be given to establish a formal procedure for conveying approval of candidates proposed by the contractor.

50. The recommendation is noted and will be taken into account for the negotiation of future contract proposals.

51. The contract is an all-inclusive, and there is no evidence that the contractor has separately charged OIP for private calls. Further, it would be contrary to the terms of the contract to demand such reimbursement.

Recommendation 9: OIP management should recover overpayments for recommendations and reimbursement of approximately \$47,000 from the Contractor (AFU/2006/009).

52. The contract is all-inclusive, therefore under the terms of the contract there is no reimbursement due.

53. As stated above, OIP maintains constant contact with professional societies and industrial organizations and is, therefore, current on the costs of services. However, the recommendation is noted.

Recommendation 17: OIP management should obtain details of "audit trails" undertaken by the Contractor and its sub-contractors, such as such required visits up to phase nine (AFU/2006/017).

54. It is more effective and efficient to have an overall team leader positioned within Iraq that have total responsibility for "auditing" functions on an on-going basis of review and action, rather than periodic audits, which are done all four years. In this regard, OIP does not consider that any recovery is due.

54. It is more effective and efficient to have an overall team leader positioned within Iraq that have total responsibility for "auditing" functions on an on-going basis of review and action, rather than periodic audits, which are done all four years. In this regard, OIP does not consider that any recovery is due.

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UNITED NATIONS NATIONS UNIES
INTERNAL AUDIT DIVISION
OFFICE OF INTERNAL OVERSIGHT SERVICES

Reference: AUD-7-131 (1023/02) 2 July 2002

To: Mr. Basim Sevia, Executive Director
Office of the Iraq Programme

From: Esther Stern, Director
Internal Audit Division, OIOS

Subject: OIOS Audit No. AF2001/006: Audit of the management of the oil inspection services Contract

1. A draft audit report on the above-mentioned subject was issued on 7 December 2001 requesting a response by 15 January 2002. The deadline for this response was eventually extended, for approximately 2.5 months, until 31 March 2002. Subsequent to the issue of the final version of the report on 15 April 2002, a reply to the recommendations was received from OIP, addressed to the OIOS USG, under a covering memorandum dated 17 April 2002. In order to address the response to the recommendations, OIOS was decided to issue a revised version of the final audit report incorporating OIP's comments.
2. Based on your response to the report, we are pleased to inform you that we have closed recommendations 004, 005, 006, 012, 015, and 021 in the IAD recommendation database. In order for us to close out the remaining recommendations - recommendations 002 to 004, 007 to 009 to 011, 013 to 016, 018, 019, 020, 022, 023, 024, 025, 026, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036, 037, 038, 039, 040, 041, 042, 043, 044, 045, 046, 047, 048, 049, 050, 051, 052, 053, 054, 055, 056, 057, 058, 059, 060, 061, 062, 063, 064, 065, 066, 067, 068, 069, 070, 071, 072, 073, 074, 075, 076, 077, 078, 079, 080, 081, 082, 083, 084, 085, 086, 087, 088, 089, 090, 091, 092, 093, 094, 095, 096, 097, 098, 099, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 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995, 996, 997, 998, 999, 1000.
3. IAD is assessing the overall quality of its audit process and kindly requests that you consult with your managers who dealt directly with the auditors and complete the attached client satisfaction survey form.
4. Thank you for the assistance and cooperation provided to the auditors on this assignment.

Copy to: Mr. J. Connor
Mr. J. P. Hiltweck
Internal Audit Division
Mr. D. Kusson
Mr. J. Prasad

Audit subject: Management of the oil inspection services Contract
Audit No. AF2001/006

Report date: 3 July 2002

Audit team:
Daniela Kuznetsov, Audit-in-Charge
Jayanti Prasad, Resident Auditor
Gloria Jose, Resident Auditor
Aana Habaan, Audit Assistant

**Audit of the management of the oil inspection services Contract
(AF2001/06)**
Executive Summary

From March through August 2001, OIGOS conducted an audit of the management of the oil inspection services Contract between the United Nations and Skybolt Eastern Hemisphere B.V. (the Contractor). The focus of the audit was on administrative and management aspects of the Contract. The audit found that there are substantial costs that should be recovered from the Contractor. The audit also identified areas where the Contractor has incurred unnecessary expenditures. Moreover, OIGOS identified areas where the Contractor could have made arrangements in order to ensure more cost effectiveness.

Results in brief:

- o A review of 10 monthly Contractor's invoices found inadequate procedures to monitor invoice payment and embargoes in supporting documentation leading to estimated overpayments of approximately \$186,000.
- o Excessive charges have been made for company and personal communication costs. Substantial savings could have been achieved if communication costs were paid on an actual basis.
- o Charges by the Contractor for accommodation and local transportation were excessive and were not based on the fact that the Government of Iraq often provided these services free of charge. Had this been taken into account, estimated savings of \$471,000 could have been achieved.
- o Despite transportation costs being provided for in the Contract, amendments were made for the purchase of vehicles.
- o The Contractor had made excessive charges for certain additional services such as providing transportation, engaging low additional experts, transportation charges for consultants, etc. In addition, invoices were paid without adequate supporting documentation and justification.
- o \$235,310 was paid to the Contractor for providing a "Comprehensive survey of the oil industry in Iraq" in preparation to bidding for this services was resorted to in awarding the contract (PDA/00/03). The Contractor's proposal and payment was made without any supporting documentation being submitted.
- o Audit visits as provided for in the Contract had not been made by the Contractor, resulting in overpayments of \$270,000.
- o The Contractor had not been charged for the services provided by United Nations Office of the Humanitarian Coordinator in Iraq (UNOHCI). *How many?*

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- o No procedures had been established to monitor the services of the Contractor, in the absence of which it is not clear as to how OIGOS had assessed the quality of services provided.
- o Agreeing to pay for equipment costs, built into the per-man day cost structure, had resulted in the UN paying approximately \$30 million for the Contractor's equipment. This cost appeared excessive compared to the value of actual equipment in use by the Contractor.
- o OIGOS had not been scrutinizing the curriculum vitae of the Contractor's staff effectively, even though they are required to do so under the Contract.

Major recommendations:

OIGOS should:

- o Strengthen the procedures for approving the Contractor's invoices by requiring complete supporting documentation and performing detailed verification of them.
- o Establish a contract management unit in Iraq, whose functions should include reviewing invoices supporting documentation, maintaining accurate records for contractors, assessing requests for additional equipment and services by the Contractor, and providing input for evaluation of the services provided.
- o Recover approximately \$186,000 due to overcharging for excess numbers of staff at designated locations and associated transportation costs. OIGOS should review all Contractor invoices to determine the correct recoverable amount.
- o Consider amending the Contract so that communication, local transportation and accommodation costs are segregated from the per-man day cost structure and are reimbursed based on verifiable supporting documentation.
- o Consider amending the Contract to segregate the Contractor's equipment costs from the per-man day cost structure. There should be a one-time reimbursement of the actual cost with some provision for maintenance.
- o Check contracts for additional services for reasonableness, obtain additional quotation and full justification and documentation to support payment.
- o Bill the Contractor for the services provided by the UN to the Contractor at the standard cost for third parties.
- o Develop a clear mechanism to monitor and evaluate the performance of the Contractor, both at the field and Headquarters level.
- o Develop appropriate procedures to approve Contractor's personnel more effectively.

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I. INTRODUCTION

1. From March through August 2001, OIGOS conducted an audit of the management of oil inspection services Contract between the United Nations and Skybolt Eastern Hemisphere B.V. (the Contractor). This audit was conducted in accordance with the general and specific standards for the professional practice of internal auditing in United Nations Organizations.
2. One of the mandates of the Office of Iraq Programme (OIP) under Security Council Resolution (SCR) 986 (1995) is to oversee the export of oil and oil products from Iraq through approved export points. In addition, OIP is responsible for monitoring the end use of oil equipment and spare parts that are being procured by Iraq to improve its decaying oil industry infrastructure.
3. The initial Contract with Skybolt Eastern Hemisphere Contractor, PD/COM/17/0045/99, for the provision of inspection services to OIP was amended in accordance with Decision of Political Affairs (DPA) for the revision of the contract terms in international oil trade in accordance with SCR 561 (1990). Since the initial Contract, twelve amendments have been made, including four amendments for additional labour and travel costs. Recently, a new bidding exercise was conducted by the Procurement Division (PD) which resulted in the Contractor again being awarded the Contract (Contract no. PD/COI/14/00).
4. The new Contract extends from 29 May 2000 until 28 May 2001 with an annual contract value not to exceed \$2,316,150 and an aggregate value of \$21,264,600. Moreover, the new Contract provides for an option to renew it for three successive one-year periods, under the same terms and conditions, including price. In addition to this Contract, OIP has also entered into other contracts with Skybolt to carry out audits separate from this Contract. The Contractor currently employs 14 inspectors to oversee oil exports from Iraq, in addition to the 10 inspectors employed by the United Nations. The inspectors are employed to monitor the end use of oil equipment and spare parts imported by Iraq.
5. A request was sent to OIP to arrange for an exit conference in order to discuss the findings and recommendations resulting from the audit. However, OIP management did not respond to the request. The final audit report was then sent to OIP on 14 October 2001. The audit report was issued on 15 April 2002. The current report has been amended to take into account comments subsequently received from OIP. The comments are indicated by the use of italics.

II. AUDIT OBJECTIVES

6. The major objectives of the audit were to:
 - (i) Assess OIP's management of the Contract, both in Iraq and at Headquarters, with respect to its obligations of the Contractor and OIP under the terms of the Contract, and procedures to verify and evaluate the Contractor's performance, receipt of services, and to review and pay invoices;

satisfactory completion of the Contract. The relevant invoices had no supporting documents, on which to base the payment. Hence, there was a lack of any internal control.

(iv) While the number of the Contractor staff present at a location at the vital parameter for payment, our review of the monthly invoices revealed that the Contractor had often maintained staff at each location both lower than, and at times, in excess of OIP requirements. ~~Discrepancy~~ have been due to the Contractor's rotation/leave policy for staff.

Recommendations 1, 2 and 3:

OIP management should:

- (i) Request the Contractor to modify the supporting invoice document (attendance sheets), to clearly indicate the exact location of their staff which is currently indicated as "from arrival to departure Annex", which would enable OIP to verify the invoice (AFD/1506/001);
- (ii) Review the arrangement whereby the Executive Director certifies invoices, and institute specific procedures for checking and approving invoices (AFD/1506/002); and
- (iii) Establish a contract management unit in Iraq whose functions should include reviewing invoices' supporting documentation, verifying the Contractor's attendance records, monitoring additional requests for equipment and services by the Contractor and providing input for evaluation of the services provided (AFD/1506/003).

10. OIP agreed with recommendation 001, indicating that as of December 2009 the attendance record has shown "perceived attendance on location, from arrival to departure." The recommendation has been closed. OIP did not provide a comment on recommendation 002 hence the recommendation remains open.

11. Recommendation 003 was not agreed to and OIP stated that the contract was managed by OIP and the UNMOVIC officers have been made by OIP to institute appropriate procedures that "that to the extent possible, officers have been made by OIP to institute appropriate procedures that would ensure that the contractor fully discharges its contractual responsibilities. OIP also stated, "we have the expertise within OIP at the Headquarters, including the OI Overseas and the group of oil spare parts experts with whom Sopohl has to work very closely, almost on a day-to-day basis. OIP therefore has to clarify that we do not intend to instruct UNMOVIC to conduct any of the OIP's functions, but to clarify that we do not intend to instruct UNMOVIC to conduct any of the OI Overseas informed so that they have no active part in the management of the contract and only use the information provided by the Contractor. Nonetheless, we are pleased to note that appropriate procedures have been established by OIP. In order to close that recommendation we request that

(ii) Determine if the Contractor provides the required services in an economical, efficient and effective manner; and

(iii) Review the management of other services being provided by the Contractor.

III. AUDIT SCOPE

7. OIGS conducted a previous audit (A/S/0746) on the procurement aspects of the Contract. The current audit therefore focused on contract management issues. The audit consisted of a review of the Contract, invoices, and OIP's procedures to evaluate the Contractor's performance. In addition, physical inspections of the Contractor's operations were carried out in Iraq and Turkey. We interviewed OIP officials in New York and Iraq, in addition, with OIP's agreement and cooperation, we interviewed OIGS staff in New York to provide us with explanations and certain documentation concerning their working arrangements.

IV. AUDIT FINDINGS AND RECOMMENDATIONS

A. Monitoring of invoices payments and financial matters

Procedures have not been implemented to monitor invoice payments

8. The Contract and amendments required the Contractor to provide a total of 14 OI Inspectors with a breakdown of six at Mina-al-Bakr, three at Zakho, and five at Ceyhan in Turkey. In addition, amendment number 8 of the Contract provided for six spare parts inspectors (two each at three different locations). The number of inspectors, whether for oil or spare parts, is the only measurable element of the Contractor's performance. Our review of the Contractor's attendance records is essential to support the monthly invoices submitted by the Contractor. Our review of procedures found however, that they were lacking basic financial checks and balances, resulting in a number of incorrect payments.

9. A review of 19 monthly invoices and supporting documents found the following deficiencies:

- (i) The attendance record was ambiguous since in many cases it reflected the attendance "from arrival to departure Annex", whereas the payment to the Contractor should only be made for manning the locations in Iraq and Turkey. This could have resulted in payment for staff not at the work locations.
- (ii) The attendance sheet did not relate to the month written on it. For example, if the month is written as "June" that has 30 days, the attendance details are for 31 days. This irregularity, found in 18 of the 19 invoices reviewed, was never questioned by OIP.
- (iii) In the initial Contract, payments were to be made in lump sums: 30 per cent three months after start of Contract, 30 per cent six months after start, and 40 per cent upon

is a high probability that the UN may be paying more for the communication expenses, than the Contractor is actually spending.

Recommendations 6 and 7:

OIP management should:

- (6) In future contracts with the Contractor (or any other contractor) request the communication expenses from the man-day tariff structure and reimburse these on presentation of detailed documentation (e.g. invoices from service providers) (AFD/306/006); and
- (7) Investigate the use of alternative communication options including the use of UNOHCI's telecommunication network with appropriate reduction in the Contract price for communication charges (AFD/306/007).

19. OIP took note of recommendation 006 and stated, "In-line costs were recognized in the current contract. PD(CO) 1460 would be taken into account in the negotiation of future contract proposals. OIP also noted that the Procurement Division questioned the practice of including communication and equipment costs in the man-day rates structure, and indicated they would be approached during the next contract negotiation case. However, the contractor opposed this approach stating, "From the beginning, we have had a tariff structure which was set in...". Based on OIP's response, we have closed this recommendation.

20. OIP disagreed with recommendation 007 and stated in its reply that the auditors had not taken account of the location of the inspectors, and the logistics and financial difficulties for UNOHCI in conducting the work. OIP stated that it was not aware of any attempts by OIP to determine the feasibility of adding the contractor to the UNOHCI network in Iraq. In our view, the feasibility of doing this should have been looked into. This recommendation remains open pending OIP's review of the feasibility of adding the Contractors to the UNOHCI network.

OIP agreed to recover personal phone calls made by the Contractor's staff

21. We found that the Contractor's internal policy is to allow each of its staff members free private telephone calls totaling up to 45 minutes per month. In Turkey, it was ascertained that staff members were not charged at all for personal calls, as these were not substantial to the Contractor's work. Since the Contractor's internal policy is to allow each of its staff members free private telephone calls of the Contractor staff members are being charged to OIP.

22. Based on a cost of \$3 per minute, the estimated fees telephone service being employed by the Contractor's staff (excluding Captain case) using Satcom in Iraq would be on the order of \$3,025 per

month or a total of \$12,150 per six-month phase. We are of the opinion that this benefit should not have been charged to OIP.

Recommendation 8:

OIP management should take steps to stop payment of personal telephone calls of the Contractor staff and recover the amounts overpaid which is estimated at \$109,000 for the first nine phases of the programme (AFD/306/008).

23. OIP disagreed with recommendation 008 and stated in their response that there was no evidence that personal telephone calls are charged to OIP. It also believed it would be contrary to the terms of the contract to demand such reimbursement. OIOS is of the opinion that OIP should obtain a monthly statement from the Contractor indicating telephone usage to ensure that only those calls that are not covered by the man-day rates but rather should be charged separately. In this regard, we found that PD had requested technical billing of telephone calls from the Contractor, but was informed that this was not technically feasible. However, OIOS notes that since the Contractor is able to separate personal phone calls for its staff, presumably it can also do this for charges to OIP. In order to close this recommendation, we request for OIP to ascertain the actual personal calls made by the Contractor staff and to recover the amount of these charges.

Accommodation and local transportation charges included in man-day billing rate have been excessive.

24. Based on the Contractor's proposal of June 1995 and subsequent proposals, expenses for accommodation and local transportation included in the man-day rates for the first nine phases of the programme are 2.85 per cent (\$3,700 out of a total of \$1,298,100) and 5.31 per cent (\$1,565,480 out of a total of \$2,948,100), respectively. However, we found that at Zabho and Min-al-hakr, the Government of Iraq oil company had provided accommodation for the Contractor's staff. Despite specific queries to the Contractor whether they are paying any cost towards accommodation, no response was received. At Zabho, the oil company had provided the Contractor with two cars for local transportation.

25. Based on the Contract proposal, we estimated that cost per person-per day is around \$20 for accommodation and \$37 for transportation. This has resulted in an overpayment of approximately \$471,000 (for nine oil inspectors at Min-al-hakr (6) and Zabho (3)) in the case of accommodation and \$1,000,000 (for nine oil inspectors at Zabho in the case of local transportation charges) for the nine compliance phases.

Recommendations 9 and 10:

30. It was also found that the Contractor proposed and the UN approved (Amendment number 11 to the Contract) for the purchase of three vehicles for the spare parts inspectors at a cost of \$19,500, \$24,000 and \$24,500 respectively. All these vehicles were to be Toyota Land Cruisers Prado STD with the only difference that, while the cheaper one was white in colour, the other two at \$3,000 extra cost were green and beige. We are of the opinion that the UN should have not allowed and paid for different color vehicles which led to unjustifiable expenditure of \$10,500.

Recommendation 12:

OIP management should ensure that specification for vehicles are in accordance with the UN standards and avoid unnecessary specifications involving additional costs (AFU/2006012).

31. OIP stated in its reply to recommendation 012, that because of the urgency of the situation, it was decided to purchase vehicles with different costs and colors that were immediately available. Based on this explanation we are closing this recommendation. However, in the future we urge OIP to standardize the vehicle specifications in accordance with UN standards in order to minimize costs.

32. As noted above, the UN had authorized the Contractor to purchase equipment including vehicles, and communication equipment like accounts, computers and software. We found that the equipment paid for by the UN did not have any UN asset number affixed and had never been inventoried by the UN. Furthermore, the equipment was not entered on OIP's inventory system, and there had been no periodic checks on these assets as required by UN financial rules.

Recommendation 13:

OIP management should ensure that UNOHCI takes stock of the equipment purchased by the Contractor and paid for by OIP, and that the equipment is properly inventoried by OIP, and routinely perform physical verification (AFU/2006013).

33. OIP disagreed with the recommendation stating, "The contract is all-inclusive... In this regard, the communication equipment, computers and software are not UN property, and therefore there is no corresponding requirement for an inventory. OHS points out that the equipment was purchased by the contractor, not the UN, and that the contractor should be responsible for its own assets. Hence, the equipment is UN property and should be fully accounted for and recorded in UN property records. In order to close this recommendation, we request that evidence be provided showing that this equipment has been recorded in UNOHCI's asset register.

Changes for additional assets provided for by the Contractor have been excessive and inadequately inventoried.

(i) OIP management should receive appropriate receipts for the equipment purchased for approximately \$471,000 from the Contractor (AFU/2006003), and

(ii) Future contracts with the current or other contractors should take into account (free accommodation and transportation provided so that the UN obtains best value for money (AFU/2006010).

26. Regarding recommendation 009 OIP stated "...in Iraq, it is well-known fact that there are types of expenses to be incurred in Iraq which have to be compensated, but under the restrictions of sanctions, no payments could be made within Iraq in any other currency but Iraqi dinars. This has led to special arrangements by the contractors, ..." OIP also stated, "the contract is all-inclusive, therefore...no reimbursement to date." From this response it is not clear whether the contractor has received the OIP for reimbursement of the cost of the equipment. We would appreciate being informed of the arrangements made and the amounts actually paid to the COI by the Contractor.

27. OIP appears to have agreed with recommendation 010, stating in paragraph 28 of its response "...the points raised in the Report regarding the cost structure, could be utilized in the negotiations for the next contract. In order to close this recommendation we request OIP to confirm that it will amend the cost structure in future contracts.

Itemized costs provided for in the Contract have been changed

28. The initial Contract, as well as the new one, specified that the price includes all costs such as transportation, equipment, and other expenses. However, in the new contract, the Contractor, amendment number three provided for computer equipment for two spare parts inspectors at a cost of \$17,800. Furthermore, as per the proposal of the Contractor, dated 19 September 2000, the cost of vehicles for spare parts inspectors was also authorized at \$39,000. In this regard, we note that the man-day rate provided for transportation costs of 2.35 per cent. In our opinion, adequate provision was made in the Contract for transportation and no justification was given for increasing the cost of transportation. This arrangement was not transparent and appeared to enable charge the UN for these costs.

Recommendation 11:

OIP management should ensure that future contracts with this Contractor include transportation cost and not incorporated in the man-day rate (AFU/2006011).

29. OIP appears to have agreed with recommendation 011, stating in paragraph 28 of its response "...the points raised in the Report regarding the cost structure could be utilized in the negotiations for the next contract. In order to close this recommendation we request OIP to confirm that it will amend the cost structure in future contracts.

34. From time to time OIP requested the Contractor to provide proposals for additional services. The cost proposals submitted by the Contractor had been accepted without any evidence of price negotiations or tests of reasonableness. Moreover, payment for these services had been made without documentation to support the invoicing such as original bills for purchases, tickets, vouchers, etc. These are basic procedures when paying for goods and services and should have been performed by OIP as a matter of routine before payment was made.

35. For example, for the purchase of communication equipment for spare parts inspectors valued at \$17,800, no effort was made by OIP or even through UNOHICI to verify that the new equipment had actually arrived or that the equipment was in conformity with authorized standards before payment was released.

36. In another case, \$67,600 was agreed to by OIP for services of four experts for a 10-day period (Amendment number 9, June 1999) without any verification of the reasonableness of the charges. A review of invoices indicated excessively high charges by the Contractor and acceptance by the UN without any questioning. The fee for these experts were \$2,000, \$1,500, \$1,500 and \$900 per day. These were much higher even by the Contractor's standards for senior inspection monitors, which the Contractor had previously used for similar assignments. Moreover, the Contractor's standard rate for Amman-Baghdad-Aman was charged for and paid at the rate of \$750 round trip, instead of the standard cost of \$150 each way. It should be noted that whereas the Contractor charged \$7,200 for the airfares for these four experts, both for inward and outward flights to Amman, \$3,000 was charged just for the Baghdad-Aman-Baghdad round journey.

37. A separate Contract (POC/0003/00) dated 13 January 2000, in the amount of \$234,400 was entered into with the Contractor to provide a report on the state of the Iraqi oil industry. While an exception to bidding was approved by the Department of Management, there was no indication that OIP had checked the reasonableness of the Contractor's proposal, which was accepted exactly as proposed. Considering the high value of the Contract it would have been expected that some of the charges should at least have been checked for reasonableness and quotations obtained from other potential bidders. The Contractor's proposal was accepted without any questioning into a full bidding exercise and within the time constraint required to report to the Security Council.

38. Furthermore, the invoice amounting to \$235,350 (Invoices 987/00 dated 30 March 2000) was subsequently paid without any receipts for any of the expenses claimed by the Contractor, and without any evidence of review of the propriety or reasonableness of the charges. While the per day fee for the Contractor was \$21,800, boarding and lodging (\$22,400), meals/drink (\$5,000) and video presentation (\$5,350). In our view, these instances indicate the lack of adequate control procedures.

Recommendations 14, 15 and 16:

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OIP management should:

(i) Take immediate steps to ensure that all payments have appropriate supporting documentation before payments are made, and that charges are checked for reasonableness (AFS/120/6014);

(ii) Obtain clarification from the Contractor for the excessive charge of \$3,000 for the round trip to Baghdad for the employment of \$2,400 from future invoices (AFS/120/6013); and

(iii) Implement procedures for procuring urgently required services, which should include: obtaining quotations from other suppliers, checking the reasonableness of quotations based on actual cost of procuring similar services with the selected supplier (AFS/120/6016).

39. OIP did not provide a response to recommendation 014 on whether they would ensure that adequate checks are made for invoices prior to payment. In order to close the recommendation we request a response indicating what steps have been taken to implement it.

40. OIP agreed with recommendation 015, and indicated that it would arrange to deduct the overpayment. The recommendation has therefore been closed, however we request OIP to provide us with documentation indicating recovery of these costs.

41. OIP took note of recommendation 016, stating that it possesses comprehensive information to determine the reasonableness of proposals. It further stated that it was therefore able to "discuss quickly with experts whether technical and financial proposals were reasonable." OIP also stated, "...that the contractor's proposals were fully considered by the Oil Overseers." OIOS points out, however, that during the audit, no documentation was available to indicate that a reasonableness check had been done for this contract. Furthermore, during interviews conducted at UNHQ, the Oil Overseers stated that they had not discussed the proposals with the Contractor. The OIOS also expressed appreciation being provided with the analysis done to determine the reasonableness of the proposal discussed in paragraph 37.

The Contractor had not considered "audit visits" as provided for in the Contract.

42. The Contractor's proposal dated June 1998, provided for a coordinator from Rotterdam to "audit" their operation in Iraq every six weeks. Clearly, the cost of these visits would have been included in the overall price proposed by the Contractor. Accordingly, for the nine completed phases the Contractor should have undertaken 36 such visits (the cost charged by the Contractor for one trip to Iraq was \$7,500). The Contractor was unable to provide any information indicating that such visits had taken place.

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sects of the UN, inspectors, etc. to Iraq and the obligations of the GOI and it is not clear how this relates to charging for services provided by the UN under the contract. The services to be provided by the UN are clearly spelled out in the contract as indicated in paragraph 43 above. Services, additional to these, should be charged for. In order to close this recommendation, we request that OIP determine cost of the services provided to the Contractor, and make every effort to recover those costs.

B. Monitoring Contractors performance

OIP officials charged with monitoring the Contract had not made inspection visits to Iraq

47. In Article 11 of the Contract, the UN reserved the right to inspect and test all services performed by the Contractor. The UN also had the right to inspect and test the work of the Contractor. We found that while the OIP had in fact never exercised this right, OIP on all invoices and during pre-mission of the case for extension to the Headquarters' Committee on Contract had stated that the services being provided by the Contractor were satisfactory and in full consonance with the Contract agreement. No formal evaluation had been made by OIP to determine the basis of this assessment.

48. While the Contract is mainly performed in Iraq (other than one location at Ceyhan, Turkey), OIP had not appointed anyone in Iraq to manage the Contract, in the absence of which there can be no assurance that the services were provided in consonance with the spirit and letter of the Contract. This is also indicated by the fact that many of the irregularities pointed out through this report would have had a better chance of being detected had contract management staff been located in Iraq.

D. Contract issues

Need to separate the cost of Contractor's equipment from the man-day fee approach

49. Based on the staff structure proposed by the Contractor, equipment purchased to perform the Contract would cost \$310,000 out of a total of \$2,940,000.

50. This means that OIP pays about \$55 per day per inspector for equipment costs or approximately \$1.2 million for the nine phases. A review of the inventory list provided by the Contractor indicated that the actual cost of equipment was far less than the amount reimbursed through the staff structure. However, the exact amount could not be determined, as the Contractor did not provide the cost of items of the equipment items. In OIG's view, it was clearly not the intent of the Contract for the UN to pay costs of equipment for exceeding their actual value.

51. In our opinion, equipment should have been charged to OIP as a one-time expenditure with the cost of the equipment being amortized over the life of the equipment. We estimated that this has resulted in excessive payments of approximately \$1 million.

Recommendation 17:

OIP management should obtain details of "multi-visit" undertaken by the Contractor and if no such visits have taken place, recover an estimated amount of \$270,000 for 36 such required visits up to plus/more (A/P/3006017).

43. OIP disagreed with recommendation 07, stating that it was the Contractor's Iraq team leaders who were responsible for the visits. OIP stated that the contract states "the technical lead of the Iraq team for Support regularly undertakes missions to Iraq and cost of these visits is included in the overall cost of the contract." As such, OIP did not consider that any recovery is due. OIG points out that paragraph 3.2 of the Contractor's proposal, which is an integral part of the Contract, specifically calls for "multi-visit", which in our view are separate from the regular visits by the technical lead. However, since these visits had not taken place under the contract, we do not believe that OIP is entitled to recover the cost of these visits. On this basis, we reiterate that the associated costs should be recovered. In order to close this recommendation we request that OIP provide us with documentation indicating that action has been taken to recover the costs paid for the required visits.

Services provided by UNORHC have not been adequately charged to the Contractor

44. Under Article 7 and 8 of the new Contract (Articles 8 and 9 of the old Contract), the UN was to provide only identify and for the Contractor's personnel and allow access to UN transport only in cases of evacuation due to security developments, and medical evacuation. However, it was ascertained that UNORHC provided many services including UN letters for visa support application of vehicle registration, issue of Iraq driving licenses, importation of equipment requiring customs clearance, and other services. OIG stated that the Contractor should have been charged for these initial phases UNORHC was also providing transport facility to the Contractor. In fact UNORHC has earmarked a senior official to deal with matters relating to the Contractor. It was also noticed that the UN Guards Contingent in Iraq (UNGCC) has provided Motorola radio sets to the Contractor.

45. While these services are necessary to enable the Contractor to function and should continue, in as much as these were not covered by a provision of the Contract, the cost of these services should be recovered from the Contractor. We found that only on seven occasions, between June 1999 and August 2001, had UNORHC charged the Contractor a total sum of \$1,447,21 for various services.

Recommendation 18:

OIP management should quantify the financial implication of services provided to the Contractor by the UN and recover the amount based on standard mission charge-out rates (A/P/3006018).

46. OIP disagreed with recommendation 018 stating, "the auditors should review Section VIII of the MOU, concerning Privileges and Immunities." This Section of the MOU deals with the right of

Candidate No.	Age	Educational qualification	Experience (Years) with the Contractor	Other professional experience (Years)
1	53	Several school certificates	23	
2	57	Several school certificates	25	
3	42	High School and nautical academy	11	
4	34	Nautical college	7	
5	58	High School	5	34
6	31	Several School certificates	6	
7	38	O level/A level	7	
8	47	IPND Chemistry	9	
9	33	B.Sc. Electronic Engineering	5 months	5
10	37	High School	4	14
11	N/A	High School	1	6
12	44	Master Mariner	1	11
13	35	Qualified marine Ch. Officer	2	7
14	33	High School (Chennai)	6	
15	37	Marine School	6	13
16	38	1st Class Marine Engineer	10 months	17
17	33	Intermediate (HSC)	8	
18	34	Intermediate (HSC)	14	
19	32	Intermediate (HSC)	8	
20	32	Intermediate (HSC)	9	
21	32	Intermediate (HSC)	9	8
22	34	B.Sc. Degree	8	3
23	32	Triplicane High School	8	2
24	35	Mechanical Engineer	7	2
25	32	Diploma B.Sc.	6	
26	38	Chemical Engineer	6	11
27	N/A	High School	2 months	14

55. A perusal of the above table indicated that, contrary to their assertion that they would form a team of experienced and competent personnel, the recommendations they submitted in the tender do not comply with the terms of experience. Another factor noted in the evaluation of the proposals is that the UN has been approving all candidates as submitted by the Contractor. We found however, that the UN has been approving proposed candidates as a matter of routine, as some of the candidates proposed by the Contractor has

Recommendations 19 and 20:

OIP management should:

(i) Provide for reimbursement of one-time equipment costs in future contracts in order to avoid the uneconomical arrangements of the current Contract (AFI/306/019), and

(ii) Negotiate with the Contractor to recover approximately \$1 million paid for equipment, in excess of its actual cost and to stop further payments for the equipment cost component in the current Contract (AFI/306/000).

52. OIP did not provide a response to recommendation 019. In our opinion, separating the cost of equipment from the man-day contract structure would be a more economical arrangement for the Organization. We therefore reiterate this recommendation.

53. OIP disagreed with recommendation 020 stating, "While the comments are too vague to be taken as a criticism of the equipment, the comments are not focused into the contract." OIP also stated, "...had the auditors been in touch with Seybold's headquarters, they could have received the information regarding the costs of some of the equipment..." OIP may not be aware that OIDS had contacted the Contractor's team leader in Iraq and requested the relevant information from him. This and other information requested was only partially provided. We remain concerned that under the current contract structure, the Contractor is not providing the information requested. We therefore request that OIP re-examine this issue and provide us with information on the steps taken to resolve the matter of excessive payments for equipment provided for under the contract.

Security of CVs of Contract personnel have been ineffective

54. The Contractor proposed (paragraph 1.1 of the Contractor's proposal of June 1996) that in view of importance and strict compliance with the relevant Security Council Resolutions (SCRs) and Memorandum of Understanding (MOU) with the Iraqi Government, each member of the team should be fully independent and consist only of people with proven experience, but without any existing connection to the oil industry. According to their recommendation was to form a team of personnel, who were not only experienced but also had a proven track record. The Contractor's proposal stated that it was capable of forming such a team of specialists with proven competence, integrity and neutrality within 48 hours. According to Article 1 of the Contract, the Contractor's proposal of June 1996 was an essential part of the Contract with the UN. A review of the CVs of pre-selected candidates (appendix II of the offer of the Contractor of June 1996) is summarized in the following table:

ever been rejected.

Recommendation 21:

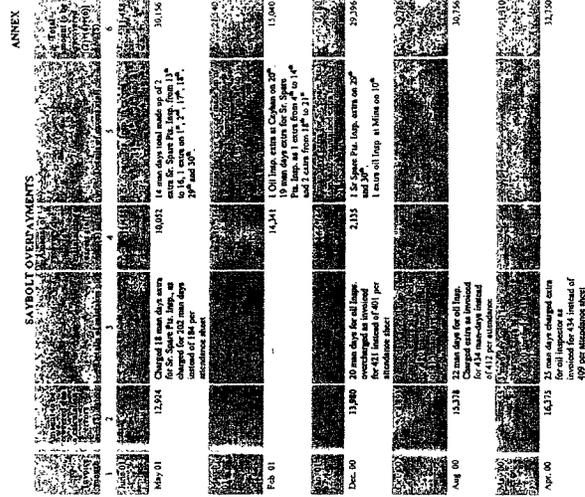
OPF management should establish an appropriate approval process for any letter issued by the Contractor in accordance with the Contract (AR07/006002).

56. With regard to recommendation 021, OPF indicated that a process is already in place, and that C's of candidates are discussed with the Contractor on a regular basis and those not accepted are withdrawn. However, OPF agreed to consider establishing a formal procedure. On the basis of this response, we are closing this recommendation.

V. ACKNOWLEDGEMENT

57. We wish to express our appreciation for the assistance and cooperation extended to the auditors by OPF and UNORICI during the conduct of this audit.

Ernest Stern
Director
Internal Audit Division, OIOS



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are not executed in a vacuum. This particular contract is being carried out within a very rigorous sanction regime and managed in a highly sensitive political environment. Any realistic assessment of the management of the contract would have to factor in these considerations. Yet, the fact that the contract was not cancelled when it was clear that it was not being managed, either in the legal or political context of the contract, which is an indicator of its management. There are many aspects of the programme as well as its implementation governed by the relevant resolutions and decisions of the Security Council and its Committee, which outside the political context may defy logic; however, as the Secretary-General has stated repeatedly regarding this programme, "we take our marching orders from the Security Council".

9. For example, in the introductory paragraph of the Executive Summary, it is stated that "OIP should have considered utilizing UN staff to perform the oil inspection service as an alternative to hiring a contractor, which would have resulted in substantial savings." Utilizing UN staff to perform the inspection services, as recommended by the Auditor, would have been in line with the Secretary-General's decision in 1986/1987 (S/1986/735). Under a ruling between the Secretariat of the United Nations and the Government of Iraq (MOU), on the implementation of the Security Council resolution 984/1995 (S/1986/735), Annex 1, paragraph 4, of the MOU expressly provides for independent inspection agents to monitor Iraq oil exports. Consideration of savings was never the ultimate goal of the mission as the contract was cancelled before it was even started. Although inspection of oil exports was full compliance with the decision taken by the Council.

10. Various amendments of the contract were undertaken in response to the requests of the Security Council and its Committee that required urgent action on the part of the Secretariat. The Government of Iraq with Sybroti remained the United Nations with a considerable advantage, one that cannot be cost evaluated, and which has enabled OIP to field the special missions most expeditiously pursuant to decisions taken by the Council or its Committee, avoiding inordinate delays in the granting of visas to the experts who had to travel to Iraq on short notice.

11. The fact that the Government of Iraq was unwilling to accept the full responsibility of the work of the experts, as evidenced by the fact that we have had no difficulty in securing visas for one of the lecturers from Sybroti to visit Iraq on a regular basis, despite his nationality, which is British.

12. The facilities to manage the contract by OIP at Headquarters rather than by UNMOVIC was in order not to unduly complicate the latter. The same applies for the management of the contract with the establishment of OIP in October 1997. The same applies for the management of the contract with CoCom, and previously with Loyds. To the extent possible, efforts have been made by OIP to institute appropriate procedures that would ensure that the contractor fully discharges its international responsibilities. It is realistic, however, to acknowledge that political actions may be taken by the Government of Iraq to suspend all oil exports for 30 days. Furthermore, although the Government has refused to allow any additional contractor's staff to be stationed in Iraq on a permanent basis, Sybroti has, with OIP's consent, occasionally deployed more staff on a short-term basis. The number of staff deployed by the contractor, payment is effected only for the number provided for in the contract.

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5. The above explanations were provided to the Director of the Internal Audit Division and the Chief of the Iraq Programme Unit of OIGS, with a request for execution of the deadline, which was granted. The Director of the Internal Audit Division and the Chief of the Iraq Programme Unit were fully informed of the extreme difficulties being faced by OIP in implementing the programme, which obliged the Executive Director of the Iraq Programme to travel to Iraq on 10 January 2002 with a view to resolving the difficulties with the Government of Iraq. The request to grant over 200 visas requested for UN personnel involved in the implementation of the programme was granted. It was also agreed that OIGS staff being originally planned for almost a month. It was also for the Executive Director to be informed by OIP and having two resident auditors in Iraq, was fully aware of the continuing difficulties encountered in programme implementation as the programme has become more complex than ever. Consequently, the focus of OIP's attention at the time of the submission of the report was on the implementation of the programme as well as assisting the Security Council Committee (1986) (hereafter referred to as the Committee) in resolving the difficulties encountered within the Committee itself.

6. The Director of the Internal Audit Division and the Chief of the Iraq Unit will recall that it was through the personal intervention of the Executive Director of OIGS that the Chief of the Iraq Programme Unit was able to visit Iraq. On the return of the Executive Director to Headquarters, it was agreed with OIGS that OIP would prepare its comments on the report and submit them to the Executive Director of OIGS. The Executive Director of OIGS, on an order to submit its "non-paper", for discussions with the Internal Audit Division, on an order to submit its "non-paper" for discussions. Instead, however, and contrary to the arrangements agreed upon earlier, the Executive Director received an e-mail message, on 5 April 2002, from the Chief of the Iraq Programme Unit, which read as follows: "As previously agreed, we have not yet received your report. We are waiting for your report to be returned to us. Since your report was to be provided by 31 March 2002. This was the second occasion since we have agreed to discuss the report. We are waiting for your report to be returned to us. At the time when the arrangements were agreed upon, the Director and the Chief of the Iraq Unit were informed of the intention of the Executive Director to invite a representative of OIGS to be present at the discussions on the "non-paper". Disappointed with the Executive Director's response that the Chief of the Iraq Unit could not attend, the report as long as "you are prepared to be fully accountable for your report. If you go ahead and publish it, however, you must also undertake to publish our comments thereon, in toto, either as a report or an addendum thereto." Copy of the e-mail exchange of correspondence is attached as an annex to the present Note.

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7. The audit objectives as stated in the Report are, *inter alia*, to assess OIP's management of the contract, to ensure that the contractor provides the required services in an economical, efficient and effective manner, and review the management of other services being provided by the contractor.

8. A review of the Report, against the stated objectives of the audit, would have to take into full consideration the context in which the contracts were executed and administered, Context

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- encountering considerable difficulties with the Government of Iraq in even importing replacement and or spare parts for existing UN communication establishment in Iraq.
24. Also, it must be borne in mind that it is essential that the independent inspection agents transmit their reports most expeditiously from the location where they are based, using communication not limited to the various Satcom units alone. Furthermore, there is daily such as the authorization of telephone calls, as well as, communication with UN Headquarters, as appropriate. Finally, it should be noted that the UN Headquarters communication costs in the current contract, PD/COI 1400, resulting in substantial savings on OIP needs to recover personal phone calls made by the Contractor's staff.
25. Paragraph 14 states that Symbiol's "internal policy is to allow each of its staff members free private telephone calls totaling up to 45 minutes per month. In Turkey, it was ascertained that these calls were not charged at all for personal calls, as these were not substantial in the Contractor's view. Since the communication cost is included in the man-day cost structure, private telephone calls of the Contractor staff members are being charged to OIP."
26. The auditors seem to have confused the cost structure with the agreed billing procedure. As the contract is a time and materials, daily fee, the only mechanism for charging would be attendance on site of the contracted personnel and satisfactory performance of their duties.
27. The contract was awarded to Symbiol based on competitive tender and there is no evidence that alleged commission costs for private calls are charged to OIP. It must also be noted that the UN Office of Military Services (OMS) has raised for quite some time upon Symbiol's cost structure with authority after the military action in 1998. All costs involved amounting to USD 4,000 per month were approved by the contractor (Symbiol).
28. However, the points raised in the Report regarding the cost structure could be utilized in the negotiation for the next contract.
- Accommodation and local transportation charges included in man-day billing rate have been excessive*
29. Paragraphs 16 and 17 state, *inter alia*, that at Zakho and Mithra-at-Sikr, the Government of Iraq had provided accommodation for the Contractor's staff, and at Zakho, SOMO had also provided two cars for local transportation.
30. With regard to questions related to costs for accommodation, transportation, and local transportation in Iraq, it is a well-known fact that these types of expenses to be incurred in Iraq would have to be incurred under the restrictions of sanctions, no payments could be made within Iraq in any other circumstances. It is noted that special arrangements by the contractors, not just Symbiol, to ensure that these services, when so provided, as required.
- Transport costs provided for in the Contract have been charged*
31. Paragraph 18 states that " notwithstanding specific provisions in the Contract to the contrary, amendment number three provided for computer equipment for two spare parts for the Contractor's equipment. The cost of this equipment was also included at \$39,000. In September 2000, the cost of vehicles for spare part inspections was also authorized at \$39,000. In this regard, we note that the man-day rate provides for transportation costs of 2.85 per cent. In our opinion, adequate provision was made in the Contract for transportation and so justification was given for amending the Contract to provide additional transport. This amendment was not transparent and appeared to double charge the UN for these costs."
32. To facilitate the execution of the contract, it was decided that Symbiol could purchase three vehicles and operate them independently and the vehicles would remain the property of the United Nations. Because of the urgency of the need, it was further decided to purchase vehicles that were immediately available, that happened to have different colors and prices. *Non-expendable equipment purchased by the Contractor had not been adequately accounted for*
33. Paragraph 20 states that "the UN had authorized the Contractor to purchase equipment including vehicles, and communication equipment like satcom, computers and software. We found that the contractor had purchased equipment that was not authorized and had never been inspected by the UN. Furthermore, the equipment was not entered into OIP's inventory system, and there had been no periodic check on these assets as required by UN financial rules."
34. The contract is all-inclusive, that is to say, inclusive of the equipment purchased by the contractor. In this regard, the communication equipment, computers and software are not UN property, and therefore there is no corresponding requirement for an inventory.
- Charges for additional services provided by the Contractor have been excessive and inadequately monitored*
35. Paragraphs 21 to 25 state, *inter alia*, that OIP accepted cost proposals from the contractor for additional services "without any evidence of price negotiations or tests of reasonableness. Moreover, payment for these services had been made without documentation to support the invoicing such as original bills for purchases, tickets, vouchers, etc."
36. The auditors do not seem to have understood clearly the nature of the work of OIP and the very sensitive and often most urgent requests by the Security Council and its Committee. The proposal referred to by the auditors relate to specific survey missions that were undertaken by the contractor on "short" notice within a very tight timeframe. The proposals by the contractor are "bills" as they are not all-inclusive. The contractor's proposals are for analysis, as well as for military services, such as report writing, presentations to the Security Council Committee, etc. In addition to the demands by the Security Council, the Government of Iraq would also have had to agree to the presence of any contractor, and the Government's experience with Symbiol presented the United Nations with a considerable advantage - one that cannot be overestimated - and reduced the missions such more expeditious and effective.
37. It is also an erroneous assumption that OIP does not maintain comparative information to determine the "reasonableness" of proposals. OIP has always kept such information and has maintained ongoing contact with professional societies and industrial organizations, and has

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- encountering considerable difficulties with the Government of Iraq in even importing replacement and or spare parts for existing UN communication establishment in Iraq.
24. Also, it must be borne in mind that it is essential that the independent inspection agents transmit their reports most expeditiously from the location where they are based, using communication not limited to the various Satcom units alone. Furthermore, there is daily such as the authorization of telephone calls, as well as, communication with UN Headquarters, as appropriate. Finally, it should be noted that the UN Headquarters communication costs in the current contract, PD/COI 1400, resulting in substantial savings on OIP needs to recover personal phone calls made by the Contractor's staff.
25. Paragraph 14 states that Symbiol's "internal policy is to allow each of its staff members free private telephone calls totaling up to 45 minutes per month. In Turkey, it was ascertained that these calls were not charged at all for personal calls, as these were not substantial in the Contractor's view. Since the communication cost is included in the man-day cost structure, private telephone calls of the Contractor staff members are being charged to OIP."
26. The auditors seem to have confused the cost structure with the agreed billing procedure. As the contract is a time and materials, daily fee, the only mechanism for charging would be attendance on site of the contracted personnel and satisfactory performance of their duties.
27. The contract was awarded to Symbiol based on competitive tender and there is no evidence that alleged commission costs for private calls are charged to OIP. It must also be noted that the UN Office of Military Services (OMS) has raised for quite some time upon Symbiol's cost structure with authority after the military action in 1998. All costs involved amounting to USD 4,000 per month were approved by the contractor (Symbiol).
28. However, the points raised in the Report regarding the cost structure could be utilized in the negotiation for the next contract.
- Accommodation and local transportation charges included in man-day billing rate have been excessive*
29. Paragraphs 16 and 17 state, *inter alia*, that at Zakho and Mithra-at-Sikr, the Government of Iraq had provided accommodation for the Contractor's staff, and at Zakho, SOMO had also provided two cars for local transportation.
30. With regard to questions related to costs for accommodation, transportation, and local transportation in Iraq, it is a well-known fact that these types of expenses to be incurred in Iraq would have to be incurred under the restrictions of sanctions, no payments could be made within Iraq in any other circumstances. It is noted that special arrangements by the contractors, not just Symbiol, to ensure that these services, when so provided, as required.
- Transport costs provided for in the Contract have been charged*

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D: Contract Issues

Need to separate the cost of Contractor's equipment from the man-day fee structure

44. In paragraphs 31 to 37, and the auditors' corresponding recommendations, the Report discusses the cost of equipment purchased under the contract with Sabyoil. While the comments are so vague to constitute a valid finding, it is clear that the equipment cost was not factored into the contract as well, when they speak of constant costs for equipment and recommend reimbursement by Sabyoil. Furthermore, had the auditor been in touch with Sabyoil's headquarters, they could have received the information regarding the cost of "some of the equipment", as the auditors have put it.

Security of CVs of Contractor personnel have been ineffective

45. It would seem that the auditors did not fully understand the background of the issue of early pensioners. It was originally foreseen that the contractor would identify vacancies that it was not adequately staffed to fill. The contractor was to identify such vacancies, all of which were to be filled by such experienced and motivated individuals capable of working effectively in the most arduous conditions in Iraq.

46. It is also incorrect to state that CVs of contractor's personnel are not to be used. Whenever Sabyoil sent a CV for consideration, it was done so by the contractor. CVs are not to be used for the purpose of OIP. For the contract, OIP has at times raised a number of questions with regard to candidates proposed by Sabyoil for various reasons, including experience, language skills, and geographical distribution. This was all discussed during the daily contact between Sabyoil and OIP. Candidates were withdrawn by Sabyoil following these discussions, and therefore there was no need for "rejection" by OIP.

47. In the memorandum, dated 15 April 2002, addressed to the Executive Director of the Iraq Programme, transmitting the Report, the Director of the Internal Audit Division, OIOS, has stated, *inter alia*, that OIOS considered recommendations 3, 4, 6, 8, 9, 16, 17 and 21, contained in the report "as being of critical importance". In light of the introductory remarks above, as well as the comments on specific paragraphs, it will be necessary to review each of the recommendations in detail hereunder:

Recommendation 3: Establish a contract management unit in Iraq whose functions should include reviewing invoices' supporting documentation, verifying Contractor's attendance records, and providing input for evaluation of the services provided (AR/12/01/008).

48. This recommendation fails to take into consideration the fact that this would require the contractor to have a contract management unit in Iraq. UNOHCI, as a contractor, would not necessarily be agreed to by the Government of Iraq. Furthermore, it should be borne in mind that UNOHCI is an integral part of OIP. We believe that the decision to manage the contract from Headquarters level was the right decision taken. We have the expertise within OIP at the

thus been able to discuss quickly with experts whether technical and financial proposals were reasonable.

38. Regarding the comments on the road-sign from Amara-Raqshah-Amanah, it is concluded that the charges were overstated. Consequently, OIP is arranging a deduction of the overcharge, as appropriate.

39. The auditors do not seem to have taken into consideration the question of the time factor which, in the case of "audit" visits, had to be taken into consideration by the fielding missions. Notably, Sabyoil had to be given time to undertake such missions, as well as their returners who were specialized in the areas necessary to undertake such missions, as well as having great technical familiarity with both the Iraqi oil industry as well as the oil industry in general in the region. Regarding the comments specifically on paragraphs 24 and 25, on "the 'audit' cost proposal", furthermore, it is essential to keep in mind that the contract was based on an "audit" cost proposal. Furthermore, the contractor's proposal was fully considered by the OI Overseers.

The Contractor had not conducted "audit visits" as provided for in the Contract

40. Paragraph 26 states that although the contractor's proposal dated June 1996, provided for a coordinator from Roussillon to "audit" their operation in Iraq every six weeks, no audit had been conducted. On the assumption that the cost of the visits would have been included in the overall price proposed by the Contractor, the auditors consequently calculated 36 such missed visits.

41. The assumption is incorrect, as the technical head of the Iraq team for Sabyoil regularly undertakes missions to Iraq and the cost of these visits is included in the overall cost of the contract. In addition, regular "audit" visits are undertaken by OIP experts, particularly those involved in spare parts and equipment for the oil sector, as well as customs experts and the OI Overseers. It should also be pointed out that it is more effective and efficient to have an overall team based in Roussillon, which can undertake "audit" visits, which are, after all, post on-going basis of review and action, than only periodic "audit" visits, which are, after all, post facto.

Services provided by UNOHCI have not been adequately charged to the Contractor

42. Paragraphs 27 and 28 have been duly noted. As stated in paragraph 12 above, it may be useful for the auditor to review Section VIII of the MOU, concerning Privileges and Immunities.

B: Monitoring Contractor's performance

OIP officials charged with monitoring the Contractor had not made inspection visits to Iraq

43. Regarding the comments on paragraphs 29 and 30, it should be noted that the contract is being executed in a highly sensitive political environment. As has been already noted, in the past, UNOHCI has been subjected to a number of attacks and threats against its personnel in Headquarters. OIP maintains oversight of the activities of Sabyoil on a daily basis through reporting as well as daily consultations with Sabyoil, the OI Overseers, as well as the OIP group of experts on oil spare parts.

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Headquarters, including the Oil Owners and the group of oil state participants with whom Skyplot has to work very closely, almost on a day-to-day basis.

Recommendation 4: OIP management should recover the payment of \$370,000 as indicated in Annex 1, from the Contractor in subsequent billings (AFU/20/06/004)

46. This recommendation should be further reviewed by OIOS. The \$370,000 seems to be significantly overstated. Ideally, Skyplot's review of its invoices revealed undercharging of approximately \$15,000 that might cancel any overcharging.

Recommendation 6: OIP management should in future contracts with the Contractor (or any other contractor) separate the communication expenses from the monthly staff structure and reimburse these on presentation of detailed documentation (e.g. invoices from service providers) (AFU/20/06/006)

50. The recommendation is noted and will be taken into account for the negotiation of future contract proposals.

Recommendation 8: OIP management should take steps to stop payment of personal telephone calls of the Contractor staff recover the amounts overpaid which is estimated at \$109,000 for the first nine phases of the programme (AFU/20/06/008).

51. The contract is as all-inclusive, and there is no evidence that the contractor has separately charged OIP for private calls. Further, it would be contrary to the terms of the contract to demand such reimbursement.

Recommendation 9: OIP management should recover overpayments for communication services from the Contractor (AFU/20/06/009)

52. The contract is all-inclusive, therefore under the terms of the contract there is no reimbursement due.

Recommendation 16: Implement procedures for providing urgently required services, which should include: obtaining quotations from other suppliers; checking the reasonableness of quotations based on actual costs; and negotiating costs with the selected supplier (AFU/20/06/016).

53. As stated above, OIP maintains constant contact with professional societies and industrial organizations and is, therefore, current on the costs of services. However, the recommendation is noted.

Recommendation 17: OIP management should obtain details of "audit visits" undertaken by the Contractor and if no such visits have taken place, recover an estimated amount of \$270,000 for 36 such required visits up to phase nine (AFU/20/06/017).

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54. It is more effective and efficient to have an overall team leader positioned within Iraq that have total responsibility for "auditing" functions on an on-going basis of review and action, rather than only periodic "audit" visits, which are after all post facto. In this regard, OIP does not consider that any recovery is due.

Recommendation 21: OIP management should establish an appropriate approval process for candidates proposed by the contractor in accordance with the contract (AFU/20/06/021).

55. There are consultations between OIP and the contractor in the selection of candidates. However, it is agreed to establish a formal procedure for conveying approval of candidates proposed by the contractor.

ANALYSIS OF SA/BOLT INVOICES

Invoice No.	Invoice Date	Invoice Amount	Invoice Description
1000	10/15/00	1000.00	SA/BOLT INVOICES
1001	10/15/00	1000.00	SA/BOLT INVOICES
1002	10/15/00	1000.00	SA/BOLT INVOICES
1003	10/15/00	1000.00	SA/BOLT INVOICES
1004	10/15/00	1000.00	SA/BOLT INVOICES
1005	10/15/00	1000.00	SA/BOLT INVOICES
1006	10/15/00	1000.00	SA/BOLT INVOICES
1007	10/15/00	1000.00	SA/BOLT INVOICES
1008	10/15/00	1000.00	SA/BOLT INVOICES
1009	10/15/00	1000.00	SA/BOLT INVOICES
1010	10/15/00	1000.00	SA/BOLT INVOICES

ANNEX I

ANALYSIS OF SA/BOLT INVOICES

Invoice No.	Invoice Date	Invoice Amount	Invoice Description
1000	10/15/00	1000.00	SA/BOLT INVOICES
1001	10/15/00	1000.00	SA/BOLT INVOICES
1002	10/15/00	1000.00	SA/BOLT INVOICES
1003	10/15/00	1000.00	SA/BOLT INVOICES
1004	10/15/00	1000.00	SA/BOLT INVOICES
1005	10/15/00	1000.00	SA/BOLT INVOICES
1006	10/15/00	1000.00	SA/BOLT INVOICES
1007	10/15/00	1000.00	SA/BOLT INVOICES
1008	10/15/00	1000.00	SA/BOLT INVOICES
1009	10/15/00	1000.00	SA/BOLT INVOICES
1010	10/15/00	1000.00	SA/BOLT INVOICES

ANNEX I

1000 X 10 x 14 2500

1001 X 10 x 14 2500

1002 X 10 x 14 2500

1003 X 10 x 14 2500

1004 X 10 x 14 2500

1005 X 10 x 14 2500

1006 X 10 x 14 2500

1007 X 10 x 14 2500

1008 X 10 x 14 2500

1009 X 10 x 14 2500

1010 X 10 x 14 2500

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COMMENTS ON THE AUDIT OF THE MANAGEMENT OF THE OIL INSPECTION SERVICES CONTRACT

An audit of the management of the oil inspection contract was conducted by OIOS from March through August 2001. A draft report (AF/2001/28/6), dated 7 December 2001, with findings and recommendations, as well as a request for time subschedule for the implementation of accepted recommendations, was forwarded to Mr. Sevald, under cover of memorandum reference number AUP-P-1:31 (175381), of same date.

Following the Security Council resolution 986 (1995) and the MOU, Skybolt Eastern Hemisphere BV (Skybolt) was awarded Contract PTD/127/0065-96, in August 1996, to provide the services of 14 individuals with "particular experience and qualifications" to assist in the oil inspection services for the period from 1 August 1996 to 31 July 2001. The contract has an initial term of six (6) months, with an option of renewal for up to three (3) successive periods of six (6) months, on the same terms and conditions. Contract PTD/127/0065-96 was subsequently amended several times to provide for additional inspectors for oil spare parts, and groups of oil experts and a special assignment at the request of the Security Council. The contract was renewed for a second period of six (6) months, from 1 August 2000 to 31 July 2001, under Contract PTD/127/0065-96. Under the new contract, which is for one year, with an option of renewal for three (3) successive terms on the same terms and conditions, Skybolt would provide 20 inspection agents; 14 to monitor the oil exports and 5 for spare parts and equipment. The contract has been amended to provide for an increase in the number of oil spare parts inspectors from 6 to 8, bringing the total number of agents to 22.

The audit objectives as stated in the draft report are, *inter alia*, to assess OIP's management of the contract, determine if the contractor provides the required services in an economical, efficient and effective manner, and review the management of other services being provided by the contractor. A review of the draft audit report indicates that the audit objectives would have to take into consideration the context in which the contract was executed and administered.

Comments are not enclosed in a vacuum. As indicated above, the particular contract is being carried out within a sanctions regime and managed in a politically sensitive environment. Any comment on the contract should take into account the context in which the contract is being administered. Yes, it would appear from the draft report that the audit was conducted without taking cognizance, either of the legal or political context of the contract which in turn influence its management. For example, the introductory paragraph of the Executive Summary state that "OIP should have considered utilizing UN staff to perform the oil inspection service as an alternative to the contract with Skybolt". It is noted that the Security Council resolution by OIP in this regard would not have been consistent with the Security Council resolution

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number of oil inspectors was increased from six to eight. Paragraph has the total number of inspectors at twenty. This error is significant as it influenced the subsequent findings and recommendations.

Paragraph 3(f) stated that "a review of 19 monthly invoices and supporting documents found 'deficiencies'. Among the deficiencies stated is ambiguity of the attendance record which does not distinguish between inspectors who arrived to departure Amman". In the view of the auditors, payments should only be made for training the locations in Iraq and Turkey.

Contract number PTD/127/0065-96 (the initial contract) determined the number of inspectors required at particular locations in Iraq and Turkey, and Article 7.1 provides for full payment for Amman and satisfactory performance by the contractor of its obligations under the contract. Amman is not a location where more oil inspection agents than required are needed under the contract, and is not being paid for the extra agents. The fact that the contractor is not being paid for the extra agents does not mean that the contractor is not being paid for the "deficiency" in documentation shown "inconsistencies, since December 2000 the attendance record has shown "inconsistent Attendance on Location, from arrival to departure".

The draft report also illustrates that the auditors do not have a good understanding of the contract and the method used in the preparation of invoices by Skybolt. This misunderstanding led to a significant error in "finding" that Skybolt overcharged some \$370,000 for services provided during the period 29 May 1999 to 28 June 2001. The auditors confirmed the billing mechanism, during that Skybolt's billing was based on contracted staff levels and not on staff on duty. On this point, the auditors need naming of inspectors for oil spare parts and equipment. This is right and not set as stated in paragraph 6 of the draft report.

There is a historical precedent in the preparation of invoices in line with the commencement of the current contract. The invoice always covers the period between the 28th day of the month and the 28th day of the next month. This is the basis on which the invoice is prepared. Thus, the invoice prepared at the end of June covers the last few days of May and the first few days of June. Reference is made in this regard to Amendment No. 8 to contract PTD/CO/127/0065/99, which covered the period 29th of May 1999 through 28th of November 1999, after which this invoicing scheme was implemented. A review of all invoices found one incorrect invoice in October 1999. This irregularity does not appear in any of the other invoices. No over billing was identified in any of the other invoices. The irregularity was not queried by OIP, because OIP was not aware of the invoicing mechanism, which the auditors did not understand the billing mechanism, which the auditors did not.

The lump sum payment method provided for in Contract PTD/127/0065-96 (the initial contract) was discontinued with effect from 28 May 1999 in the successor contract. Since June 1999, invoices have been accompanied by an attendance sheet.

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986(1993) and the Memorandum of Understanding between the Secretariat of the United Nations and the Iraq Government of Iraq on the implementation of the Oil-for-Food Programme (UNSCR 986(1995) (MOU), Annex II, paragraph 4, of the MOU expressly provides for independent inspection agents to monitor Iraq oil exports.

Various amendments of the contract were undertaken in response to the requests of the Security Council and its Committee established by resolution 661 (1990). The amendments have been made with a considerable advantage, one that cannot be cost evaluated, and which rendered the missions much more expeditious and effective.

The decision to engage the contract from OIP under the UNOCHI was in order not to unduly compromise the latter's mandate. To the extent possible, efforts have been made by OIP to institute appropriate procedures that would ensure that the contractor fully discharge its contractual responsibilities. It is realistic, however, to acknowledge that political actions may be taken that would affect the contractor's discharge its responsibilities. For example, it is common knowledge that oil companies are often subject to political actions. It is also common knowledge that the Government has refused to allow any additional contractor staff permanent basis, therefore occasionally deploys more staff to cope with peak periods of work.

The auditors failed to avail themselves of vital consultations that would have been useful to them in their work. The auditors were not aware of the background to the contract, the contract itself and its management.

Although the auditors undertook site visits to some of the locations where the independent inspection agents are located, they did not visit Miss A.J. Baker to witness first hand the very difficult relationship between the auditors and OIP. In addition, there was no consultation between the auditors and OIP for the auditors' some of the contractor's headquarters that would have helped clarify for the auditors some of the contractor's issues. An exit conference might also have helped had one been held.

Comments on specific staff findings and recommendations are proffered hereunder:

A1: Monitoring of invoice payments and financial matters

Procedures have not been implemented to monitor invoice payments:

Paragraph 8 of the draft report stated, inter alia, that the number of inspectors, whether for oil or spare parts, is the only measurable parameter by which the UIC monitors the contractor. Hence an accurate attendance record is essential to support the monthly invoices submitted by the contractor."

The real parameters to measure the performance of the inspectors, whether for the export of oil or the monitoring of spare parts, are the number of OIP daily, weekly, and in special cases, as stated. It is contractual responsibility which some OIP daily, weekly, and in special cases, as stated. It should also be noted that through Amendment number 1 to Contract number PTD/CO/14/00, the

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Paragraph 14 stated that Syybolt's "minimal policy is to allow each of its staff members three private telephone calls totaling up to 45 minutes per month. In Turkey, it was ascertained that staff members were not charged at all for personal calls, as those were not included in the Contractor's view of the cost structure. In Iraq, however, staff members were charged for their structure, private telephone calls of the Contractor staff members are being charged to OIP."

The auditors seek to have confirmed the cost structure with the agreed billing procedure. As the contract is all-inclusive daily fee, the only mechanism for charging would be attendance on site of the contractor personnel and satisfactory performance of their duties.

The contract was awarded to Syybolt based on competitive tender and there is no evidence that alleged communication costs for private calls are charged to OIP. It must also be mentioned that the State Oil Marketing Organization (SOMO) has relied for quite some time upon Syybolt's communication system after the military action in Iraq. The costs involved amounting to USD 6,000, per month were assumed by the contractor (Syybolt).

However, the points raised in the draft report regarding the cost structure could be utilized in the negotiations for the next contract.

Accommodation and local transportation charges included in man-day billing rates have been excessive

Paragraphs 16 and 17 stated, inter alia that at Zabho and Mina-ab-hakr, the Government of Iraq had provided accommodation for the Contractor's staff, and at Zaxuo, SOMO had also provided two cars for local transportation.

With regard to questions related to costs for accommodation, transportation, communications, etc., in Iraq, it is a well-known fact that these types of expenses to be incurred in Iraq would have to be compensated, but under the restrictions of sanctions, no payments could be made within Iraq in any other currency in the form of goods and services, etc., would be provided.

Transport costs provided for in the Contract have been charged

Paragraph 18 stated that "resubmitting specific provisions in the Contract to the country, the Contractor number three provided for computer equipment for two spare parts inspectors at a cost of \$17,800. Furthermore, as per the proposal of the Contractor, dated 19 September 2000, the cost of vehicles for spare parts inspectors was also authorized at \$39,000. In this regard, we note that the man-day rate provides for transportation costs of 2.85 per cent. In our opinion, adequate provision was made in the contract for transportation and related expenses for the spare parts inspectors. The Contractor's proposal for the man-day rate for spare parts inspectors appeared to double charge the UN for these costs."

To facilitate the execution of the contract, it was decided that Syybolt could purchase three vehicles and operate them independently and the vehicles would remain the property of the

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Overpayment of monthly invoices needs to be recovered

Paragraph 10 of the draft report stated that the contractor had overcharged by approximately \$370,000, on short and excess staffing of staff. Except for the 1999 invoices where Syybolt billed for 31 June 1999, there did not appear to be any evidence of over billing. The invoices were in line with the attendance records. It would seem that the auditors only reviewed the invoices for the month of June 1999, and not the invoices for the months of 29th, 30th and 31st of the month, in determining the days of attendance. The other billing errors found were for December 2001, where Syybolt billed for 421 days for Oil inspectors against 422 shown on the attendance sheet, so undercharging by one day, and June 1999, where a wrong code was used on the attendance sheet, although this did not have a financial consequence.

Regarding the short staffing of staff, as the invoices (since 29 May 1999) were based on staff as per the attendance sheet, no adjustment was required to the invoices for contracted staff that were not on duty, as the invoice did not include any charge for an absent Syybolt staff. As noted above, irrespective of the maximum allowed spare parts inspectors, during the night shift, the contractor only deployed one spare parts inspector, and only on the requirement of the 663 Contractor staff. It is obvious that the delay in ordering and physical arrival of spare parts and equipment. It would, thus, appear that the auditors did not differentiate between Syybolt's responsibilities.

Communication charges by the Contractor have been excessive

Paragraphs 11 and 12 stated that the tariff structure of the contract include communication expenses which is about 21 per cent of the total contract amount and that the Contractor did not provide for any requirement to justify the expenses incurred through the use of a satellite communication system (Satcom). The draft report also stated that the "UN did not consider the communication system to be a necessary expense. It is noted that the communication expenses (significantly) spent from being transparent in terms of identification of all calls including personal ones....."

The auditors did not seem to take into consideration the geography of Iraq, the location of the sites where the independent spare parts inspectors are stationed, the logistics that would have been involved in the UN telecommunication system in the various locations and also the political environment.

It must be noted that time is essential and the independent inspection agents have to transmit their reports from the location where they are based, using communication not limited to the satellite communication system. The draft report also stated that the "UN did not consider the various locations in the field, to transmit data such as the authorization documentation for crude oil loadings. It should also be noted that "on-line" costs were renegotiated in the current contract, PD/OCI 14/00, resulting in substantial savings on communication costs.

OIP needs to recover personal phone calls made by the Contractor's staff

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overcharge. But again it should be noted that the auditors seem not to have taken into consideration the question of the time factor, in that Saybolt was able to provide experts immediately from their centers who were specialized in the areas necessary to undertake these missions, as well as having great technical familiarity with both Iraq and other countries in the region. And regarding the comments specifically on Paragraphs 24 and 25 on the cost of the mission, it is essential to keep in mind that the contract was based on an "audit" cost proposal.

The Contractor had not conducted "audit visits" as provided for in the Contract

Paragraph 26 reads that although the Contractor's proposal dated June 1986, provided for a coordinator from Rotterdam to "audit" their expenses in Iraq, no such audit had been conducted. On the assumption that the costs of the visits would have been included in the overall price proposed by the Contractor, the auditors consequently calculated 36 such unexecuted visits.

The assumption is incorrect, as the technical head of the Iraq team for Saybolt, Mr. Graham Brent, regularly undertakes missions to Iraq, and the cost of these missions is included in the overall price of the contract. In addition, regular "audit" visits are undertaken by OIP experts particularly those involved in spare parts and equipment for the oil sector, as well as customs experts and the Oil Overseers. It should also be pointed out that it is more effective and economical for an overall team leader positioned within Iraq that have total responsibility for auditing functions, as opposed to sending teams on review and action, then only periodic "audit" visits, which are after all *post facto*.

Services provided by UNOHCI have not been adequately charged to the Contractor

Paragraphs 27 and 28 have been duly noted.

By Monitoring Contractor's performance

OIP officials charged with monitoring the Contractor had not made inspection visits to Iraq
Regarding the comments on paragraphs 29 and 30, it should be noted that the contract is being executed in a politically sensitive environment. As has been already stated, in order not to compromise UNOHCI's mandate, it was decided to administer the contract from headquarters. OIP maintains oversight of the activities of Saybolt on a daily basis through regular consultations with Saybolt, the Oil Overseers, as well as the group of experts on oil spare parts.

Need for reduction in contractor payment during "no work" periods

In paragraphs 31 and 32, the auditors opine that during times when oil is not being exported from Iraq, the Contractor should be required to reduce its daily amount to that of a single day's work. It is pointed out that the Contractor is not a company of that type that would agree to such conditions in its contract with the United Nations. There is no way to know in advance when there will be a disruption in the oil exports, and it is illogical to expect that ships will wait until the

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United Nations. Because of the urgency of the need, it was further decided to purchase vehicles that were immediately available, that happened to have different colors and prices.

Non-expendable equipment purchased by the Contractor had not been adequately accounted for

Paragraph 20 stated that "the UN had authorized the Contractor to purchase equipment including vehicles, and communication equipment like stations, computers and software. We found that the equipment paid for by the UN did not have any UN asset number affixed and had never been inventoried. In other words, the equipment was not entered into OIP's inventory system, and there had been no periodic checks on these assets as required by UN financial rules."

Due to the political environment in which the contract is executed, it is not feasible to conduct physical inventory of the vehicles and equipment at site. The Contractor maintains a record of what has been purchased by Saybolt under the 2.5% contract, and it is necessary wish to cause unnecessary friction with the Government of Iraq.

Changes for additional services provided by the Contractor have been excessive and inadequately monitored

Paragraphs 21 to 25 stated, *inter alia*, that OIP accepted cost proposals from the contractor for additional services "without any evidence of price negotiations or terms of reasonableness. Payment for these services had been made without documentation to support the invoicing with original bills for purchases, tickets, vouchers, etc."

The auditors seem not to have a clear understanding of the nature of the work of OIP and the very sensitive and often urgent requests by the Security Council and its Committee established by resolution 661 (1990). The proposals referred to by the auditors relate to the purchase of spare parts for the equipment of the Security Council within a tight timeframe. The proposals by the contractor are for an audit as well as an expert personnel for technical activities and analysis, as well as for auxiliary services, such as report writing, presentations to the Security Council Committee, etc. In addition to the demands by the Security Council, the Government of Iraq would also have had to agree to the presence of the OIP auditors. The Government's experience with Saybolt presented the United Nations with a considerable advantage, which cannot be overestimated - but rendered the missions much more expeditious and effective.

It is also an erroneous assumption that OIP does not maintain comparative information to "reasonableness" of proposals. OIP has always kept such information and has maintained records of the prices of similar services and financial organizations, and has thus been able to discuss quickly with experts whether reduced and financial proposals were reasonable.

Regarding the comments on the round-trip from Amman-Baghdad-Amman, it is concluded that the charges were overrated. Consequently OIP is arranging a deduction of the

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Saybolt Eastern Hemisphere B.V. - Rotterdam

Memorandum

To : Office of the Inq Programme
From : Mr. Stephen Sober
Subject : OOS Audit No. A2001006: Audit of the management of the oil
Date : December 24, 2001

We refer to the draft audit reports as mentioned above, which we received on December 13, 2001. Although you mention in the covering note that the auditors spoke to us in Rotterdam, this is not the case. We only provided some information to our team-leader in Baghdad, in response to questions addressed to him. At that time, we encouraged through our team-leader the auditors to contact us in Rotterdam. Unfortunately this never occurred.

Given the fact that the Executive Summary is overlapping the main body of the document, we will limit our use to the latter.

I. Introduction

In the introduction referenced is made to our current contract, mentioning the present staffing levels. It should however be noted that Amendment No. 1 to Contract No. PDCO1140100 allows us to deploy two additional spare parts inspectors. Given the fact that the GOI has refused to allow any additional spare parts inspectors, we are currently unable to meet the current requirements. It is essential to cope with peak periods of work. It must be understood that under present circumstances the current requirements significantly exceed the allowed number of spare parts inspectors.

III. Audit Scope

Although we noted that the auditors undertook site visits to some of the locations where our staff are located, they unfortunately did not visit Miss Al Bahr, in witness first hand the very difficult conditions under which our staff are forced to operate, which we will refer to later. In addition, we ascertain that our inspectors have not been directly contacted to discuss any of the contentious matters referred to in their report.

IV. Audit Findings and Recommendations

9 (1) Saybolt maintains throughout the year the following staff on site:

- Cyhan - Turkey : 3 Staff members
Miss Al Bahr - Inq : 6 Staff members
Zaido - Inq : 3 Staff members

The contract is all-inclusive, and there is no evidence that the contractor has separately charged OIP for private calls. Further, it would be contrary to the terms of the contract to demand such reimbursement.

Recommendation 9: OIP management should recover overpayment for accommodation and transportation of approximately \$471,000 from the Contractor (ARU/2006/009).

The contract is all-inclusive, therefore under the terms of the contract, there is no reimbursement due.

(1) Recommendation 16: Implement procedures for procuring urgently required services, which should include: obtaining quotations from other suppliers; checking the contract terms and conditions; and negotiating costs with the selected supplier (ARU/2006/010).

As stated above, OIP maintains constant contact with professional societies and industrial organizations and is, therefore, current on the costs of services. However, the recommendation is noted.

Recommendation 17: OIP management should obtain details of "audit visits" undertaken by the Contractor and if no such visits have taken place, recover an estimated amount of \$100,000 from the Contractor (ARU/2006/017).

It is more efficient and efficient to have an overall team leader positioned within Inq that have total responsibility for auditing functions on an on-going basis of review and action, rather than only periodic "audit" visits, which are after all poor value. In this regard, OIP does not consider that any recovery is due.

Recommendation 21: OIP management should negotiate with the Contractor to recover approximately \$1 million per for equipment in excess of its actual cost and to stop further payments for equipment cost components in the current Contract (ARU/2006/021).

This recommendation is rejected. OIP is bound by the terms of contract between Saybolt and the United Nations. However, the recommendation will be considered for future negotiations of contract proposals.

Recommendation 23: OIP management should consider the option of engaging UN staff members at the appropriate level, which is clearly a much more economical alternative to contracting

- (v) Given the fact that there is a historical precedent in changing the invoice covers always the previous month, the previous month's invoice is not issued until the 29th day of the month the invoice is prepared. Thus the invoice is issued at the end of the month, and not at the beginning of the following month. After review of all invoices, we found one incorrect invoice, issued for the month June 1995. This irregularity does not appear in any of the other invoices reviewed.
- 10 (i) A review per invoice is attached for your reference.
- (ii) In view of the maximum allowed spare parts inspection, during the initial stages of this contract, only employees sufficient staff to effectively carry out the requirements of the 661 Committee, there is an obvious time delay in ordering and physical arrival of spare parts and equipment.
- (iii) We refer to our review per invoice.
- 12 It must be noted that given the fact that time is essential, that our inspectors have to measure their reports from the location where they are based. We are unaware that there are options to link in to the UN telecommunication system from locations such as Missa Al Bakr. In addition to this communication is not limited to the use of the various alarm units alone. The fact that the UN is not able to use the UN HQ in Baghdad to the various locations in the field, transmit data such as the authorization determination for crude oil loading.
14. Essentially we feel that our contract has been awarded on the basis of a competitive tender.
16. OIP, it will agree that Skybolt has subcontracted the services for transportation and accommodation within Iraq. Initially this was done directly with the Ministry of Oil, which was proven to be in contravention with UN regulations. It was then decided to subcontract this service through a company in Jordan, which to date still is the case.
17. For good order's sake there is no free transportation and/or accommodation within this contract.
18. The auditors refer to the provision of transportation to the spare parts monitors, which was arranged through UNOCHA and taken into consideration in our fee structure. When the United Nations decided to subcontract the transportation services, it was decided that Skybolt could purchase three vehicles and operate them independently. The vehicles will remain the property of the United Nations. Skybolt has never quoted for the provision of transportation of the spare parts monitor.
20. A side-remark is that equipment purchased under this arrangement have in numerous cases been replaced by Skybolt. Are there any guidelines as to how we should cope with that?

26. Given the importance of this contract, it was decided that it would be more effective and efficient to appoint an overall team leader positioned within Iraq to have total responsibility for auditing functions on an on-going basis of review and action. In addition to that, visits were made by Executives from Rotterdam as and when required.
31. Essentially we feel that our contract has been awarded on the basis of a competitive tender. Side-remark is that equipment is an ongoing expenditure, such as laboratory consumables, replacing laboratory equipment, medical equipment, upgrading communication equipment and/or computers, gear for new staff etc.
36. It would seem that the auditors did not understand the background of the issue of early-cessations. This approach was chosen, when the proposal had to contain the provision of all overruns as well. This requirement was however deleted, and therefore a provision in the contract was made that the auditors should be experienced and motivated individuals capable of working efficiently in the sometimes-unknown conditions in Iraq.
38. Again a side-remark. The United Nations in promoting the UNOCHA OIG decided to subcontract the auditing functions to a specialized company. The appointment of the successful bidder was by competitive tender. In addition to the 20 inspectors on-site, a much larger pool of staff is needed to maintain the 7 day's per week 24 hours a day operation, which is common practice in the oil business. It goes without saying that contracts at that time were not awarded on the basis of an independent audit. The fact that the UNOCHA OIG is not realistic to assume that staff is prepared to work at that platform on the conditions mentioned by the auditors. Additionally, a specialized team of a full time employees is involved in the ongoing management of the project, and is giving advice and guidance to the OIP on all matters pertaining to the OIG laboratory in Iraq.

Audit. DE 1197.

From: Peter Bosa on 10/28/97 06:28 PM
To: Amd@comcast.net
CC: Steve
Subject: UN Audit

Steve,

Please find herewith our comments on your telefax dated 27 October 1997:

1) Letters of Credit.

Letters of Credit are often not opened until the last moment and have to be processed via SWIFT. It is not clear from your letter to the Bank in New York and then to the UN Overseas for their approval. We note the Auditor's comments but feel that this is a subject that should be addressed by the Overseas.

We do all we can to assist, and remain in close contact with the Overseas on this matter to ensure that vessels are not delayed.

2) Trafique Claim.

A number of points are raised in this section.

My letters to Catois-Breton, led by 26th 1997, and to J. Stephanelles (dtd 27 May 1997) address the issue of Saybolt working directly for the buyer as well as UN. It is a moot point whether Catois-Breton is an "interest", and captioned letter to J. Stephanelles also advises that the UN Auditor's statement is in contradiction to the statement by the UN Auditor that normal commercial practices; this is indeed a normal commercial practice.

If required we could furnish evidence of this procedure for normal means of commercial sale/purchase confirmations, between buyer and seller, mention under the heading inspection:

Quality/quantity to be determined by mutually acceptable independent inspectors, whose findings to be final and binding for both parties, safe fraud or error, costs to be shared 50/50 buyer/seller.

3) Small Interactions: Trading & Shipping - "Nikolosa" Loading.

Our previous report to the UN advises the sequence of events regarding this loading.

The question from the UN Auditor seems to revolve around the statement "How A different crime was loaded?"

Our answer is as follows:-

3.1. The Bosa terminal was originally designed primarily as a loading terminal.

3.2. There has never been more than one valve separation between

the discharge and the loading line systems, a factor which was noted during initial site visits regarding the measuring systems.

3.3. The vessel "Gobas" was discharging, for the account of Topras, during the initial stages of the loading of "Nikolosa".

3.4. On completion of "Gobas" discharge Bosa approached the Saybolt team to verify they had observed a 30,000 barrel shortage in received quantity from the buyer, and that they were concerned as to its eventual destination.

3.5. The Saybolt team initially checked the valves separating the discharge line used for the "Gobas" from the loading line used for "Nikolosa". The valves were found to be closed and the electronic registering closed on the terminal electronic system but proved to be slightly open owing to incomplete testing.

3.6. We then stopped the "Nikolosa" loading, alleged (measured) the ship's tanks and checked the above tanks allocated for the UN loading. The UN team then contacted the buyer, advised them of the problem, and Rotterdam the buyer, advising them of the problem.

3.7. After some deliberation it was decided that the cargo already received was to be replaced with uncommenced oil, and arrangements for forwarding transfer to the Mirnikala refinery.

COMMENT

The Bosa terminal was not specifically designed for the use it is being put to. It is a case of disrepair and the UN/Saybolt team were unable to best ability loading in mind these constraints, as there are no acceptable alternatives. The agreed format for monitoring loaded volumes is old and unreliable. The agreed format for monitoring loaded volumes is old and unreliable. The agreed format for monitoring loaded volumes is old and unreliable. The agreed format for monitoring loaded volumes is old and unreliable.

In the case of the "Nikolosa" the UN/Saybolt team carried out their intervention. Saybolt took steps to advise all parties to ensure that the "Nikolosa" loading was in line with UN requirements.

Kindest regards,

Peter Bosa



United Nations HQ, New York
Page 2/2



Saybolt International B.V. - Rotterdam

Telefax

Fax number receiver : 00 1 212 963 1300
To : United Nations Headquarters, New York
Attention : Mr. Steven
From : Saybolt International B.V.

Subject : UN Audit reply
Date : October 27, 1997

Dear Steve,

In reply to your fax dated 24 October 1997, we would like to comment as follows:

Which of the two figures is closer to the actual quantity?

In view of the non-functional metering system, it is, as you know our procedure to measure:

1. The storage tanks before and after loading of a cargo (for reference and check).
2. The vessel is measured after loading, whereas the vessel's measurements are adjusted by Vessel's Experience Factor (VEF) and On Board Quantities (OBQ).

The measurements described under point 1. serve as reference and check, and the figures are recorded, and archived, against possible future requirement but owing to the relatively long time span since the storage tanks were independently calibrated the control mechanism described under point 2. is considered the more accurate determination, in the absence of accurate metering facilities, for monitoring purposes.

The difference of 26,851 barrels GSV can in our opinion be attributed to the loading of the T.V. "Hiberna Prestige". This vessel arrived in Croylan after an extended period in dry dock during which alterations were made to the deck, ullage points to allow use of M/MC-type measuring apparatus. The vessel's calibration charts, as presented, were not adjusted for this structural alteration.

On completion of loading there was an apparent difference between the vessels figures (by reference to calibration charts) and shore figures, as follows:

Vessel	986,182 barrels
Shore	959,106 barrels

Which equates to 28,076 barrels or 2.85 %.

How has the difference been adjusted?

After consultations with the UN OH overseers and local SOMO representatives it was decided not to deviate from the procedure and that on establishment of the outturn of the ullage of the vessel an adjustment with the client would be made. (Either by volume on a future lifting, or financially).

5023704

This adjustment is in view of the difference (26,851 barrels) over the entire period in our opinion justified.

The adjustment has however as far as we know not yet been made.

Did not the buyers claim refund?

Obviously the buyers are, as a rule not involved in the measurements that are done for reference/check by Saybolt in conjunction with their tasks as UN observers. Moreover the bill of lading is based on the vessel's measurements adjusted by Vessel's Experience Factor (VEF) and On Board Quantities (OBQ).

However in the case of T.V. "Hiberna Prestige" the buyer has claimed refund, as they noticed consistent with the differences observed in Liverpool, an outturn due at the discharge port.

Why difference arose?

Explanation is given earlier.

Could Saybolt have prevented this difference?

Separate from the acceptable differences which will always occur, in view of the relatively long time span since the storage tanks were independently calibrated or measurement error's with temperature readings or soundings, the difference in the case of T.V. "Hiberna Prestige" exceeded the acceptable difference and it was brought to the attention of all parties concerned. Subsequently it was decided not to deviate from the procedure.

It is therefore that Saybolt can not be blamed for this difference.

Steve, I trust this answers the queries, please contact me in case you need some clarification.

Best regards,

Peter Bols

5023705

Graham Birt
11/22/2001 04:43 PM
To: K112@pds.net, K113@pds.net
cc: Peter Bobb, Saybolt, James@pds.com, Mennus
Subject: REVISED DAILY REPORTING PROCEDURES - CEYHAN & MINA
ALABAMA



Gentlemen,
You will no doubt all be aware of the alleged illegal loadings from Mina

involving the vessel "Essex", and the revised
reporting procedures instituted at both Ceyhan and Mina al-Bahr to
prevent the possibility of such occurrences in
the future.
Recently it was noted that the Report monitoring
activity at Ceyhan and Mina al-Bahr was under the closest scrutiny from the
U.S. Coast Guard and that the quality of reporting to this office and
the quality of reporting to the office and
significantly deteriorated.

Examples, in no particular order of merit, are:
1) Missing logs with no completion, or sailing,
2) Sailing wires with incorrect Bill of Lading
3) Missing or incorrect reporting of the Iraq
Program of the United Nations has written to
Saybolt on this matter.

I do not have to take the point that this
level of performance is unacceptable
for a United States citizen. It is unacceptable
for a United States citizen to be associated by a
U.S. citizen with an illegal activity that
out an important task. If we are not seen to act
firmly, we will lose the respect of our
people under our very noses, and
then we will all suffer the consequences.
In our reporting function we are the only
and the quality and the quality and
content of our reporting function is the only
performance. Once established, confidence is
hard to rebuild.

Since the inception of the "Oil for Food"
Program in late 1996 Saybolt has done a
great job of reporting. However, recently it
is only our mistakes that are noticed, and of
late there have been too many mistakes and
mistakes will not be tolerated.

THE FOLLOWING ACTIONS WILL NOW BE TAKEN:
A) As from receipt of this message, both the
Ceyhan and Mina al-Bahr reporting procedures
as part of the daily report, comprehensive time

December 20th, 2001

Core Labor Administration
U.S. Headquarters,
6316 Windoffem--77040
Houston
Texas
U.S.A.

FAO: Kinnz Dantz--Assttann General Council

RE: "T V" Essex"

Dear Kings,

As per our telephonic conversation of yesterday, regarding the matter of the vessel "T V Essex", please find attached copies of documents from the working file held in Rotterdam.

Should you need any assistance on the identification of any of these documents please feel free to call me directly. My telephone number is 020 674 1111. My fax number is 020 674 1112. My e-mail address is Kinnz.Dantz@FAO.org. My office is located in the Eastern part of January, 2002.

Kindest regards,

Graham Birt
cc: Peter Bobb, Saybolt, Rotterdam

Please do tell us:
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log activities per vessel covering at minimum daily entries as they occur. I expect to see all items being reported; further pertinent details regarding any entry can be added as appropriate.
 END OF SEA PASSAGE/ARRIVAL AT ANCHORAGE
 NOTICE OF READINESS TENDERED
 LEFT ANCHORAGE
 LEFT PORT
 LEFT PORT USE ADDRESS
 NOTICE OF READINESS RECEIVED
 COMMENCED UNLOADING
 FREE PRATIQUE GRANTED
 OND SURVEY COMPLETED
 COMMENCED LOADING
 COMPLETED LOADING
 DISCONNECTED
 UNLASHED AND SAMPLES COMPLETED
 UNLASHED AND SAMPLES COMPLETED
 VESSEL SAILED

If, in face receipt of this message, the sailing wire to the ON OIL Overseas MUST be counter-checked by at least one other member of the saybolt monitoring team, as follows:
 C.1) The Inspector who prepares it, and, C.2) The Inspector who checks it.
 D) Whenever you have a problem, need advice, or require guidance on software, call the person(s) responsible; we need to know about, and react to, problems BEFORE they happen, rather than after.

For the record, my contact numbers are:
 Office 44-1707-21194
 Mobile 31-651-218961
 Home 44-1707-21194
 SEANNA.BIKAL@POLSKA.PL

We have an important job to do, and we must all work together as a team to provide the level of professional service expected of us.
 Thank you,
 Graham Brett

If you are satisfied with our services do tell others. If you are NOT satisfied,

New 22, Labl

You will no doubt all be aware of the alleged illegal loadings from Mina al-Bakr involving the vessel "Essex", and the revised procedures that have been instituted at both Ceyhan and Mina al-Bakr to prevent the possibility of such occurrences in the future.

Bearing in mind that the Sabyoil monitoring operations at Ceyhan and Mina al-Bakr are being conducted by a team of UN Oil Overseers, it is particularly disappointing to have to advise you that the quality of reporting to this office and to the UN Oil Overseers has, of late, significantly deteriorated.

- Examples, in no particular order of merit, are:
- 1) Time logs with no complaints, or sailing times
 - 2) Sailing wires with incorrect Bill of Lading dates, and incorrect notification of barrels loaded. The Office of the Iraq Program of the United Nations has written to Sabyoil on this matter.

I do not have to labour the point that this level of performance is unacceptable. We are a professional company appointed by a major humanitarian concern to carry out an important task. If we are not seen to act professionally, especially so soon after alleged illegal activities have taken place under our very noses, then we will all suffer the consequences.

In our monitoring function we are the "eyes and ears" of the United Nations, and the quality and content of our reporting function is the only benchmark by which the United Nations can judge our performance. Once discredited, confidence is hard to rebuild.

Since the inception of the "Oil for Food" program in late 1996 Sabyoil has done a tremendous amount of work for the United Nations, and we have been most fortunate to be noticed, and of late there have been too many. Mistakes and omissions will not be tolerated.

THE FOLLOWING ACTIONS WILL NOW BE TAKEN:

A) As from receipt of this message, both the Ceyhan and Mina al-Bakr operations will advise, as part of the daily report, comprehensive time logs which cover at least covering at minimum the following times, split over a number of daily entries as they occur. I expect to see all these times reported; further pertinent details regarding deballasting etc can be added as appropriate:

- END OF SEA PASSAGE/ARRIVAL AT ANCHORAGE
- NOTICE OF READINESS TENDERED
- PILOTS ON BOARD
- LEFT ANCHORAGE
- FIRST LINE ASHORE
- LEFT BERTHING ?
- NOTICE OF DEPARTURE RECEIVED
- GANGWAY IN POSITION

- FREE PRATIQUE GRANTED
- OBO SURVEY COMPLETED
- LOADING ARMS/FLEXES CONNECTED
- LOADING ARMS/FLEXES DISCONNECTED
- COMPLETED LOADING
- LOADING ARMS/HOSES DISCONNECTED
- ULLAGES AND SAMPLES COMPLETED
- DOCS ON BOARD
- VESSEL SAILED

B) As from receipt of this message, the sailing wires to the UN Oil Overseers MUST be counter-checked by at least one other member of the monitoring team before despatch.

C) The sailing wire will now be signed by two members of the Sabyoil monitoring team, as follows:
 C.1) The impositor who enters it, and
 C.2) The impositor who checks it.

D) Whenever you have a problem, need advice, or require guidance on any matter, call I, or Peter Boks, are always available; we need to know about, and need to, problems BEFORE they happen, rather than after.

For the record, my contact numbers are:
 Office 44-207-222-0171
 Mobile 31-653-973896
 Home 44-1707-271794
 E-mail graham_berts@saboil.nl

We have an important job to do, and we must all ensure we work together as a team to provide the level of professional service expected of us.

Thank you,
 Graham Berts

To: kefauver@peterbois.com
cc: Graham.Brett@sybsoft.com; Robert.Bernard@sybsoft.com
Date: 02/17/2002 05:28 PM
Subject: MESSAGE FROM PETER BOIS



From: Peter.Bois@sybsoft.com
Date: 02/16/2002 04:45 PM
Subject: Mr. AMANDINO Owners

Dear Jorge,

Unfortunately, we have to discontinue Mr. Armando AMANDINO's participation in the UN Program. Please let me know if you have an alternative candidate. The reason is a recent error of judgment, which we can not tolerate from a team leader.

I look forward to hearing from you.

Kindest regards,
Peter Bois

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TO: MR. JORGE AMANDINO

Dear Jorge,

As per message from Peter Bois regarding Armando AMANDINO, please be advised that the UN Program is a team effort and we need a team leader. It is not possible to have a team leader at this stage. The letter of credit approval for this vessel applied before the vessel was chartered. The UN Oil Owners instructed me that this vessel was to be chartered with the United Nations Oil Owners and that the UN Oil Owners instructed me that this vessel was to be chartered with the United Nations Oil Owners and that the UN Oil Owners instructed me to keep them advised.

I think you will agree that the message is quite unambiguous - it says: 1) The L/C approval for the "GLORIFY" has expired on Feb 13th, 2002, and this vessel may not commence loading until an amendment has been received from the UN Oil Owners.

The message further says that "if you have any problems, call me". "GLORIFY" was I came into my office on the 13th day of Feb. 2002, and this vessel was chartered with the UN Oil Owners. I did not receive any call at home. I therefore called Armando and asked him why the vessel had commenced loading. He said that he had not received any call from the UN Oil Owners and that this was not agreed to by the UN Oil Owners. I did not have a "statement of facts" to show which had been accepted.

I asked him why he had not called me. He said he did not think there was a problem. I asked him why he had not called me. He said he did not think there was a problem. I asked him why he had not called me. He said he did not think there was a problem.

The situation then required me to call the United Nations Oil Owners in the United Kingdom. I called them and they instructed me to call the UN Oil Owners. I called them and they instructed me to call the UN Oil Owners. I called them and they instructed me to call the UN Oil Owners.

The amendment to the letter of credit was not available until Saturday AM CET. I think further contact would be redundant.

Kindest regards,
Graham Brett

Graham Brett

Section 2 - Summary

Subject: "Excess" loading investigations
 Dates: May 16th, 2001 and August 27th, 2001
 Location: Mina al-Bahr, Persian Gulf
 Description: Legal papers and correspondence

 Peter Bala To: mwan@un.org
 CC: Subject: "A. Bahr"

02/26/2001 03:40 PM

Dear Brian,

Just to advise you that two investigators visited our office regarding the illegal crude oil loadings from Mina Al Bahr in 2001. Apart from an interview they held claim to the following documents:

- Our report on the alleged loading of Crude Oil from Mina Al Bahr outside the UN Oil for Food Programme dated October 17, 2001

- Four photographs from Mina Al Bahr

- two maps of the region

- a copy of our time sheet and voyage report of the loading dated 16 May 2001

From the discussions, it became clear that Sheikh is not suspect and that they are still investigating whether Tirdgura will face criminal prosecution.

Kindest regards,

Peter

MONITORING OF CRUDE OIL EXPORTS FROM IRAQ

The measurement of crude and refined petroleum product volumes and weights is carried out internationally to recognized published standards resulting in uniform reporting thus allowing accurate comparison between loaded and discharged volumes for finalization and loss control activities.

The standards adopted are those published by various technical committees of experts acting independently under the guidance of non-profit making international standards organizations such as the American Petroleum Institute (API) and the Institute of Petroleum (IP).

The monitoring of crude oil exports from Iraq differs from normal international practices in that:-

1. There are currently no internationally acceptable measurement systems operating in either of the loading facilities involved in the "Oil for Food" contract; the reported quantities are therefore ascertained by reference to the loading vessel's calibration charts.
2. The monitoring role requires that all crude oil exported from Iraq under the "Oil for Food" program is fully accounted for, and that no diversion of the oil from this intended use can be made.

LOADING TERMINALS

Crude Oil Exports from Iraq are currently delivered to sea-going vessels from either the Ceyhan Tank Farm in Turkey, at the end of the Iraq/Turkey pipeline (ITP), or from the Mina Al-Bakar oil terminal at the head of the Gulf and are reported to the UN Overseers on a ship-by-ship basis.

LOADED VOLUMES

The volume delivered at each loading is established by reference to the vessel's calibration charts and the volume of oil and water ascertained on board prior to loading (the OBG figure) and the vessel's measurement system. The OBG figure is determined by the Iraq ITP authorities, is required as there are no accurate and "in calibration" metering systems operating at Ceyhan or Mina Al-Bakar, or accurate tank calibration charts at Ceyhan.

DELIVERIES FROM IRAQ

Deliveries from Iraq to Turkey, via the ITP, are monitored out of Iraq via the MS-1 metering station at Zakhro, and into the Ceyhan Tank Farm, Turkey, and reported to the UN Overseers on a 24 hr basis.

REPORTING PROCEDURES

All loadings to vessels are monitored by Seybolt staff at both installations, and a full loading report is issued to the UN Overseers from the Seybolt Rotterdam office, who monitor and collect the relevant data, reporting direct to the UN Overseers both by Fax and electronically by the UN Database which is updated automatically every 12 hrs.

I. CEYHAN

Storage Tanks

There are 12 tanks in the terminal available for receiving and deliveries of crude oil with a capacity of approximately 780,000 US Barrels each, at the moment unit D-602 is out of order. Maximum usable capacity is currently 7,480,000 US Barrels.

Measurement

The storage tanks have Enraf level indication (automatic tank gauging system) but it is unreliable and is not acceptable for calculation of vessels' loaded quantities, or for quantities delivered by the ITP from Iraq. All such measurements are therefore effected by hand measurement.

The metering system is not functioning, although the meter prover have been recalibrated at the commencement of the "Oil for Food" program.

Loading facilities

There is one jetty with four loading platforms for vessels from 25,000 Mt. to 300,000 Mt.

There are 3 segregated lines for loading from the terminal and one line for discharging into Tuzla Terminal and the discharge of ballast.

The in-line sampling apparatus is not efficient, and needs replacing. Manual line samples are therefore drawn by the skylight inspector every 10% of the loading, for quality analysis.

Quantification of oil received from Iraq via the ITP

Every 24 hours a comparison is made between the Enraf (auto-gauge) figures and those derived from MS-1 on the board of Iraq.

Both manual measurements and temperatures of the shore tanks are recorded before and after receiving from the ITP, and volumes ascertained, calculated to Gross Standard Volumes.

A comparison of received quantity e.g. the MS-1 measured quantity is made on both a daily and monthly basis. Any unusual discrepancies are investigated and resolved.

Loading of vessels

Prior to commencement of loading, Seybolt ensures - in conjunction with the UN Overseers in New York - that for each cargo there is written evidence of a current contract between the buyer and SOHIO; there is a Letter of Credit in place (approved by the Overseers); and that the volume to be loaded is fully covered by the Letter of

two plus and berths 1, 2 and 4 can accommodate ships up to 250,000 deadweight tons. In between the loading platforms are other platforms for Main Generators and for mooring dolphins. There are two generator platforms with two diesel-powered generators per platform. The total number of platforms making up the terminal is 12.

The Terminal was commissioned in 1972. It was destroyed during the Iranian war during the eighties. At the end of this war the accommodation block and Loading Platform A were rebuilt by international contractors, however, during the 1991 war both were again destroyed. Since the 1991 war the terminal has been completely rebuilt by Iraqi labor only. Concrete structures, pipes and equipment have come mainly from Iraq. Some Oil Spill skids have been destroyed and there has been extremely limited and there is still a lot of evidence remaining of the war damage.

There are two 48-inch diameter Crude-Oil Sea Lines from Al Fao that extend to the terminal. A 48-inch diameter touch line from each sea line is connected to each loading arrangement.

Loading arrangements.

On each Loading platform are two berths, equipped with four 16-inch diameter steel hydraulically operated chibxan loading arms.

Metering. The Meter Skid on platform A consists of Turbine meters with local and remote readout. The Meter Skid on Platform B consists of PVD meters with local and remote readout. There are prover hogs fitted to each platform.

Sampling. Berth No. 4. On platform B has a 'walker' automatic sampling device. This device is old and relies only upon pre-set grab settings and therefore is not accurate when loading rates are fluctuating as much as they do in the case of the other berths. The other berths are equipped with automatic sampling devices at any other berth. Sampling each shipment is carried out by drawing from a sampling pipe on the main Crude line at each berth at predetermined intervals. It has been considered that under the present circumstances and conditions that this is the only way a representative shore sample may be obtained but this is far from ideal or accurate.

Bill of Lading and Cargo Documents.

Calculations are based upon the ship's measurements of quantity of crude oil received on shore. The shore measurements are made using the standard standard volume bins like the Vessel Experience Factor (VEF) applied. For calculation purposes ASTM tables 24A and 29 are used for volume and weight determination.

Credit.

After berthing the vessel is inspected and any residues of previous cargo left on board - the "OBQ" quantity (either oil or water) - is determined by the Skybolt inspector.

The Vessel Experience Factor (VEF) is agreed with the master of the vessel and is used for calculating the Bill of Lading figures.

The nominated shore tanks will be manually measured and manual temperatures taken, for comparison only.

The in-line sample container will be inspected for cleanliness.

After loading the vessel will be manually measured and temperatures taken.

The in-line sample will be collected and analyzed by the Skybolt team. The Relative Density will be used for calculation of the Bill of Lading Figures; gross and net figures are calculated.

The oilhead shore tanks will be manually measured and manual temperatures taken for comparison only.

The Bill of Lading figures will be calculated taking into account the OBQ and VEF measurements, and after comparison with the shore tank figures, advised to the Iraq personnel present at Coydon.

The same process occurs except that the oil is transferred to the Kirkcaldy Refinery rather than loaded in to a vessel.

Pipeline transfer to Kirkcaldy Refinery, Ankers-

2. MINA AL-BAKR

Mina Al Bakr is located about 50 km out sea from the Port of Al Fao. It is a steel structure about 1000 meters long.

The Terminal consists of two loading platforms with two berths per platform inter-linked with mooring platforms, generator platforms and an accommodation block. At the southern end of the platform is a platform supporting the accommodation block and at the southern is the platform supporting 8 helicopter landing pads.

The Main Loading platform support all crude oil pipes, meter skids, chibxan loading arms, independent control rooms and emergency generators. Platform A is the northernmost platform.

Berth numbers 1 and 2 are located at Platform A, berths 3 and 4 are located at Platform B. Berth No. 3 is designed to accommodate the larger ships up to 300,000 deadweight

**Report on alleged loadings of Crude Oil from Mina Al Bakr
outside the
United Nations Oil for Food Program.**

Preamble

On 9 October 2001, the United Nations Oil Overseen received a letter from a Mr. Chiadakis Theofanis. Mr. Theofanis was the Master of TV "Essex" which has frequently loaded Basha Light Crude Oil at Mina al-Bakr.

According to Mr. Theofanis, there have been two occasions whereby after completion of UN Oil for Food Program operations, the UN inspectors left the vessel. Additional volumes were loaded on board the vessel. Mr. Theofanis enclosed with his letter supporting evidence.

The Loading Platform at Mina al-Bakr

Mina al-Bakr is located in the Persian Gulf about 50 km offshore from the port of Basra. The platform is situated in 1000 m of water. The Terminal consists of two loading platforms with two berths per platform interconnected with mooring platforms, generator platforms and an accommodation block. At the northern end is the platform supporting the accommodation block and at the southern is the platform supporting a Helicopter landing pad.

The Main Loading platforms support all crude oil pipes, meter skids, chokes, loading arms, independent control rooms and emergency generators. Platform A is the northernmost platform.

Berth numbers 1 and 2 are located at Platform A, berths 3 and 4 are located at Platform B. Berth No. 3 is designed to accommodate the larger ships up to 300,000 deadweight tons plus and berths 1, 2 and 4 can accommodate ships up to 250,000 deadweight tons.

In between the loading platforms are other platforms for Main Generators and for the mooring systems. The platforms are interconnected with two diesel-powered generators per platform. The total number of platforms making up the terminal is 12.

The Terminal was commissioned in 1972. It was destroyed during the Iran/Iraq war during the eighties. At the end of this war the accommodation block and Loading Platform A were rebuilt by international contractors however, during the 1990s war both were again destroyed. Since the 1990s the terminal has been under reconstruction. The reconstruction work has only construction materials, pipes and equipment have come mainly from the

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3. ZANHO.

The Zabo metering station is situated close to the border between Northern Iraq and Turkey and is therefore entirely suited as being the point at which the exported volumes from Iraq are ascertained. There are two pipelines that run from Iraq into Turkey one (46") is currently in use, the second (46") is not used and has no current metering facilities in operation.

46" Kirkuk Crude Oil Metering Station

Three of the four metered oil meter/flow computer combinations are operational and functioning. The fourth flow meter/computer combination and accumulator (Denscan - which is faulty) cannot be used owing to lack of spare parts and this system is currently mechanically isolated from the pipeline flow.

The original telecommunications and data acquisition system (SCADA) which had been designed to communicate data and safeguard the interlocks between the metering station MS-1, ITI/2 Pump station/boiler firms and Ceyhan in Turkey have been destroyed. Operators at MS-1 are working blind with no pumping/pressure data with respect to up/downstream pumping operations and pipeline flow. The operators are also working blind with respect to pipeline capacities as their monitors have been also destroyed (33 bar instead 300%) due to pipeline leakages at design operational pressures (23 bar).

46" Kirkuk / Basha Crude Oil Metering Station

The metering station is mechanically isolated (padded off) from the main pipeline and is non-operational. It is presently being repaired and prepared for future use together with the 46" pipeline to Ceyhan.

Metering Operations.

All meters are read once every hour, and collated into twelve-hour batches. Every 24 hrs (i.e. two batches) a comparison is made with the received quantity in Ceyhan. All data is recorded locally both in hard copy and electronically, and sent to Rotterdam on a 24 hr basis.

As a further back up (in case of catastrophic meter failure) the storage tanks at ITI-A (where the oil for transfer to Turkey is bulked prior to transfer) are gauged every 12 hrs and volume calculated by reference to their calibration check. This volume is then compared to the metered volume over MS-1.

The metered volumes recorded at MS-1, and the received volumes in Ceyhan, both daily and cumulatively per program, are reported electronically to the UN Overseen on a daily basis.

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document entitled "Total Quantity on Board", verifying the additional quantity loaded on top of the initial quantity which was allowed by the Letter of Credit approved by the United Nations, was signed by the terminal representative and the representative of Falcon Navigation, the Greek representative of Trafiguna who was aboard the vessel at that time.

The vessel is scheduled to discharge its cargo at South Sabine, US Gulf Coast on, or about, October 14th, 2001.

The Master of the vessel at the time of both the above loadings has submitted to the United Nations Oil Overseers copies of all relevant documents.

The Facts

1st Loading

This loading was covered by the United Nations Oil Overseers Letter of Credit Approved on May 7th, 2001 containing a Letter of Credit (B/L Ref No. D721185) in favor of the United Nations Oil Overseers, for the benefit of the Charter Party No. M40981 for 1,800,000 barrels +/- 5% of Barah Light Crude Oil to USA on MT "Easen" or sub with latest shipment date of May 25th, 2001.

The vessel berthed on Berth No 1 at Mina al-Bahr, commenced loading at 17:45 hrs 130501 and completed loading at 01:50 hrs 160501 and the flexible hose (Gulfstream arm) were disconnected at 02:10 hrs 160501.

Measurement of vessels tanks and subsequent calculations were completed at 04:00 hrs 160501, and loaded volumes submitted to the SOMMO shipping office at 06:00 hrs 160501. The vessel subsequently sailed at 19:00 hrs 160501.

At no time after the completion of the loading of the volume approved by the United Nations Oil Overseers were the United Nations monitors advised by the terminal that a further loading was contemplated.

2nd Loading

This loading was initially covered by the United Nations Oil Overseers Letter of Credit Approved on July 24th, 2001 confirming a Letter of Credit (B/L Ref No. D721185) in favor of the United Nations Oil Overseers, for the benefit of the Charter Party No. M41068 for 2,800,000 barrels +/- 5% of Barah Light Crude Oil to USA on MT "Stena Companion" or sub with latest shipment date of July 26th, 2001.

the terminal manager, and a Bill of Lading for the amount of US Barrels 1,799,735 or gross metric tonnes 247,831,254 was presented by the Mina al-Bahr terminal, to be signed by the UN monitors. The same quantities were reported by the UN monitors to the UN Oil Overseers.

After the completion of this loading, and all documents were signed and the UN monitors had left the vessel, loading was resumed after one hour without informing the UN monitors. The vessel loaded an additional 229,756 barrels, after which the vessels tanks were re-measured. The revised ullage report was signed by the master and the terminal representative. The loading was subsequently reported by the terminal manager to the UN monitors, which was signed by the Master. By comparison with the "official" Bill of Lading this document can be seen to be prepared with a different font/type-face and has no SOMO logo. Another document entitled "Total Quantity on Board", verifying the additional quantity loaded on top of the initial quantity which was allowed by the Letter of Credit approved by the United Nations, was signed by the terminal representative and the representative of Falcon Navigation, the Greek representative of Trafiguna who was aboard the vessel at that time.

The vessel then proceeded to the East Coast, USA, where part of the cargo was discharged at the Loop, and the balance at South Sabine. On arrival at the Loop the vessel's cargo tanks were measured by the charterer's cargo inspector and the receivers cargo inspector who confirmed the cargo on board to be 2,024,358 barrels or some 234,623 gross barrels in excess of the volume measured in the vessel tanks by the United Nations monitors at Mina al-Bahr on completion of the loading.

2. 2nd Loading

Vessel was fixed by Trafiguna to load 1,800,000 barrels Barah Light at Mina al-Bahr terminal. The same procedure as the first loading was followed. On completion of loading the volume due is presented in the normal way by the vessel to the terminal manager and the UN monitors. The vessel's ullage report was signed by the Master and the terminal manager, and a Bill of Lading for the amount of US Barrels 1,788,820 or gross metric tonnes 246,475,319 was presented by the Mina al-Bahr terminal and signed by the Master. The same quantities were reported by the UN monitors to the UN Oil Overseers.

After the completion of this loading, and all documents were signed and the UN monitors had left the vessel, loading was resumed after one hour without informing the UN monitors. The vessel loaded an additional 271,884 barrels, after which the vessels tanks were re-measured. The revised ullage report was signed by the master and the terminal representative, and a second Bill of Lading was issued by the terminal covering the additional quantity, which was signed by the Master. Another

calculations on the second loading were carried out by the Team Leader himself.

It is normal practice that on completion of measurements and calculations the monitor returns to the Saybolt office (in the accommodation module) to prepare the report. The Team Leader was not present at the time of the report on to the SOMO representative for the Bill of Lading presentation; and to prepare the official "notification" document which is then returned to the vessel where the Master signs for receipt.

The Team Leader added that, as is the case on Mina al-Bahr (and indeed most off-shore loading platforms) he had met with Captain Chudakina (Theodan) over dinner on more than one occasion and noted that he was a very friendly and approachable person. On the day of the loading, he did not appear nervous but commented that this was his last trip and that he was looking forward to his forthcoming retirement after completing the voyage in question. At no time did the Team Leader meet with, or was introduced to, a representative of Falcon Navigation.

The Team Leader was slowly questioned as to how, on two separate occasions, the vessel was able to load oil into the tanks of the United Nations monitors noticing these events. The team leader, who was visibly shocked by the events as described to him, answered that on completion of their monitoring duties the Saybolt staff tended to remain within the accommodation module as the external temperatures at that time of the year (May 27-42°C, August 42-46°C both with 100% humidity) were such that any outside activity meant severe discomfort, and was therefore avoided. The vessel was able to load oil into the tanks of the United Nations accommodation module, and rarely venture outside unless there is a vessel to be attended.

The Team Leader confirmed that a loading could take place without the monitors hearing as one needed to be within a few feet from the incoming sea-lines to hear the vibration of the moving oil. At this point there are several monitors on the vessel, and the temperature of the moving oil, which is usually visible, would be high enough to be heard if oil was being loaded. The Saybolt office and the mastery of the monitors accommodation faces North and therefore there is no "line of sight" to the tanks; the Team Leader's accommodation, below which is the Saybolt mess room, is on the East side of the accommodation module but the view to Berth No 1 is limited by the window construction (the mess room is set back on a floor below the accommodation) there is no "line of sight" to the centre of the vessel where line re-connection would be noted.

In his professional opinion, the Team Leader considered that the alleged volume of oil loaded to the TV "Eases" after the official loading on both occasions would, under normal circumstances, take 5 to 7 hours but could

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This was later amended as per Amendment No. 2 of August 20th 2001 changing the number of barrels to be shipped from 2,000,000 to 1,800,000, changing the name of the vessel from "Sierra Companion" to "Eases", and extending the validity date to October 13th 2001 and the latest shipment date to August 30th 2001.

The vessel berthed on Berth No 1 at Mina al-Bahr, commenced loading at 07:00 hrs on 27/08/01, and completed loading at 19:20 hrs 27/08/01 and the flexible hoses (Giro-san arms) were disconnected at 19:20 hrs 27/08/01.

Measurement of vessels tanks and subsequent calculations were completed at 22:00 hrs 27/08/01, and loaded volumes submitted to the SOMO shipping office at 24:00 hrs 27/08/01. The vessel subsequently sailed at 11:00 hrs 28/09/01.

At no time after the completion of the loading of the volume approved by the United Nations Oil Company were the monitors advised by the terminal that a further loading was contemplated.

Remarks

It is not uncommon that on completion of a loading the vessel remains on the pier alongside the terminal (sometimes with the hoses still connected) for the following reasons:

- > The vessel is waiting for the next high tide before sailing.
- > The pilots and/or tug-boats are not available (these craft are used for staff transfer to and from shore)
- > The weather conditions, especially strong winds, are such that the pilots will not move heavily laden vessels.
- > Malfunction of the hydraulic systems, may require manual operation to disconnect the loading arms.

The subsequent investigation

In order to thoroughly investigate the allegations made by the Master of the vessel "Eases" on both the loadings reported above, the Team Leader who was present at the loading on 27/08/01, and a Saybolt employee (Mr G. J. van der Vliet, previously Penagal loading master for 16 years) was flown to the Saybolt Head Office in Rotterdam.

He confirmed that the standard Saybolt procedures for the calculation of volume loaded to vessels under the Oil for Food Program was applied in all cases, and that nothing untoward was noted during the procedures. The standard procedures for the calculation of the first loading of the "Eases" were carried out by one of the Saybolt inspectors and the measurements and

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- a) "Kaka" arrived 01:50 hrs May 14th, 2001
 b) "Astro Bar" arrived 10:00 hrs May 14th, 2001 and confirmed by SOMCO
 c) "Scopelore" arrived 17:30 hrs May 15th, 2001 and confirmed by SOMCO

Normal SOMCO procedure would be to berth vessels in laycan rotation; following that there were attempts to berth the "Astro Bar" during the day of May 16th, 2001 which failed as a result of very strong winds; berthing of that vessel was also cancelled during the day of May 17th, 2001.

As a result of the above, we may conclude that it was a deliberate decision to delay berthing of the "Astro Bar" to make certain that chances of Sypport staff attending the platform's were minimized.

The second loading of the TV "Easen" commenced on Berth No 1 at 15:00 hrs on August 25th, 2001 at which time the "Sotabello" was loading on Berth No 3. The "Sotabello" completed loading at 22:55 hrs on August 26th, 2001 and sailed at 11:30 hrs on August 27th, 2001. In the meantime the "Barro de Manar" had berthed on Berth No 4 at 06:35 hrs on August 27th, 2001 and the tanks were impounded 100 hrs before the loading of the berthing of the vessel commenced. The loading area was connected at 11:45 hrs on August 28th, 2001 and loading commenced at 11:45 hrs August 28th, 2001.

The loading of the "Easen" completed at 19:20 hrs on August 27th, 2001 meaning that from this time until the time she sailed at 11:00 hrs on August 28th, 2001 no monitors were required on the platform as the hoses were not connected to the "Barro de Manar" until 11:45 hrs on August 28th, 2001.

Also here, we may conclude that it was a deliberate action, all the more as we have noticed that initially the TV "Sena Companion" was nominated to load 2,000,000 bbls +/- 5 % under the contract #M/1008 (nomination was dated 24 July 2001) and on 20 August 2001 the nomination was changed to 1,800,000 bbls to be loaded on TV "Easen".

The implications on other loadings

For the purposes of this investigation it was considered necessary to review all loadings from Mina al-Bahr during Phase 9, and Phase 10 to date. These two periods were chosen as they coincide with the heightening of tension surrounding the loadings exemplified by the issue of port charges, extra payments overwith the Oil for Food program direct to the supplier and the issue of bi-monthly pricing (OSP) policy.

All loadings during these two Phases were therefore investigated and the results are summarized on the attached spreadsheet.

For each vessel we calculated (where published) the difference between the published 95% loading volume capability, and the volume of oil actually

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have been accomplished within 3 to 4 hours, but was astonished at the potential risks taken by those parties involved in that it would only have taken one monitor to walk down the platform to witness the operation being undertaken. It is noted that the operation required the presence of shore personnel to stop and start the pumps to deliver the oil and to ensure the availability of oil, terminal staff to connect and disconnect the loading arms, re-measure the vessel after the additional loading and prepare the documentation; and the positive involvement of both officers and crew on the vessel.

Finally the Team Leader confirmed that the United Nations Monitoring and Reporting Mechanism (UNMRM) has been advised of all oil shipments and hand-working staff with no evidence of any personal problems whatsoever.

Recommencement of loading would therefore only be noticed by the United Nations monitors if there was occasion to walk South along the platform towards the 4 berths and the helicopter pad at the South end. This would only be required if a vessel was berthing or completing loading, or at the specific request of SOMCO.

The choice of when to carry out such an additional loading – when there is no other activity on the platform requiring the presence of the United Nations monitors – would therefore be of paramount importance, to which would also apply a number of other factors including:

- > A vessel on which the officers and crew were willing to become involved in an illegal activity, and which would have sufficient capacity to load a significant extra volume of oil after loading the official UN approved volume without exceeding the limited draft availability at Mina al-Bahr.
- > A buyer in the chain of sale that was capable of arranging such an illegal activity with the supplier, and had the capacity to sell the extra oil and – presumably – obtain payment and distribute the extra oil on shore.
- > The implicit involvement of the supplier, both on the platform and on shore.
- > The availability of Berth No 1 (used in both loadings in question) as this was the berth least likely to be overlooked from the accommodation module by the United Nations monitors.

An investigation into the berthing situation at Mina al-Bahr either side of the two loadings reveals that the first loading of the "Easen" was scheduled to commence on May 15th, 2001 after which the "Easen" continued loading until completion of the official parcel loading at 01:30 hrs on May 16th, 2001. At this time there were no other vessels berthed, and 3 vessels on the anchorage as follows:

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loaded. Loadings where sufficient space to load more than 100,000 extra barrels was available were highlighted (any volume below this being considered not worth the risk involved).

For each of these vessels we considered the draft available (the maximum draft available at Mina al-Bakr is 21.00 metres on the top of the side) and deleted those where the actual sailing draft after the official loading was close to this limit.

We then considered the amount of time available between the end of the loading and the sailing time and vessels where there was insufficient time to complete the loading were deleted. A vessel where there was a sufficient "window" (time period) to consider a second loading further loadings were deleted if there was other berthing or completing activity on other berths requiring the physical presence of monitors.

This investigation suggested that it was extremely unlikely that further unapproved loading(s) could have been effected during Phases 9 and 10.

Actions taken since the information on these two unofficial loadings was advised

1. On completion of all loadings at Ceyhan and Mina al-Bakr after the completion of the shore-side loading hoses all valves on the vessel at the loading facilities were closed and the loading numbers recorded.
2. The seal numbers are noted on the "Notification" document presented to the vessel before sailing, which is signed by the Master, which should be checked as being intact prior to discharge.
3. If the vessel does not sail immediately on completion of loading and the normal formalities, these seals will be checked before the vessel sails. If found to be broken the vessel will be re-measured and the United Nations Oil Overseers informed accordingly of any significant changes.

Recommendations

In addition to the above actions it is recommended that the United Nations consider making it a requirement of the contract holders submitted by SONO to be approved by the United Nations Oil Overseers that they ensure that the formalities are completed, the loading numbers are checked and that they undertake to supply documents, including evidence of the measurements on arrival at discharge port, and the official shore discharge figures compared to the Bills of Lading issued by SONO.

APPENDIX No.1

Monitoring of Crude Oil Exports from Iraq

The measurement of crude and refined petroleum product volumes and weights is carried out internationally to recognised published standards resulting in uniform reporting thus allowing accurate comparison between loaders and discharge volumes for identification and loss control benefits.

The standards adopted are those published by various technical committees of experts acting independently under the guidance of non-profit making international standards organisations such as the American Petroleum Institute (API) and the Institute of Petroleum (IP).

The monitoring of crude oil exports from Iraq differs from normal international practice in that:

1. There are currently no internationally acceptable measurement systems operating in either of the loading facilities involved in the "Oil for Food" contract; the exported quantities are therefore ascertained by reference to the loading vessel's calibration charts.
2. The monitoring role requires that all crude oil exported from Iraq under the "Oil for Food" program is fully accounted for, and that no diversion of the oil from that intended use can be made.

LOADING TERMINALS.

Crude Oil Exports from Iraq are currently delivered to sea-going vessels from either the Ceyhan Tank Farm in Turkey, at the end of the Iraq/Turkey pipeline (ITP), or from the Mina Al-Bakr oil terminal at the head of the Gulf and are reported to the UN Overseers on a ship-by-ship basis.

LOADED VOLUMES.

The volume delivered at each loading is calculated by reference to the vessel's calibration charts adjusted for any volume of oil and water ascertained on board prior to loading (the OSO figures) and the vessel's experience factor (VEF). This system, as previously agreed with the Iraqi

From: Peter Boka
 Date: 10/09/2001 11:10 PM
 To: sevan@un.org
 cc: [Michael Talbot](mailto:Michael.Talbot@un.org), [James Jensen](mailto:James.Jensen@un.org), [Stephan Schaefer](mailto:Stephan.Schaefer@un.org), [Marlene Bur-Jensen](mailto:Marlene.Bur-Jensen@un.org)
 Subject: Re: Alleged loadings of Crude outside UN Control

Dear Simon,
 I confirm reading of Norton's email and will investigate this matter thoroughly. Will revert asap.

Kindest regards,

Peter Boka

"Norton Bur-Jensen" <jensen@un.org> on 10/09/2001 08:44:29 PM
 Subject: "Marlene Bur-Jensen" <marlene@un.org> on 10/09/2001 08:44:29 PM



To: [Simon Brown](mailto:Simon.Brown@un.org), sevan@un.org, [Michael Talbot](mailto:Michael.Talbot@un.org), [James Jensen](mailto:James.Jensen@un.org), [Stephan Schaefer](mailto:Stephan.Schaefer@un.org)
 cc: [Marlene Bur-Jensen](mailto:Marlene.Bur-Jensen@un.org), [Stephan Schaefer](mailto:Stephan.Schaefer@un.org)
 Subject: Alleged Loadings of Crude outside UN Control

Simon,

Today we received documents which indicate that on two occasions oil has been loaded on board the vessel. The documents also certify UN official supervision of the loading process. The total amount involved is approximately 400,000 barrels (which represents 18 million approximately).

We have brought this to the attention of Boko and are investigating the matter. We will keep you informed of the outcome.

Oil Overcases.

From: Peter Boka
 Date: 10/17/2001 01:08 PM
 To: NS106@un.org
 cc: [Michael Talbot](mailto:Michael.Talbot@un.org), [James Jensen](mailto:James.Jensen@un.org), [Stephan Schaefer](mailto:Stephan.Schaefer@un.org), [Marlene Bur-Jensen](mailto:Marlene.Bur-Jensen@un.org)
 Subject: Tankers possibly associated with Enxco

Dear CDR Hansen,
 Further to our telcon regarding your list, I can confirm that following vessels have been loading at PMBCT:

Date	Vessel	Gross Standard Volume	Perc. of Capacity
07/15/01	Sum Sea	3,456,415 barrels	approx. 98 %
07/15/01	Sum Sea	3,456,415 barrels	approx. 98 %
07/19/01	Doreet	3,421,362 barrels	approx. 86 %

The above would lead us to believe that the TV, "Doreet" is suspect, also because the vessel prior to sailing was 18.5 m and Aft 19.0 m. However, the vessel is currently loading the vessel with additional barrels, this seems very unlikely.

Time log:

Operation	Time	Date
Completed loading	09:09	07/19/01
Documents delivered to Boko	12:05	07/19/01
Documents delivered to Boko	12:30	07/19/01
Vessel sailed	13:30	07/19/01
	16:08	07/19/01

Kindest regards,

Peter Boka

Beck 3. + independent surveyor.
Tr. Schaefer - alongside Beck 1.
14.24 hrs 19/07.

All our activities are carried out under our general terms and conditions and in accordance with our code of practice. The general conditions can be consulted

"Morris Bur-Jones" <mburj@un.org> on 10/09/2001 08:44:28 PM



To: "Boris Swan" <swan@un.org>, P@Seybolt
cc: "Mikael Telling" <Mikael.Telling@OP_OIP.UN-DAKAR@un.org>, "Alexandre
Kamer" <Kamer@un.org>, "Bernard Senter" <Senter@un.org>
Subject: Alleged Landings of Cruise outside UN Control

Boris,
Refer to enclosed document which indicates that on two occasions all the
been loaded at Misa all under control of Seybolt's control on vessels which
also carried UN official shipments.
The document also indicates that the approximately 200 barrels which represents
28 million approximately.
We have brought this to the attention of Seybolt who are investigating the
case.
We will keep you informed of the outcome.

Oll Overness.

All our activities are carried out under
general terms and conditions and in
accordance with the following conditions:
The general conditions can be consulted
at: <http://www.seybolt.com/> and will be
sent upon request free of charge.

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UNITED NATIONS NATIONS UNIES



OFFICE OF THE IBAO PROGRAMME - BUREAU CHARGE DU PROGRAMME IBAO

THE EXECUTIVE DIRECTOR
LE DIRECTEUR EXECUTIF

REF: ED/04/GEN/S

31 October 2001

Dear Ms. Rudy,

I should like to refer to your letter dated 29 October 2001, which was received at this Office on 30 October 2001. In your letter, you stated that you had received a copy of the "Energy Security Council Committee established by resolution 661 (1990) was between Iraq, Energy S.A. and SOMO. This approval had nothing to do with Trafigura's arrangements with Iraq, and the United Nations is not a party to the contract between them."

The questions raised in your letter of 29 October 2001 concerning the legality of the export of oil would have to be investigated by a State or States having jurisdiction over that matter. In my letter of 27 October 2001, I advised that Trafigura seek the assistance of the Dutch authorities in this regard, which I understand you have done.

You will also recall that, in my letter of 27 October 2001, I informed you that this matter had been brought to the attention of the Security Council Committee established by resolution 661 (1990), which is responsible to monitor the sanctions regime imposed on Iraq by the Security Council. The findings of a relevant investigation will also have to be brought to the attention of that Committee.

It follows from the foregoing that, as the Security Council Committee has not thus far taken any action regarding the sources of these oil products, the matter of the absence of any action by the Committee, the matter of the Energy S.A. and SOMO, Trafigura and Iraq, in which the United Nations Secretariat cannot involve itself.

Ms. Beverly J. Rudy
Counsel to Trafigura B. V.
Sutherland, Asbill & Brennan LLP
1700 Pennsylvania Avenue, N.W.
Washington, DC 20004-2415

-2-

With regard to the cancellation of the letter of credit, I should like to draw your attention that the letter of credit is irrevocable, and it has been confirmed by BNP Paribas. As noted above, since no action has been taken with respect to the approved letter contract, that contract remains in effect. In addition, accordingly, the United Nations cannot agree to the cancellation of the letter of credit.

Sincerely yours,

Bruno V. Seven
Under-Secretary-General

UNITED NATIONS NATIONS UNIES



OFFICE OF THE DPO PROGRAMS - BUREAU CHARGÉ DU PROGRAMME DPAQ

THE EXECUTIVE DIRECTOR
LE DIRECTEUR GÉNÉRAL

REF: ED/2001/GEN/4

27 October 2001

Dear Ms. Rudy,

I should like to thank you for your letter dated 25 October 2001, written on behalf of Trafigara BV, concerning Iradj crude oil, aboard the ship Basec.

As you already have been informed, on 24 October 2001, this Office brought the matter to the attention of the Committee of Experts (COE) on the basis of the information provided to the allegations made and the comments shown by the Government of Iraq. It is my understanding that the Committee intends to review the matter in early November.

In connection with the difficulties you have referred to in your above letter, Trafigara may wish to seek the assistance of the Dutch authorities. I have noted that you have already contacted the Dutch authorities to seek their assistance.

Remon V. Sevón
Under-Secretary-General

Ms. Beverly J. Rudy
Counsel to Trafigara B.V.
1725 Main Street, Suite 200
Washington, DC 20004-2415

Z06E2Z05

Mr. Bronn V. Sevan
October 29, 2001
Page 2 of 2

concerns to the vessel owners for breach. I would greatly appreciate if the UN could sign as
million barrels or whether such remaining portion of Iraq's allocation will be cancelled. Given
the experience with the *Ezzar*, I also would appreciate if you could inform me what written
authorizations that the UN can provide us so that we know that there is authorized to procure the
entire cargo from SOMO, and that the cargo has been properly loaded and approved by the
United Nations.

Sincerely,

Beverly J. Rudy

Beverly J. Rudy
Counsel to Trafifigura Behner B.V.

cc: Steven Katz, Esq.

S023901

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Washington, D.C. 20004-1000
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ATTORNEYS AT LAW
DIRECTOR OF LEGAL COUNSEL
INTERNATIONAL TRADE PROGRAMS

October 29, 2001

VIA FACSIMILE

Mr. Bronn V. Sevan
Under-Secretary-General
Executive Director
Commodity Programs
United Nations
New York, NY 10017

Re: Trafifigura Behner B.V. — Urgent Guidance Requested Regarding *El Borge Odeh*

Dear Mr. Sevan:

I received your October 27, 2001 letter and thank you for your prompt response. I understood
that the UN Security Council Committee is scheduled to take place early next week to
review the matter and we will assist the Committee in any way we can. To that end, I am in the
process of drafting a letter explaining my client Trafifigura's understanding of the chronology of
the findings in question about the *El Borge*.

I am writing for your further assistance regarding the vessel *El Borge Odeh*, which Trafifigura
chartered some time ago to load a cargo of approximately 1.8 million barrels of Basrah light
crude under contract in purchase from Iraq (which we are told by Iraq is covered by Iraq's 7
million barrel Basrah light allocation). The vessel will en route to the Persian Gulf when
lighterage is loaded on board. The vessel is currently in the Persian Gulf. The vessel is
being chartered by Trafifigura Behner B.V. (Trafifigura) under a charterparty with the following
terms: The vessel is to be chartered for the purpose of loading and discharging cargo
proceeding to the SOMO terminal for lifting by Iraq in order to first obtain assurances from all
appropriate UN authorities that the lifting is in compliance with all 661 Sanctions Committee
procedures, and will be continuously supervised by the UN or its contractors so as to prevent any
issues as have occurred with the *El Borge*.

Trafifigura's bank, BNP Paribas (Swiss), has posted a letter of credit for the entire volume of the
loading to the BNP Paribas, New York Branch, Euro Sub Account, Account Number 0200-
207352-002-05. BNP Paribas also is concerned about the vessel's status in the UN
sanction and we understand that the bank has contacted the United Nations as well.

The vessel is now accruing demurrage of over USD \$40,000 per day, and Trafifigura must decide
very shortly whether to cancel the charter party, notwithstanding a potential risk of incurring

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the amount of the "stand-by letter of credit" presented by the vessel. The Oil Overseas should be advised of the amount of the credit. Moreover, it should be pointed out that, if the "stand-by letter of credit" were accepted as a condition of the vessel's departure, it would not be received until at least 160 days after the date of its issuance, which was 1 November 2001.

cc: Mr. Gollitsyn

Switzerland
ASBIL &
BRENHOLD
AG

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November 2, 2001

VIA FACSIMILE

Mr. Brian V. Sevan
Lieut. Colonel-General
Executive Director
Office of the Iraq Programme
United Nations
New York, NY 10017

Re: Trafigura Bahseer B.V. - M. Essex

Dear Mr. Sevan:

In further reference to your letter dated October 27, 2001, I am writing to provide you and the Security Council Committee established by Resolution 661 concerning the situation between Iraq and Kuwait with information regarding the location of Bahseer light crude oil at Mina Al-Bahseer on the vessel M. Essex. The information is current to the best of our knowledge, as of the date of this letter.

We would appreciate it if you would pass this letter on to the members of the Sanctions Committee in advance of their meeting to review this matter.

1. General Background

Established in 1993, Trafigura is an oil and metals trading company incorporated in the Netherlands, with offices in Amsterdam and Lucerne, Switzerland. The parent company, Trafigura Bahseer, trades worldwide through a network of offices managed by its Lucerne headquarters. Trafigura AG, a Swiss company affiliate based in Lucerne and with a branch office in Stamford, Connecticut, focuses on trading with the United States. Trafigura Ltd., another company affiliate, focuses on trading with the United Kingdom. Trafigura Ltd. was established in 1993.

Over the past few years, Trafigura regularly has purchased Iraqi crude oil from third parties who have sold it to Trafigura. In 2001, Trafigura purchased Iraqi crude oil from a third party who sold it to Trafigura. Until this latest cargo loaded on the M. Essex, it was not aware of and did not encounter vessels.

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any problems with its suppliers, and in particular with Box Energy France ("Box"), or with Box's compliance with the procedures for oil purchases established by the Sanctions Committee. Trafigura has entered into several purchase and sale contracts with Box France since 1997, including two contracts to purchase Kirok in 1999, without incurring any comments or legal difficulties.

4. The First Erase Cargo

In April 2001, Box France offered Trafigura a cargo of approximately 1.8 million barrels of Barak light oil under a charterparty with charterparty number 1330/COM481, Contract No. M09981. The cargo was sold by Box's affiliate, Box Energy (Bermuda) Ltd. It would have been standard industry practice for Trafigura to pay Box through a letter of credit, as Box is the contract holder liable for remitting the funds to the seller. However, as Box did not have the credit facility to issue such a large letter of credit, it asked Trafigura to arrange for the letter of credit payable to the UN on its behalf.

Box then asked Trafigura if it would subcharter space on the vessel for a top-off parcel of 200,000 to 300,000 barrels, which Box wanted to sell to a U.S. buyer on its own. Trafigura agreed, but shortly thereafter Box informed Trafigura that it had found it difficult to locate a cargo vessel that would accept the cargo. Trafigura then agreed to charter a vessel to take the extra oil on a delivered datum basis so that it would not assume the risk of in-transit cargo loss (which has been excessive for Alin A-Bur fittings destined for the United States). However, for credit security and insurance reasons, Trafigura wanted to acquire title to the cargo at the time it was loaded on the vessel.

Box executed a detailed warranty to Trafigura that the second parcel was covered by the UN allocation, that it had complied with all UN and national regulations and that all proceeds would be paid into the UN account. The language of this warranty is similar to those customarily used in U.S. contracts to purchase Iraq-origin crude oil from both contract holders and downstream third-party purchasers.

Box was able to finance the purchase of the smaller parcel from SOMO based on its own credit and requested that Trafigura pay it directly and post as security a standby letter of credit for the payment with the bank. Credit Agricole Indosuez, Geneva branch, issued the letter of credit for the purchase of the smaller parcel. Trafigura's ability to meet its payment obligation to Box to open a letter of credit that is at the same time the supplier's bank to receive the letter of credit payment. Additionally, Swiss banking law provides an automatic right of offset without prior notice to the account holder. Thus, Roundhead, Inc., a wholly-owned Trafigura subsidiary domiciled in the Bahamas (which does not have a branch in Switzerland), was able to offset its debt to Trafigura with its debt to Credit Agricole Indosuez. Roundhead, Inc. also executed a letter of credit for the purchase of the smaller parcel. Trafigura explicitly informed the bank that the standby letter of credit requested by Box, it to be issued under the full risk and responsibility of Trafigura Bearer.

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The vessel completed loading on May 14, 2001 with 2,077,622 net U.S. barrels of cargo (based on the bill of lading) and departed for the United States. Trafigura received the bill of lading and shipping documents required by its contract with Box for export, and the bank issuing the letter of credit to the UN received copies of the documents required for presentation in the letter of credit. The full cargo was paid for 30 days after bill of lading date. The cargo was discharged partially at the Louisiana Offshore Oil Port and purchased by Marathon Atlantic Petroleum LLC and the two lighter vessels sold to Koch Petroleum Group LP ("Koch") at Corpus Christi, Texas.

3. The Second Erase Cargo

On May 14, 2001, Trafigura offered Trafigura another cargo of Barak light oil and provided a copy of its SOMO allocation for seven million barrels, dated July 13, 2001. Trafigura entered into a contract to purchase approximately 1.8 million barrels, Box represented to Trafigura that the oil was allocated to Trafigura under contract number M10108, UN Ref: S/C.2/52001/OIL/1360/COM481.

Box then asked Trafigura whether it would purchase another approximately 200,000 to 300,000 barrels of Barak light oil with the view toward selling the cargo itself. Box did not ask that Trafigura transport the cargo for it with the view toward selling the cargo itself, but Trafigura did not think that this was unusual as it is customary in the industry for smaller oil companies to purchase part cargoes in order to establish a good credit history. The separate contract for this parcel (in the name of Roundhead, Inc.) was issued by Credit Agricole Indosuez, Geneva branch. Trafigura was not aware of the existence of this contract until it was presented to the UN. Trafigura had no reason to believe that anything was amiss with the purchase or unauthorized by the UN. For both parcels, Trafigura paid Box the official selling price in effect at the time of loading, plus a premium.

The vessel began to load at the terminal on August 25, 2001. Trafigura received two bills of lading for the cargo, one for 1,797,407 barrels and one for 271,669 barrels. Trafigura paid for the larger parcel by setting up a letter of credit on Box's behalf in favor of the UN account at BNP-Paribas. As explained, Trafigura assumed that Box did not have its own credit to do this. Trafigura paid Box for the second parcel directly at Box's direction as with the first cargo.

Trafigura obtained the customary shipping documents, including (1) two separate bills of lading issued and endorsed by the vessel Master, Captain Chahadik Theophanis and (2) a cargo receipt signed by the vessel Master and the SOMO representative. Trafigura also obtained a bill of lading report with typewritten notations on the vessel based on the combined bills of lading, the ullage report and a verbal verification from Captain Mavroulis Mavroulakis, Trafigura's on-site lost control

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representative, who attended the loading of the oil. Trafigura appointed Captain Manousaki to attend the loading because historically there have been substantial unexplained losses reported from the Miles A-1-Ber. Several of around 10,000 barrels between the vessel figure and discharge figures have occurred, facilities in the United States.

Captain Manousaki informs us that the vessel berthed at A1-Ber on August 23 and that the port authorities, the SOMO representative and Soybech-surveys boarded at the same time. The vessel was discharged on August 27. Both the Soybech surveyor and the SOMO representative boarded the vessel on August 27 and remained on board by that time. When these arrangements were completed a short while later, the loading resumed for another seven hours until the Terminal gave a stop load order to the vessel Master.

On completion of loading on August 28 of both parcels, the vessel Master and the SOMO representative boarded the vessel again and prepared a report for the port authorities which were signed by the SOMO representative and the vessel Master. The SOMO representative presented the two sets of bills of lading, which the vessel Master signed. To ensure that the entire cargo complied with UN procedures, Captain Manousaki asked the SOMO representative and Captain Manousaki. Given these official documents and vessel confirmation from Captain Manousaki, Trafigura could only assume that both parcels were within their allocation and were properly authorized by the Soybech inspector to load; it had no reason to believe otherwise.

3.2 Payment Information

Trafigura arranged for payment for the first parcel, 1,787,407 net U.S. barrels at the official selling price of \$20.25 per barrel, to be paid to the UN account, Euro 11,000,000,000, at the Bank of Paris (USD equivalent \$39,211,501,311). Trafigura instructed its bank, the Basel branch of BNP Paribas (Swiss) S.A., to issue an irrevocable documentary letter of credit, Ref. LCM 511892/GROG, by order of BNP Paribas in favor of The United Nations. The letter of credit was paid on September 25, 2001, by BNP Paribas, Paris to BNP Paribas, New York. The amount was deposited into the account of the UN.

BNP requested that Trafigura pay it for the second cargo of 271,669 U.S. net barrels directly and asked that Trafigura post a standby letter of credit in favor of BNP Paribas (Swiss) S.A., London, B.V.I. which had purchased the cargo for the UN account. Trafigura paid BNP Paribas (Swiss) S.A., London, B.V.I. from its account with Credit Agricole Indosuez, London Branch, into BNP Paribas' account with Credit Agricole Indosuez (Swiss) S.A.

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3.3 Sale to Koch

Trafigura sold one million barrels of the oil loaded onto the *Ezer* to Koch for delivery to its facility in Corpus Christi, Texas. PDVSA arranged for delivery to its refinery in Corpus, Refinaria SIA (Cruzar) S.A. The *Ezer* arrived at Corpus Christi on October 14. By October 18, 316,000.54 barrels was discharged into the first lighter vessel *mt. Alabaster*, and approximately 53,000.54 barrels onto the second lighter vessel *mt. Berne* (these figures are Koch's as the oil because the lighter vessel is not yet loaded). The lighter reports provided to Trafigura show that after the second 11,000.54 barrels, 1,002,600 U.S. net barrels remained on the vessel.

The parcel lightened onto the *Alabaster* was discharged into Koch's tanks at the jetty side terminal. Before the entire cost of the oil not being covered by the UN Oil for Food Programme, PDVSA had been informed through the U.S. Embassy in Caracas and had received communications from Mr. E. M. Rowland, the Inspector of Import duties and excises in Caracas. We understand that the U.S. government did not and has not contacted Trafigura or Koch since that time. Trafigura has not been informed that authorities were contacted. Whether some of the oil might not have been sold or paid through the Oil for Food Programme.

Koch refused to let the second lightning vessel discharge and will not pay Trafigura for any of the oil (yet the vessel has been in port for four days). The Treasury Department's Office of Foreign Assets Control (OFAC) will assess if of sanctions violations. The second lightning vessel is sitting in the port at Corpus Christi and is costing over \$15,000 a day in demurrage. The shipowner is insisting that Trafigura return the vessel. Koch has sought guidance from OFAC and permission to import the cargo and pay Trafigura.

3.4 Sale to PDVSA and Disposition of Cargo on *W Ezer*

The *Ezer* arrived at Caracas on Wednesday morning, October 24, with approximately one million barrels onboard. The ship's agent, Mr. A. W. Whitford (Caracas General), Messrs. E. A. J. Sandoz (Swiss) (Caracas) and Mr. W. A. Dorant (United Nations). These individuals are reported to have examined the cargo, taken samples, obtained copies of the vessel's cargo documents, log book, oil record book and obtained the original vessel Certificate of Registry and Tonnage Certificate (presumably so that the vessel could not sail).

On Friday, October 26, Mr. H. de Jong, a Chinese Public Prosecutor, advised the vessel owner's representative that the vessel was cleared insofar as his jurisdiction was concerned and would proceed with unloading and discharge, if PDVSA agreed to the conditions. The vessel owner is waiting for Trafigura to give discharge instructions, but Trafigura is unable to do so as PDVSA has not

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yet authorized discharge. PDNSA will not allow discharge of the oil until approved by the Curaçao government and the United Nations oil owners or other UN authorized parties and the UN will not pay any claims for the oil until it is approved by the UN. The UN will not be held liable for all consequential losses, including demurrage, sustained as a result of the uncracked oil.

The flagra's counsel in Curaçao, the Spightoff law firm, has been working with the Curaçao government and the United Nations oil owners. Mr. H. C. M. Willems, who is a member of the Cabinet of the Governor of the Netherlands Antilles, and his colleague Mr. Brachdop, to achieve a speedy resolution of this matter. Although it is an innocent party in the matter and has already paid for the unauthorized oil, in order to seek the expeditious governmental approval of the discharge and sale of the cargo of oil, flagra has posted a letter of intent to the UN and a copy of the UN agreement, which represents the official selling price of the second parcel at the time of loading.

Upon receipt of the letter of credit (which was issued and confirmed yesterday), the Attorney General of the Netherlands Antilles confirmed in writing that he was not to be held liable for the oil. He also has received approval from the Bureau of Foreign Affairs of the Netherlands Antilles and the Ministry of the Foreign Affairs of the Netherlands written confirmation of their approval. We understand that this written approval will be issued on Monday, November 5.

As noted, PDNSA refuses to accept the cargo unless it receives written approval from the United Nations. Meanwhile, the vessel owner has notified flagra that it will hold it accountable for all demurrage and other expenses attendant the delay. The cost of demurrage is in excess of USD \$40,000 per day. We do not know how long the vessel will be permitted to sit at anchorage at Curaçao.

4. Consequences to Tradfigura and Other Purchasers of Iraqi Crude under the Oil for Food Programme

Given the facts known to us, it appears that flagra, with the complicity of several parties, simply authorized the vessel to load the oil outside of its allocation and did not remit the funds to the UN Account. Tradfigura purchased the oil with customary assurances from its supplier that the entire cargo was approved under the UN Oil for Food Programme and received customary documentation supporting that fact. There would not have been any way to know that the oil had lifted oil outside of the Oil for Food Programme.

The cost to Tradfigura is potentially enormous. Tradfigura has paid over USD \$45 million for the oil, and it must obtain payment from Kooch and PDNSA soon or its banks may close it to make business. In addition, to obtain release of the oil, Tradfigura must pay for the oil and make second payment to the UN. Tradfigura also may be liable for the cost of the oil and the cost of the demurrage on a vessel *Berge Chief*—a vessel that it had chartered for lifting of another cargo from that but which it cancelled given the

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absence of UN assurances that the flagra lifting would be authorized. Now Tradfigura faces the costs of cancellation of the charter party. The total cost to Tradfigura of this debacle could exceed USD \$9 million, exclusive of the cost of attempting to recover its losses from the various parties involved.

We are mindful that the Sanctions Committee does not ordinarily communicate with private oil companies. However, this is an unprecedented situation, and we believe that the Sanctions Committee should be aware of how an innocent party can be entrapped and how SOGOFIA can be used to circumvent the UN sanctions. Although the UN is not responsible for the actions of the various parties involved, the complicity or inaction of various parties likely contributed to this situation.

First, the vessel Master signed all the bills of lading and shipping documents. The original of the bills of lading and shipping documents were issued to the UN, not to Tradfigura. Tradfigura made the letter of credit issued in favor of the UN Line Account. The master kept the full set of the bills of lading of the 271,000 barrels onboard and when he disembarked from the vessel while it was en route, he kept one of the original bills of lading.

Second, all of the shipping and loading documents were endorsed by the SOMO terminal. Tradfigura and flagra did not have involvement in the active participation of SOMO and the loading terminal.

Third, the lifted oil outside its allocation and failed to pay the UN Account. This could not have been done without flagra's authorization. In organizing the scheme, the banking channels and the loading and unloading documents.

Fourth, if flagra was aware that the payment received through the letter of credit was covering Iraqi oil, no payment should have been authorized other than to the UN account with BNP Paribas.

5. X For a vessel of this size cannot load significant volumes of oil without the knowledge of the UN-appointed inspector. According to Tradfigura's line control representative onboard the vessel, it took seven hours to load the 271,000 barrels. The use of such vessels and all required that flagra name subcontractors. We do not think it credible that a vessel can remain on the berth with pipes connected for seven hours without questions or knowledge of the UN-appointed inspectors. *Inspected by UN inspectors of UN 2716*

Without change to the procedures, other purchasers of Iraqi crude easily could find themselves in the same situation. The cost of recovering the remaining losses is sure to be significant and with uncertain success given that, at present, the allocation holders are small companies and it is very difficult to reach. We know of no SOMO account that has been controlled by a party other than the UN. In any event, the liability of other parties will be difficult to prove absent a finding of criminal wrongdoing.

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After the completion of loading of 1,800,000 bbls and all the documents signed the UN cargo inspectors left the vessel without informing the UN cargo inspectors and was completed when the vessel loaded the additional 229756 bbls.

Ullage report (doc 3) was signed by Master and Terminal Representative, B/L (doc 4) was issued and signed by Master, (doc 5) was signed by Terminal Representative and by FALCON representative cpt Manousakis Maroulis verifying the additional quantity was loaded on top of the quantity which was allowed by letter of credit issued by UN.

After loading vessel South Sea, where she discharged part of her cargo On arrival at the LOOP the vessel was measured by charterer's cargo inspector (doc 6) as well as by SGS receiver's cargo inspector (doc 6a) and the total quantity of cargo on board found to be 2,034,538.00 bbls or 280,121.07 metric tons, thus more than the letter of credit about 229756 bbls.

SECOND LOADING AUG 27th 2001 (U.N. code: SAC2572001/CIL/1360LC23)

The vessel T/T ESSEX was fixed by TRAFIGURA to load a cargo of 1,800,000 bbls Basrah light crude oil from Al Baker oil terminal, IRAQ. The same procedure as the first loading was followed. As per (doc 1) and (doc 2) vessel loaded 1,788,820.00 bbls equal to 246,475.219 metric tons. As per (doc 4) vessel loaded additional 271,894.00 bbls or 37,461.957 metric tons which was over the U.N. letter of credit. Vessel is proceeding to U.S. GULF (South Station) to discharge and site is expected to arrive there on or about October 14th 2001.

Attachments

first loading : doc 1, doc 2, doc 3, doc 4, doc 5, doc 6, doc 6a.
second loading : doc 1, doc 2, doc 3, doc 4, doc 5.

CHILADAKIS THEOFANIS
IRINIS 27-29, tel: (01) 6392097
AVIA PARASKEVI 153.41
ATHENS, GREECE

To,
UNITED NATIONS
1 UN PLAZA, DC1-1572
NEW YORK, NY 10017
U.S.A.

ATHENS
SEPTEMBER 21st 2001

Attention: Mr Morten Bjar Jensen

Subject: T/T ESSEX, Loading at AL BAKR OH Terminal IRAQ, ignoring UN loading instructions.

Companies involved:

A. TRAFIGURA LONDON, CHARTERS/TRADEERS
TEL: 21187922166

B. ELKA LONDON, OWNERS OF T/T ESSEX
TEL: 44 171 238 3337 FAX: 44 171 724 1390

C. SOMO LONDON, IRAQI OIL COMPANY, TLX: 212198

D. EUROPEAN NAVIGATION, ATHENS, OPERATORS FOR T/T ESSEX
TEL: (01) 8941581, FAX: (01) 8941588

E. FALCON NAVIGATION, ATHENS, REPRESENTATIVES OF TRAFIGURA
TEL: (01) 9607230 FAX: (01) 9616801

FIRST LOADING MAY 16th 2001 (U.N. code : missing)

The above named vessel (T/T ESSEX) was fixed by TRAFIGURA to load at AL BAKR oil terminal IRAQ, a cargo of 1,800,000 bbls Basrah light crude oil. As per attached doc 1, vessel loaded 1,800,000 bbls Basrah light crude oil. Ullage report (doc 1) signed by Master and Terminal manager, B/L (doc 2) issued and signed by Master verifying the quantity the vessel was fixed to load 1,800,000 bbls or 247,847.80 metric tons.

Nov 22, 2001

doc 5

TOTAL QUANTITY ON BOARD

TOTAL QUANTITY LOADED ON BOARD VESSEL. E:1:5:2:7
ON (/652001) AS FOLLOWS:-

	GROSS	NET
CUBIC METERS :	322,607.513	322,165.533
U.S. BBLs :	2,029,744	2,023,622
LONG TONS :	275,030.718	274,392.48
METRIC TONS :	279,444.472	279,202.891

SIGNATURE


SIGNATURE:


You will no doubt all be aware of the alleged illegal loadings from Mina al-Bahr involving the vessel "Eason", and the revised procedures that have been instituted at both Ceyhan and Mina al-Bahr to prevent the possibility of such occurrences in the future.

Bearing in mind that the Seybolt monitoring operations at Ceyhan and Mina al-Bahr are under the closest scrutiny from the United Nations, it is particularly disappointing to have to advise you that the quality of reporting to this office and to the UN Oil Overseers has, of late, significantly deteriorated.

Examples, in no particular order of merit, are:

- 1) Time logs with no completion, or sailing, times
- 2) Sailing wires with incorrect Bill of Lading dates, and incorrect notification of barrels loaded. The Office of the Flag Program of the United Nations has written to Seybolt on this matter.

I do not have to labour the point that this level of performance is unacceptable.

We are a professional company appointed by a major humanitarian concern to carry out an important task. If we are not seen to act professionally, especially so soon after alleged illegal activities have taken place under our very noses, then we will all participate consequences.

In our monitoring function we are the "eyes and ears" of the United Nations, and the quality and content of our reporting functions is the only benchmark by which the United Nations can judge our performance. Once discredited, confidence is hard to rebuild.

Since the inception of the "Oil for Food" program in late 1996 Seybolt has done a tremendous amount of good work. Unfortunately it is only our mistakes that are noticed, and of late there have been too many. Mistakes and omissions will not be tolerated.

THE FOLLOWING ACTIONS WILL NOW BE TAKEN:

A) As from receipt of this message, both the Ceyhan and Mina al-Bahr operations will advise, as part of the daily report, comprehensive time log activities per vessel covering at minimum the following times, split over a number of daily entries as they occur. I expect to see all these times reported; further pertinent details regarding debussing etc can be added as appropriate:

- END OF SEA PASSAGE/ARRIVAL AT ANCHORAGE
- NOTICE OF READINESS TENDERED
- PILOTS ON BOARD
- LEFT ANCHORAGE
- START OF UNLOADING
- ALL FAST BERTHS ?
- NOTICE OF READINESS RECEIVED
- GANGWAY IN POSITION

VISIT TO BOJA TERMINAL, CEYHAN
ALGOSSETI - 20.02.2001

STAFF ON-SITE DURING VISIT:

Gilj Stoejil Acting Team Leader
 Petko Goculov
 Vlatko Poshov
 Gert van der Veen
 Vladimir Pisk
 Chemist

During this visit:

1. Took part in discussions with Gijl Stoejil on a "top-to-ear" basis.
2. Took part in discussions with the whole team.
3. Visited the jetty and control room.
4. Visited the ship's agency, Bureau, at Iskenderun.
5. Toured the Boja Terminal, the jetty and control room, and inspected the automatic sampling machinery (Cranek, one per store line), the missing systems (Chemist), and the Sphobol machinery.
6. Met with SOMO officials based at Boja.

For ease of reference I will follow the heading established by Paul Edwards (PE) in his de-briefing report on departure from Ceyhan, commenting as necessary.

CARS:

When Gijl Stoejil (GS) handed over the operation to PE, he passed on a note regarding the fact that the cars needed servicing, and that the 90,000 and 35,000 kilometers respectively. They had a hard life and will need to be replaced within the next 12 months should the "Olef" contract still be running. GS also mentioned that the cars had been serviced during the recent slack period. The following items have been mentioned so far:

- > The item armor missing from one vehicle has been re-fitted.
- > The car on this vehicle's previous service, although ten years were required, they had not been fitted. All ten years have now been replaced.
- > The car on this vehicle's previous service, although ten years were required, they had not been fitted. All ten years have now been replaced.
- > The servicing will be carried out as per manufacturer's schedules and, where considered necessary by resident team leader, I recommend should be serviced at more regular intervals.

OFFICE SPACE & FURNITURE:

PE's comments on the conditions he noted on arrival were as follows, and have been confirmed by team members; the action he took has resulted in an acceptable office work environment:

- > PE has made a written request to Boja regarding office refurbishment and replacement (see below).
- > The request regarding the repair to chairs had already been delivered prior to PE's arrival, and has already been acted upon.

The staff have been advised that the office furniture will, in the early replacement area available to our team and is therefore constantly in use. The TVM/Boja team leader, however, has advised that the resident team leader must ensure the office area is kept in a clean and tidy condition.

OFFICE TOOLS:

Further to the notes from PE:

- > The use of the "Olef" (labelled from Pretek) is used for daily reports in London/Rotterdam, and the creation of SIS reports.

- > The data on "SIS" is used for store tank calculations and other routine monitoring and office administration purposes.
- > The local petty cash box will now be kept in the team leader's room, rather than in the office.
- > The monthly "make-up" of the office computer (on ZIP drive) will be kept in the team leader's room.
- > The old notebook computer (see notes, needs a monitor to operate) is kept in the flight controller's room. It is used for the calculation of store tank quantities, the fuel depletion in Out 1, it is not available for reporting.

OFFICE ADMINISTRATION:

PE has arranged the boxing up, labelling and storage of old hard copy files stored in the second office.

- > The new ZIP filing system is used to back up the SIS reports and the contract details currently (to alpha a month) on a monthly basis.
- > The old ZIP drive should be kept in the team leader room (to operate from the office).
- > The ZIP drive should be kept in the team leader room (to operate from the office).

LABORATORY:

The binning, which was previously liked, is currently under replacement with multi-topped binning by Boja, who have also replaced the windows and doors making the two rooms weather-proof, and improved the electrical wiring, power sockets and lighting.

As to PE's comment:

Even though the MHC map is only used once a month for temperature checks of the Etnaf system, the papers have been ordered in Rotterdam office and will be filed on arrival, thus making the light fully functional again.

I have reviewed the comment made by PE on the desirability of an air-conditioning unit for the laboratory with Gert van der Veen, the maintenance technician in charge of the laboratory. The laboratory with Gert van der Veen, the maintenance technician in charge of the laboratory, as this situation has existed for the past six years, it seems foolish to rush into Sphobol expenditure in view of the fluid political situation. The team leader will consider request Boja may send via the air-conditioning unit for one of the two rooms. If they agree, all well and good. If not we should consider this a longer-term Sphobol requirement. If the "Olef" release continues through winter months.

ITEMS THAT REMAIN TO BE ADDRESSED:

- Auto sampler:**
- > It appears that the newly-installed Jibber auto-samplers do not always fill the 18 litre sample tins, thus creating empty tins and sample loss.
 - > I have discussed this with the team leader who has promised to investigate and make available the sample report printouts from the control room.
 - > I visited the jetty control room and the warehouse pressure did not seem to be what it should be. I have discussed this with the team leader who has promised to ensure complete sample. Control inspection suggests that all is required to input the sample control computer with the intended loading volume, and the software will adjust the sample "grab" with the correct set very few of whom know any English whatsoever.
 - > The team leader should ensure that the sample vessel is full after each loading. If not VEF/Liver Boja management should be advised in writing.

Under review by GCB/BB, and until further notice not to be issued. COB to advise Mike at incorporation of Exam documents into SIS.

I would recommend this is done before the end of this year.

C G Bree
August 31st, 2002

- > Not immediately necessary, and subject to what happens to SRS system under review by management.
- > Room costs for food/recommendation.
- > Air conditioning in laboratory.
- > Discussed above.
- Uniform
 - > Discussed with team, uniform to be worn when working and on-call in terminal.
 - > As staff are mainly resident on the terminal, reasonable dress code is to be observed within the terminal. The uniform will be provided by management. The uniform will be available in the terminal and staff should follow their good example.
- Safety:
 - > Medical kit are considered superfluous, there is a well-equipped hospital on the Base terminal available to our staff.
 - > Fire equipment can only be supplied by Base.

BOTAS MANAGEMENT:

On 28/08/02 I had an appointment to meet with the new manager, Mr Peter Ashmore, (I was accompanied to his office by Mr Adam Webb (GM, farm manager), Ben Mr Webb (Business JTP chief engineer) and then introduced to Mr Alan Eddis (General GM, and technical manager) who advised Mr Ashmore had gone on holiday. No apologies were offered.

Mr Eddis speaks fluently in English, and was most obviously not been pleased at being interrupted. A Base team member was introduced to me as a manager. We discussed:

- > The current situation of the Base, including my finances. (This, not unexpectedly, did not inspire and will need to be followed up by the team leader).
- > Hearing Eddis state system "nearly ready" for use on Bill of Lading calculations, I reminded him that the system had not been used for a long time and that the system would have to be discussed before finalisation was, and any change from the present system would have to be discussed and approved by the 461 Committee. He was not impressed.
- > The current situation of the Base, including my finances. (This, not unexpectedly, did not inspire and will need to be followed up by the team leader).
- > Additionally, he stated he is only carrying out instructions received from Ankara.

As noted by PE, and fortified by above, the attitude of the Base management and staff seems to be hostile towards the Soyuz team, and is certainly interpreted as such by our people, who nevertheless try as far as possible to ignore the perceived injustices.

SOMG:

Met with Mr Sabin (ex NOC), Mr Zia and Mr Jial all of whom I know from SOMG, Baghdad and from previous visits to the North.

- > Their major concern is with the retroactive pricing and the (apparent) effect on sales.
- > They are currently working on a proposal to the Soyuz team.
- > They would like to know what permission will be given to use Odeh Al-Amyry; interesting discussion ensued.

CONCLUSION:

I will report wider aspects cover on a number of the issues that I have discussed locally with Gijb Song and the team.

Certainly PE's recommendation that regular visits be made by management should be acted on. In the response received in that an act of complacency has developed in the Soyuz operation. I have noted this opinion to Gijb Song who, out of loyalty to his team leader, deigns to comment further than to say that the Soyuz team are currently working on a proposal to the Soyuz team. I will state the same to Hub de Bruijn. Only a report will be submitted, whether things have improved.

Code of conduct:

With the present UN Team on the terminal the Code of Conduct has been amended to include the following: The UN Team will be working day and when Staff are attending ships. There is no evidence of any person on the terminal being upset with our staff's conduct, in fact quite the opposite.

Conditions:

Living conditions are reasonable. All staff live in a local type of building on the terminal. The building is over ten years old, each room is approximately 100 sq. meters. It is noted that furniture and carpets look old although in a reasonable state of repair.

All meals are consumed on the terminal at a special restaurant in a separate building. Meals served are reasonable although the service can be improved. The Turkish Operations staff, the Pilots and SOMO.

The office space is in another separate building which is together with the Turkish Operations staff, the Pilots and SOMO.

For recreation there is a small club which also serves various alcoholic drinks. The beach has its own staff for safety and cleaning. It is kept open to all installation staff and their families.

Installation staff live in various types of accommodation. All over the terminal there are a total of about 500 men, women and children live in the Terminal.

Housekeeping:

Laundry is done on the terminal daily. There is also a laundry service which is not at all reliable, most of the UN staff were hand washing their own laundry except for items that required ironing, this service could be improved considerably.

Restaurants and a wine bar is set up to attend. Office menu items are prepared daily. The staff can speak a word of English which alleviates the problem.

I have suggested that the Team Leader makes sure that all complaints are made known to the local Cacon Team manager and to ensure that he explains everything to the Terminal management. Before he pays any bills.

It appears that there are no copies of invoices for payment of accommodation, meals etc., with the Team Leader. All bills are in Turkish which the Cacon Manager interprets to his own advantage. The Cacon staff have been advised to forward their own invoice to Sypsoft International in Holland. There is no copy whatever on the terminal for reference or cross checking.

I suggest that in order that a better contact is maintained, a list of receipts should be in the Team Leader's possession for reference.

The Terminal Management should be made more aware that the Team Leader is responsible for Team welfare and that Cacon is paying the UN Team's bills. Cacon may even be thinking that Cacon is paying the UN Team's bills.

the Ceyhan Tanks only.

measured by the Cable Beth Inspection Company.

Import from Iraq:

recognition of between 900,000 and 1,000,000 barrels per day to Ceyhan tanks.

Of the 13 tanks in the complex, 12 are in service being filled and shipped as required. The storage size of each tank is about 650,000 barrels.

Monitoring the amount imported from Iraq is carried out by manual inspection of tanks by the UN Team members.

On some occasions, due to the present demand for exporting the oil much more quickly than before, it can be seen that Terminal Operators do their best to comply with this requirement.

Filing Systems:

All day to day messages and correspondence are filed. Files are kept with regards to Code imported and exported together with daily, weekly, and monthly comparisons.

All SIP reports for the beginning of the food for oil programme have been filed.

SIP Reports:

A full SIP report is completed for each shipment (SIP Code Version). Reports are sent to the ship side of the inspection, is sent to Holland for onward distribution to the UN. These reports are discarded at regular intervals.

Investigation reveals that the ship reports are calculated in work sheets and are not computerized. The Team Leader to date no permanent records have been kept as a back up on diskettes.

Terminal Relations:

There is a very good and a regular exchange of information takes place.

Perhaps the greatest barrier that exists is language. Amongst the Turkish staff there are very few who can understand or speak the English language. This can cause minor problems, particularly at the local communication takes place with the pilots who also act as the loading masters. All the pilots speak English and have a good relationship with Sypsoft UN. They do however sometimes forget that this has caused misunderstandings when information and documents are requested which we are not at liberty to release to them.

SOMO Relations:

Relationship with SOMO and the Iraq North Oil Company staff remains extremely good. Once again they are relying on the UN Team to solve our situation is clarified to them.

There is no notes or procedures in place with regards to a relieving Team Leader. Full reliance has been placed simply upon a hand over since no one has been trained in writing. This is not a good procedure since no one is able to take over if the person in charge is unavailable. Workfull notes should be completed by the laboratory and equipment inventory should be checked and signed over in writing to the succeeding Team Leader.

The Laboratory Inventory should also be checked and signed over each time the laboratory person is changed.

By implementing the above a better continuity can be maintained and controlled.

Conclusion

I feel that my visit was well justified useful. I would now like to return to the station and continue with my regular visits every three months to review the station condition and to help assist familiar with everything that is going on.

Action Items

- 1) Each SIP alignment report to be copied to diabetics.
- 2) Action : Team Leader
- 3) 1) and update each computer to be made every month (back UP streamer) 1) and update each computer to be made every month (back UP streamer) 1) and update each computer to be made every month (back UP streamer)
- 4) Action : Team Leader and Computer Department.
- 5) Action : Team Leader
- 6) Action : Team Leader and Computer Department.
- 7) Action : Team Leader and Computer Department.
- 8) Action : Team Leader and Computer Department.
- 9) Action : Team Leader and Computer Department.
- 10) Action : Team Leader and Computer Department.
- 11) Action : Team Leader and Computer Department.
- 12) Action : Team Leader and Computer Department.

out of their own pocket and that they are responsible. Computers

It is noted that both computers originally supplied to Cayman in 1986 as the disk operating system. This is still in use. Any team member assigned before he can work. It familiarise himself with a different system

The contents and operation of both computers were investigated. The Team Leader's computer had problems with the SIP programme, these were investigated and corrected. It was found that the address book was well out of date. The address book has never been updated mainly because past and present staff were unaware that this database existed.

On the computer designated for the Monitor's use there are larger and smaller programs. Some of these programs are not running. It is noted that the Vessel Data base has never been updated mainly because past and present staff were unaware that this database existed.

It was also noted that the printer was not working. This was investigated and corrected. The printer was found to be out of paper. This was corrected and the printer was found to be working.

With regards to copies of the original programs, none exist on site. I would suggest that a full back up of the Team Leaders computer is made once a month and that full standby computer programs are supplied. This will ensure that the computer is always up to date and that the supply of a back up tape streamer and program would be very useful.

Equipment

The equipment is in constant use by the team every day. There are insufficient spares on site. To my mind minimum required is one complete MC plus two spare tapes.

Recently a replacement MC was ordered from Holland and sent by DHL clearance. On August 21 it was still with DHL in Turkey awaiting Customs clearance.

Delays such as above only highlights the need for spares to be on site. It is noted that an "AVTERR" thermoprobe is kept on site as a back up in case the "AVTERR" thermoprobe is broken.

A comprehensive inventory of all equipment should be maintained. The equipment was not available. This must be made as soon as possible for the good order and reference of each Team Leader.

Handing Over to relieving Team Leaders



Saybolt International B.V. - Rotterdam

Telefax

For number receiver : 00 1 212 903 1510
To : United Nations Headquarters, New York
Attention : Mr. Steve Avonson
From : Saybolt International B.V.
Subject : UN Audit reply
Date : October 27, 1997

Dear Steve,

In reply to your fax dated 24 October 1997, we would like to comment as follows:
Which of the two figures is closer to the actual quantity?

In view of the non-functional taringing system, it is, as you know our procedure to measure:

- 1. The storage tanks before and after loading of a cargo (for reference and check).
2. The vessel is measured after loading, whereas the vessel's measurements are adjusted by Vessels Experience Factor (VEF) and On Board Quantities (OBQ).

The measurements described under point 1. serve as reference and check, and the figures are received, and archived, against possible future requirement but owing to the relatively long time span after the completion of the loading operation, the measurements are not considered for the purpose of monitoring the mean accurate determination, in the absence of accurate taringing facilities, for monitoring purposes.

The difference of 26.451 barrels GSY can in our opinion be attributed to the loading of the 7v. "Hizbik" (the vessel's cargo manifest) and the figures for the 7v. "Hizbik" were made to the deck village points to allow use of BAC-type monitoring equipment. The vessel's calibration charts, as presented, were not adjusted for this structural distortion.

On completion of loading there was an apparent difference between the vessel's figure (17y reference to Vessels Experience Factor) and the figure, as follows:
Shore 986,142 barrels
Vessel 959,691 barrels
Which equates to 28,475 barrels or 2,88 %.

How has the difference been adjusted?

After consultations with the UN Oil overvoers and local SOMO representative it was decided not to deviate from the procedure and that on establishment of the output of the vessel an adjustment with the client would be made. (Either by volume on a future billing, or financially.



United Nations HQ, New York
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This adjustment is in view of the difference (26,451 barrels) over the entire period in our opinion justified.

The adjustment has however as far as we know not yet been made.

Did not the loading differ widely?

Obviously the figures are, as a rule and involved in the measurements that are done for reference/check by Saybolt in connection with their work as UN observers. Moreover the bill of lading is based on the vessel's measurements adjusted by Vessel's Experience Factor (VEF) and On Board Quantities (OBQ).

However in the case of 7v. "Hizbik" the cargo has claimed instead, as they noticed consistent with the difference observed in Rotterdam, an output loss at the discharge port.

Why difference arose?

Explanation is given earlier.

Could Saybolt / you generated this difference?

Separate from the acceptable difference which will always occur, in view of the relatively long time span since the figures were taken, the vessel's measurements were fully calibrated or measurement error's with temperature correction. In the case of 7v. "Hizbik" the difference in the case of 7v. "Hizbik" exceeded the acceptable difference and it was brought to the attention of all parties concerned. Subsequently it was decided not to deviate from the procedure.

It is therefore that Saybolt can not be blamed for this difference.

Steve, I trust this answers the queries, please contact me in case you need some clarification.

Best regards,

[Handwritten signature]

Peter Boks

... 01/14/84 ...

... 01/14/84 ...

... the mean that 50 per cent of all Phase III ...

1. In Appendix I to the above - contained ...

... 6511 ...

A. Specifically with regard to facilities, Mr. ...

... the commitment of the "Oil for Food" Programme.

A. General ...

B. Loading Facilities ...

C. Unloading ...

D. Other ...

E. Other ...

F. Other ...

G. Other ...

H. Other ...

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Meeting room. This situation, however continued till 20-5-68 when one hour was made available.

> In its report of 27-6-68 no Motor launch service was reported functional from Uman Qatr. Journey time was considerably extended and was the same probably.

> As per report of 22 May 1968 the oil impurities picked out the power unit were causing several times a day and night. No generators were operating for an hour or more. Power was reported to have been restored only by Zangany generator. This was reported to be not a safe situation in the event of any incident of fire or breakdown there would have had no power to run machinery or supply illumination.

> In Min-A1-Bahr, the power situation was reported to be badly deteriorated in its report of 2-6-68. Numerous power out were reported every day and night for periods upto three hours. The main generators are reported to be operating only occasionally with the result that only Zangany generator was being used continuously which could be hardly a safe procedure.

3.1 Board recommends that necessary steps be taken to improve facilities in the meeting room in the interest of generation of revenue by sale of oil to the extent possible.

3. Board noted in connection with the vulnerability of infrastructure that a group of reports unaccompanied by two United Nations Oil Convoys visited Iraq from 12 to 12 March 1968 to observe the condition of the production and transportation facilities necessary for the export of petroleum and petroleum products. After physical inspection of the various facilities, an in situ observation and on the basis of information supplied by various Iraq Government Agencies and analysis of historical data, the group of experts had concluded in their report that without rapid and

mechanically inclined from the pipeline flow.
> The original telecommunication and data acquisition system (SCADA) have been destroyed and the operators are working blind with no pump/flowmeters data with respect to infrastructure pumping operation.
C. 6.2. Khabat/Bahrat, Chalk Oil Marketing Station
> The marketing station is substantially behind (upheld) and thus the main pipeline and its non-operational.

As the Iraq Oil Ref. Prod Programme is normally in the final month of the fourth year, Board recommends that these problems be resolved expeditiously.

3. Board have observed from the Weekly reports sent by MA, Baghdad to Omeira that various operational difficulties persist despite the experience gained by the authorities implementing the Oil Ref. Prod Programme which commenced very work in December 1966. Some of these are detailed below:

> As per report of 5-12-1967 no 70kt boats were available at Min A1 - Bahr for handling of "ANDROSOR GEORGIOU". There was no improvement in Service launches and transportation. Transportation to Shara required at least 15 hours with one change of boat each time. Outgoing No 1 was reported to be under repair.

> As per report of 12-12-67 only one Meeting boat was available at Min A1 Bahr which too was stated to be unreliable. Also, transport within Shara was reported to be scarce. Tugboat was reported to be at sea enabling repairs and delivery of parts from Uman Qatr.

> In its report of 13-3-68 the inspectors indicated that no Meeting Boats were on Station at Min A1 - Bahr and were reported to be under repair. It was pointed out that for the last 3 Weeks morning was done without use of

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4.

Overpayment of monthly invoices needs to be recovered

Paragraph 10 of the draft report stated that the contractor had overcharged by approximately \$70,000, on short and excess rationing of staff. Except for the 1999 invoice which was \$170,000, the contractor has not provided any supporting documentation. The draft report also stated that the contractor has not provided any supporting documentation. The draft report also stated that the contractor has not provided any supporting documentation. The draft report also stated that the contractor has not provided any supporting documentation.

Regarding the short rationing of staff, the invoice (dated 29 May 1999) was based on the number of staff that were not on duty, as the invoice did not include any change for absent staff. As set out above, irrespective of the maximum allowed given per inspectors, during the initial stages of this work the contractor only deployed sufficient staff to effectively carry out the requirements of the 561 Committee, as there is an obvious time delay in obtaining and processing of the UN communication system. It would, thus, appear that the auditor did not differentiate between Seybol's responsibilities.

Communication charges by the Contractor have been excessive

Paragraph 11 and 12 noted that the bulk provision of the contract includes communication charges which amount to 21 per cent of the total contract amount and that the Contractor did not provide for any requirement to justify the expenses incurred through the use of a satellite communication system (Satcom). The draft report also stated that the UN did not consider alternative options such as using the UN (communication) system, which would have reduced the cost of the contract. It would, thus, appear that the contractor has not provided any supporting documentation for all calls including personal calls.

The auditor did not seem to take into consideration the geography of Iraq, the location of the sites where the independent inspection agents are stationed, the logistics that would have been involved in the UN telecommunication system to the various locations and also the public situation.

It must be noted that time is essential and the independent inspection agents have to transmit their reports from the location where they are based, using communication systems. The draft report also stated that the contractor has not provided any supporting documentation for the various locations in the field, to transmit data such as the subcontractor documentation for the end of the contract. It should also be noted that "no-line" costs were recognized in the current contract, P/COI 1400, resulting in substantial savings on communication costs.

OIP needs to recover personal phone calls made by the Contractor's staff

number of all inspection was increased from six to eight. Paragraph has the total number of inspectors as twenty. This error is significant as it influenced the subsequent findings and recommendations.

3.

Paragraph 9(1) stated that "a review of 10 monthly invoices and supporting documents found 'deficiencies'. Among the deficiencies noted is irregularity of the attendance record which reflected "from arrival to departure hours". In the view of the auditor, payments should only be made for manning the location in Iraq and Turkey.

Contract number PTD/017/0065-06 (the initial contract) designated the number of inspectors required at particular locations in Iraq and Turkey, and Article 7.1 provides for full attendance complaints and satisfactory performance by the contractor. The contractor has not provided any supporting documentation for the contractor. As has been noted above, the contractor has not provided any supporting documentation for the contractor. As has been noted above, the contractor has not provided any supporting documentation for the contractor.

The draft report also illustrates that the auditor does not have a good understanding of the contract. A significant error in finding that Seybol overcharged some \$70,000 for services provided during the period 29 May 1999 to 28 June 2001. This auditor continued the billing mechanism, seemingly thinking that Seybol's billing was based on contracted staff levels and not on staff on site. Also, on this matter, the auditor counted the contracted number of inspectors for all spare parts and equipment. This is right and not six, as stated in paragraph 8 of the draft report.

There is a historical precedent in the preparation of invoices in line with the communication date of the current contract. The invoice always covers the period between the 28th day of the previous month and the 28th day of the month in progress. Thus, the invoice for the period 29 May 1999 to 28 June 2001. The auditor continued the billing mechanism, seemingly thinking that Seybol's billing was based on contracted staff levels and not on staff on site. Also, on this matter, the auditor counted the contracted number of inspectors for all spare parts and equipment. This is right and not six, as stated in paragraph 8 of the draft report.

The lump sum payment method provided for in Contract PTD/017/0065-06 (the initial contract) was discontinued with effect from 28 May 1999 in the successor contract. Since June 1999, invoices have been accompanied by an attendance sheet.

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Lilled Nations. Because of the urgency of the need, it was further decided to purchase vehicles that were immediately available, that happened to have different colors and prices. Non-essential equipment purchased by the Contractor had not been adequately accounted for.

Paragraph 20 stated that "the UN had authorized the Contractor to purchase equipment including vehicles, and communication equipment (the antenna, computers and software. We found that the equipment purchased by the UN did not have any of the necessary equipment necessary for the mission and that there had been no periodic checks on these assets as required by UN financial rules".

Due to the political environment in which the contract is executed, it is not feasible to conduct physical inventory of the vehicles and equipment purchased by the Contractor. The Government of Iraq has been provided by the Contractor a copy of the equipment list that has been purchased by the Contractor under the 2.2% account, and does not necessarily wish to come under any friction with the Government of Iraq.

Charges for additional services provided by the Contractor have been excessive and unacceptably excessive.

Paragraphs 21 to 25 stated, *inter alia*, that OIP accepted one proposal from the contractor for additional services "without any effort to compare the proposal with other proposals or to conduct an audit of the proposal. The contractor had provided additional documentation to support the proposal such as original bills for purchases, tickets, vouchers, etc."

The auditors were not to have a clear understanding of the nature of the work of OIP and the very limited and often incomplete information provided by the contractor. The proposals submitted to OIP (1990). The proposals submitted to by the auditors relate to specific survey missions that were undertaken at the request of the Security Council within a tight timeframe. The proposals by the contractor are "all-in", i.e., including all relevant personnel for technical activities and analysis, as well as for auxiliary services, such as support for the project, the Security Council, the Government of Iraq, and the United Nations. The contractor, and the Government's experience with Sanyal, would also have had to agree to the presence of a considerable advantage - one that cannot be cost evaluated - and retained the intention with more expeditious and effective.

It is also an erroneous assumption that OIP does not maintain comprehensive information to determine the "reasonableness" of proposals. OIP has always kept such information and has maintained on-going contact with professional societies and technical organizations, and has thus been able to discuss quickly with experts whether technical and financial proposals were reasonable.

Regarding the comments on the round-trip from Amman-Baghdad-Amman, it is contended that the charges were overstated. Consequently OIP is arranging a justification of the

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Paragraph 14 stated that Sanyal's "normal policy is to allow each of its staff members five private telephone calls totaling up to 45 minutes per month. In Turkey, it was ascertained that staff members were not charged at all for personal calls, as these were not subtracted in the Contractor's view. Since the total communication cost is included in the non-day cost structure, private telephone calls of the Contractor staff members are being charged to OIP."

The auditors seem to have confused the cost structure with the agreed billing procedure. As the contract is all-inclusive daily fee, the only mechanism for charging would be attendance on site of the contractor personnel and satisfactory performance of their duties.

The contract was awarded to Sanyal based on competitive tender and there is no evidence that alleged communication costs for private calls are charged to OIP. It must also be mentioned that the State Oil Marketing Organisation (SOMO) has waived the quite some time upon Sanyal's communication systems after the military action in 1991. All costs involved amounting to USD 6,000, per month were absorbed by the contractor (the fact).

However, the points raised in the audit report regarding the cost structure could be utilized in the negotiations for the next contract.

Accommodation and local transportation charges included in non-day billing rate have been excessive.

Paragraphs 16 and 17 stated, *inter alia*, that at Zabih and Minabik, the Government of Iraq had provided accommodation for the Contractor's staff, and at Zabih, SOMO had also provided two cars for local transportation.

With regard to questions related to costs for accommodation, transportation, communications, etc., in Iraq, it is well-known that these types of expenses to be reimbursed by the Government of Iraq. It is not clear from the information provided that special arrangements being made by the contractor, not just Sanyal, to ensure that these services, etc., would be provided.

Transporter costs provided for in the Contract have been charged.

Paragraph 18 stated that "notwithstanding specific provisions in the Contract to the contrary, annexment number three provided for computer equipment for two spare parts inspectors at a cost of 17,000 US dollars. In paragraph 19, the Contractor had provided for the purchase of two cars for 17,000 US dollars. In paragraph 20, the Contractor had provided for the purchase of two cars for 17,000 US dollars. The Contractor does not state that the non-day rate provides for transportation costs of 2.55 per cent. In our opinion, adequate provision was made in the Contract for transportation and no justification was given for charging the Contractor to provide additional transport. This arrangement was not transparent and appeared to double charge the UN for these costs."

To facilitate the execution of the contract, it was decided that Sanyal could purchase three vehicles and operate them independently and the vehicles would remain the property of the

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inspectors are back in place before they can leave. To move inspectors in and out of Iraq on that kind of resumption would render the United Nations incapable of fulfilling its mandate in regard to monitoring of oil exports. The requirements of the Security Council and the Security Council Committee demand that a full time presence of inspectors be maintained in the oilfields of Iraq.

Need to separate the cost of Contractor's equipment from the non-duty fee structure

In paragraph 33 to 35, and the addendum corresponding recommendations, the report states that the OIP officials are not satisfied with the cost of the equipment. The report comments are too vague to constitute a valid finding. It is clear that the auditors did not take into consideration the ongoing maintenance, repair and replacement costs that are factored into the cost-out as well, when they speak of machine costs for equipment and recommended reimbursement by Skyplot.

Suitability of CV's of Contractor personnel have been ineffective

It would seem that the auditors did not understand the background of the issue of early personnel. It is originally from that the contractor would identify personnel. This idea was rejected by the OIP. The OIP officials are not satisfied with the quality of the CV's of personnel. They are clearly made up and do not show individuals capable of working effectively in the sometimes, arduous conditions in Iraq.

It is also not correct that the CV's of contractor personnel are not reviewed. Whenever Skyplot identifies a contractor personnel, the OIP would review the CV's and the OIP would forward to the OIP Overseas for their comment. OIP has at times questioned the selection of candidates for various reasons, including experience, language skills, and geographical distribution. This was all discussed during the daily contacts between Skyplot and OIP. The OIP officials are not satisfied with the quality of the CV's of personnel. They are clearly made up and do not show individuals capable of working effectively in the sometimes, arduous conditions, and so there was no need for rejection by OIP.

In-house versus outsourcing of services

As was stated in the introductory comments, the Memorandum of Understanding between the Government of the United Nations and the Government of Iraq on the implementation of the Security Council resolution 986 (1995), Annex II, paragraph 4, provides that the "sale of petroleum and petroleum products originating in Iraq will be monitored by United Nations inspectors appointed by the Secretary-General of the United Nations to assist the OIP in its monitoring of oil exports from Iraq." The OIP officials are not satisfied with the quality of the CV's of personnel. They are clearly made up and do not show individuals capable of working effectively in the sometimes, arduous conditions, and so there was no need for rejection by OIP.

It would be noted that the comment with the above quoted provisions were the OIP to replace the independent inspection agency with United Nations personnel. It should also be pointed

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overcharge. But again it should be noted that the auditors seem not to have taken into consideration the fact that Skyplot was able to provide experts immediately from their own ranks who were specialized in the areas necessary to undertake these missions, as well as having great technical familiarity with both Iraq and other countries in the region. And regarding the comments specifically on Paragraphs 24 and 25 on the reasonableness of the charges, it is essential to keep in mind that the comment was based on an "audit" cost proposal.

The Contractor had not conducted "audit visits" as provided for in the Contract

Paragraph 26 stated that although the Contractor's proposal dated June 1996, provided for 4 "audit visits" to be conducted by the Contractor in Iraq every six weeks, no audit had been conducted. On the assumption that the costs of this visits would have been included in the overall price proposed by the Contractor, the auditors consequently calculated 36 such missed visits.

The assumption is incorrect, as the technical head of the Iraq team for Skyplot, Mr. Graham, stated that the OIP officials are not satisfied with the quality of the CV's of personnel. They are clearly made up and do not show individuals capable of working effectively in the sometimes, arduous conditions, and so there was no need for rejection by OIP. The OIP officials are not satisfied with the quality of the CV's of personnel. They are clearly made up and do not show individuals capable of working effectively in the sometimes, arduous conditions, and so there was no need for rejection by OIP.

Services provided by UNOIC/7 have not been adequately charged to the Contractor

Paragraphs 27 and 28 have been duly noted.

Bi Monitoring Contractor's performance

OIP officials charged with monitoring the Contractor had not made inspection visits to Iraq

Regarding the comments on paragraphs 29 and 30, it should be noted that the comment is being executed in a politically sensitive environment. As has been already stated, in order not to compromise UNOIC's mandate, it was decided that the OIP officials are not satisfied with the quality of the CV's of personnel. They are clearly made up and do not show individuals capable of working effectively in the sometimes, arduous conditions, and so there was no need for rejection by OIP.

Need for reduction in contract payment during "no work" periods

In paragraph 31 and 32, the auditors opine that during times when oil is not being exported from Iraq, the contractor should not be paid. In this connection, it would be truly difficult to imagine any professional company of this type that would agree to such conditions in its contract with the United Nations. There is no way to know if the contractor will be a disruption in the oil exports, and it is suggested to suggest that the contractor will not be a

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that together in the United Nations is there an operational group for personnel... to create the operational group of 20 people... P-4 level for a very short period... Nations recruitment and placement procedures, would not be feasible. There is also the related cost of deploying these 20 P-4 staff members, i.e., transportation, accommodation, communication, etc.

In regard to the recommendations by the auditor, the... recommendations 3, 4, 5, 6, 9, 10, 17, 21, and 23... being of critical importance. In light of the introductory remarks above, as well as the comments on specific paragraphs, it will be necessary to review each of the recommendations as stated hereunder:

Recommendation 3: Establish a contract management unit in Iraq whose functions should include reviewing invoices/ supporting documentation, verifying Contractor's attendance records, monitoring additional requests for equipment and services by the Contractor and reporting input for the evaluation of the service provider (ARU/2006/003).

This recommendation fails to take into consideration the fact that this would require additional resources and staffing, which are extensive to UNOCI's mandate and would not necessarily be agreed to by the Government of Iraq.

(i) Recommendation 4: OIP management should recover the overpayment of \$370,000 as indicated in Annex 1, from the Contractor in subsequent billings (ARU/2006/004)

This recommendation should be reviewed by OIOS. The \$370,000 seems to be significantly overstated. Initially, Seybolt's review of its invoices revealed undercharging that may cause any overcharging.

Recommendation 6: OIP management should in future contracts with the Contractor (or any other contractor) require the communication expense from the non-day tariff structure and reimburse those on presentation of detailed documentation (e.g., invoices from service providers) (ARU/2006/006)

The recommendation is noted for the negotiation of future contract proposals.

Recommendation 8: OIP management should take steps to stop payment of personal telephone calls of the Contractor staff... for the first nine phases of the programme (ARU/2006/008).

The contract is an all-inclusive, and there is no evidence that the contractor has separately charged OIP for services calls. Further, it would be contrary to the terms of the contract to demand such reimbursements.

Recommendation 9: OIP management should recover overpayments for accommodation and transportation of approximately \$471,000 from the Contractor (ARU/2006/009)

The contract is all-inclusive, therefore under the terms of the contract, there is no reimbursement due.

(i) Recommendation 16: Implement procedures for... which should include... obtaining quotations from other suppliers; checking the... with the selected supplier (ARU/2006/016).

As stated above, OIP indicates contract cost with professional fee/dates and industrial organizations and is, therefore, correct on the cost of services. However, the recommendation is noted.

Recommendation 17: OIP management should obtain... each visit here when plates, reserve an estimated amount of \$270,000 for 36 such required visits to please sites (ARU/2006/017).

It is more effective and efficient to have an overall team leader positioned within Iraq that have total responsibility for adding functions on an on-going basis of review and action, rather than a only periodic "audit" visits, which are after all post-facto. In this regard, OIP does not consider that any recovery is due.

Recommendation 21: OIP management should negotiate with the Contractor to receive approximately \$1 million paid for equipment in excess of its actual cost and to stop further payments for the equipment cost component in the current Contract (ARU/2006/021).

This recommendation is rejected. OIP is bound by the terms of contract between Seybolt and the United Nations. However, the recommendation will be considered for future negotiations of contract proposals.

Recommendation 33: OIP management should consider the option of engaging UN staff members at the appropriate level, which is clearly a much more economical alternative to contracting.

for oil inspection services being in mind the relevant SCRs and MOU with the OOI (AFU/206/02).

This recommendation is inconsistent with the relevant Security Council resolutions and the MOU.

Ref: 53

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NOTE TO MR. BEVAN

FOR ONOS AUDIT NO. AF201/006: AUDIT OF THE MANAGEMENT OF THE OIL INSPECTION SERVICES CONTRACT

I refer to the memorandum of 29 November 2001 from Mr. Peter Stein, addressed to you, entitled ONOS AUDIT NO. AF201/006: AUDIT OF THE MANAGEMENT OF THE OIL INSPECTION SERVICES CONTRACT. In this connection, as discussed, I have had extensive consultations with Mr. Peter Stein, Managing Director of Symbiot Holdings, S.V. Mr. Stein has provided extensive and comprehensive comments on various portions of the report. I have also had extensive consultations with Mr. Stein regarding the various responses in paragraph 27, in particular in the context of the sample of Symbiot invoices. With regard to all questions raised to specific charges covered by invoices submitted by Symbiot, you may wish to cross check these responses with the OIP Executive Office.

Further to this, I would like to offer some additional comments. I would first agree that it is very clear from the audit report that there was a lack of general understanding regarding the responsibilities of Symbiot. This would have been avoided had the auditors followed all of our advice and consulted with Symbiot at their headquarters and with OIP at Headquarters, in particular with respect. For our part, we certainly should have had a comprehensive set of instructions, which would also have included clarifying OIGB to prepare this report in a timely manner.

With regard to specific comments, I would like to address the following:

In the OIGB report under "Audit Findings and Recommendations" the auditors state: "The number of inspectors, whether on oil or grain ports, is the only measurable parameter by which the UN authorized payment to the Contractor. Hence, an increase attendance record is essential to support the monthly invoice submitted by the Contractor. Our review of procedures found however, that they were lacking basic financial control and balance, resulting in a number of errors in the calculation of the number of inspectors. The number of inspectors is a measure of the performance of the inspectors, whether for the report of oil or the monitoring of grain ports. In fact, since OIP duty, weekly, and in special cases as required in the form of detailed reports of all activities under Symbiot's area of contractual responsibility.

Under paragraph 8, which Mr. Stein has addressed subsequently, you may wish to discuss the first three items with the Executive Office. With regard to recommendations 1 and 2, you may wish to discuss this also with the Executive Office, as this would be a forward-looking action. As to number 3, this is very unclear since here in the report the auditors indicate that under paragraph 27 there is a focal point assigned by UNOCHA for Symbiot to provide the information on the number of inspectors. This information is not provided, which has contributed to the fact that this would require additional resources and staffing, which

Seybold Eastman International B.V. - Rotterdam

Memorandum

To : Office of the Insp Programme
Attention : Mr. B. Savan
Cc : Mr. S. Colner
From : Peter W.G. Bolder
Subject : OOS Audit No. AF200/2016; Audit of the management of the oil inspection services Contract.
Date : July 12, 2017

We refer to the draft audit reports as mentioned above, which we received on December 13, 2016. Although you mention in the covering note that the auditors spoke to us in Rotterdam, this is not the case. The auditors did not visit us in Rotterdam. At that time, we encouraged through our team-lead the auditors to contact us in Rotterdam. Unfortunately this never occurred.

Given the fact that the Executive Summary is overlapping the main body of the document, we will limit ourselves to the latter.

I. Introduction

In the introduction reference is made to our current contract, including the present staffing levels. It is noted that the contract is for a period of 12 months, starting on 1 January 2016. The contract also envisages two additional seven month inspectors. Given the fact that the GCII has refused to allow any additional staff on a permanent basis, we occasionally deploy more staff when considered absolutely essential to cope with peak periods of work. It must be understood that under present circumstances the current requirements significantly exceed the allowed number of seven parts inspectors.

III. Audit Scope

Although we noticed that the auditors undertook site visits to some of the locations where our staff are located, they unfortunately did not visit Miss A.I. Bakir to witness first hand the very difficult conditions that our Helicopters are faced to operate, including the fact that the Helicopters are not being directly contacted to discuss any of the circumstances mentioned in their report.

IV. Audit Findings and Recommendations

9 (1) Seybold maintains throughout the year the following staff on site:

- Cyprus - Turkey : 5 Staff members
Miss A.I. Bakir - Iraq : 6 Staff members
Zakho - Iraq : 2 Staff members
Baghdad - Iraq : 6 - 8 Staff members

Council Committee deemed that a full time presence of inspectors be maintained in the designated sites.

In paragraph 33 to 35, and the authors' corresponding recommendations, the report discussed the equipment problems with Seybold. While the concerns are too vague to recommend valid findings, it is considered that the time spent for equipment and recommended replacements by Seybold, they have failed to take into consideration the on-going maintenance, repair and replacement costs that are factored into the contract as well.

Paragraphs 36 and 37 indicate a confusion on the part of the auditors related to the original consideration in 1995-1996 regarding Oil Drivers. It was originally foreseen that the contractor would identify owners. This idea was subsequently cast aside.

The auditors then proceed to criticize the manner in which OIP reviewed Seybold recommended candidates for hire. They state that some of the candidates were not interviewed before sending the documents to the Oil Drivers for their comments. At times, I questioned candidates for various reasons including experience, language skills, and when we seemed to have no suitable candidates. This was all discussed during the daily contact between Seybold and OIP. Candidates were subsequently interviewed from time to time following these discussions - and so there was no need for "rejection" by OIP.

Finally, paragraphs 38 and 39, with corresponding recommendations, truly surprise me. The text is completely wrong as it implies that the idea was that workers in the United Nations is there as occupational group and 20 posts at the P-4 level for a temporary programme, and then subject these posts to the normal United Nations recruitment and placement procedure. It is clear that it is thoroughly unreasonable and clearly detrimental to the work of the programme to advise the auditors in making this recommendation. In any event, the proposed number of 20 posts is completely wrong. The number of posts for occupational, communication, etc. Perhaps if they had contemplated there, their recommendation would have been advised.

Seybold L. Baker
12 February 2017

- (ii) Given the fact that there is a historical precedent in obtaining the invoice review always the period between the 25th day of the previous month until the 25th day of the following month, the invoice is prepared. Thus the invoice prepared at the end of June covers the last few days of May until the 25th of June inclusive. After review of all invoices, we found one incorrect invoice, issued for the month June 1995. This irregularity does not appear in any of the other invoice reviewed.
- 10 (i) A review per invoice is attached for your reference.
- (ii) Inspectives of the mechanism allowed spare parts inspectors, during the initial stages of this work, we could not identify any spare parts that were not actually carry out the requirements of the O&I. Consequently, as there is an obvious time delay in creating and physical arrival of spare parts and equipment.
- (iii) We refer to our review per invoice.
- 12 It must be noted that given the fact that time is essential, that our inspectors have to transmit these reports from the location where they are based. We are conscious that there are requests to link it to the UN telecommunication system. From locations such as Mine Al Baker, the difficulties in telecommunication is not limited to the use of the various nations units alone. The fact that we are using our PQ in Rotterdam in the various locations in the field, to transmit data such as the substitution documentation for crane oil leakage.
14. Essentially we find that our contract has been awarded on the basis of a competitive tender.
16. OIP it well aware that Sphobji has subcontracted the services for transportation and accommodation within Iraq, initially this was done through the company of OIL, which was proven to be in contravention with UN regulations. It was then decided to subcontract this service through a company in Jordan, which to date still is the case.
17. For good order's sake there is no free transportation and/or accommodation within this contract.
18. The auditors refer to the provision of transportation to the spare parts missions, which was originally meant through UNDOH and taken into consideration in our the structure. While this was not considered in our the structure, it was proven an ineffective solution, it was decided that Sphobji could combine the services of transportation and accommodation. The vehicles will remain the property of the United Nations. Sphobji has never applied for the provision of transportation of the spare parts missions.
20. A side-remark is that equipment purchased under this arrangement have in numerous cases been replaced by Sphobji. Are there any guidelines as to how we should cope with this?

S024249

26. Given the importance of this contract, it was decided that it would be more effective and efficient to appoint an overall team leader positioned within Iraq to have total responsibility for a filing functions on an on-going basis of review and action. In addition to that, visits were made by representatives from Rotterdam as and when required.
33. Especially we find that our contract has been awarded on the basis of a competitive tender. Side-remark is that equipment is an ongoing expenditure, such as laboratory consumables, replacing laboratory equipment, medical equipment, upgrading communication equipment with computers, gear for new staff etc. etc.
34. It would seem that the auditors did not understand the background of the lease of empty containers. This approach was chosen, when the proposal had to contain the provision of oil over seas as well. This requirement was however deleted, and therefore is irrelevant. In the sub-line of staff assigned to monitor the crude oil exports from Iraq, one clearly needs experienced and successful individuals capable of working efficiently in the international and-run conditions in Iraq.
38. Agri's a side-remark. The United Nations is promulgating the UNSCR 986 decided to subcontract the monitoring of Crude Oil exports from Iraq, to a Worldwide independent age allowed company. The appointment of the successful bidder was by competitive tender. The contract was awarded to Agri on 20th of June 1995. The contract was awarded to Agri on 20th of June 1995. It got without any delay that candidates at Mine Al Baker are far from Iraq. This is illustrated in virtually every weekly report, which is published to the United Nations. Accordingly, it is not realistic to assume that staff is prepared to work at this platform on the conditions mentioned in the contract. Additionally, a specialized team of 4 full time employees is involved in the ongoing management of the project, and in giving advice and guidance to the OIP on all matters pertaining to the OI industry in Iraq.

S024250

To my mind there should be no connection whatever with Resolution 1151 - entity with nothing connected with our Oil Inspectors. The recent attempt to deny our inspectors in Zafiro are sending the wrong message to everybody involved.

Kind regards,
Paul

Subject: Oil Inspectors
Author: Peter.Barnfield.com at SAVBOLT
Date: 05/12/98 20:38

Subject: WATER SUPPLY AT KIRKUR MASTER
Date: Monday June 21, 1998
Time: 17:00
Message Contents

Dear Peter,

Reference is made to my last weekly report concerning a cut in supply last week.

This week the water was cut on Saturday morning June 20. To date there is no sign of replenishment.

Upon investigating the situation this morning with the Harbour Master and the Harbour Master it was explained to me that there is now a shortage of water at the Port of Ham Geop, therefore the barge was not fully loaded by Saturday when she was originally scheduled to come to the Terminal.

Instead, the barge had to go to Baura over the weekend to top up to full. She is now apparently broken down and when she will arrive is purely conjecture.

In order to replenish supplies temporarily the Harbour Master has asked a tanker to come from the port. From previous experience this water will be contaminated with diesel oil upon delivery. This is not really good enough.

Peter, may I ask if anything can be done to correct this situation? The same situation was being reported at this time last year and as far as I know whatever has changed except that there are more ships now in the port. I am sure that the Harbour Master will be able to advise you that WOPER THE BARKER unless something is done very quickly.

We are now with the Dutch oil company and the Ministry of Oil has been asked for a 10% water supply until June & considerable time (over 10 months).

In these conditions that can be done very quickly to ensure that there will be an adequate supply on the terminal. With the water supply cut, the ambient temperatures are now in excess of 48 deg C and without water even for sanitation things are already in a very poor condition.

I ask you please if you can assist in any way it would be most appreciated by everybody concerned.

Kind regards,
Paul.

Dear Paul & Ruib,
At present I am working on the new contract with the DN for the coming 6 months.

I am wondering what your feelings are on the occupation of our staff at present. And also bearing in mind the attempts to

Do you feel that we have reasons to increase our staff? Or can we manage under the present conditions?

Look forward to hearing from you.
Kindest regards,
Peter Baka

5046501

5046575

Author: SAVERS, W.L.G. at SAVILDRON
 Date: 05/21/98 11:58
 Priority: Normal
 TO: Frank Edwards
 CC: Robert (dbs)@068@post.a1 at MCIMAIL
 Subject: W/ Recruitment 984, Transport to Kiss al Bahr, Memphis Consulate

Date: Thursday May 21, 1998
 Time: 12:00 PT
 To: S O C Beane
 From: S O C Beane
 Subject: Marine Transport to and from Kiss al Bahr Terminal

Dear Sir,
 I am writing to you to highlight the details and effects of the poor transport facilities that exist at the present time to the S O C terminals in the Arabian Gulf.
 The original reason that the UN team began looking at Kiss al Bahr was to see if it was possible to provide a means of transport to and from the Terminal to Al Fao Port. This would have meant that the UN staff would have had to travel to the port and back to the terminal. This would have meant that two staff members would take a week period at the S.O.C port house in Beane.

Since the month of August last year the tender boat service was severely restricted due to boats still and BUD constantly breaking down. There were only two boats that were used to transport the UN staff to the port. This was a very slow and unreliable service. Consequently the journey time increased dramatically from 1 hour to 4 hours. The UN staff had to wait for the boat to arrive at the terminal and then wait for the boat to leave. This was a very frustrating experience for the UN staff. As a result of this situation in January last year as well as the poor and unsafe conditions on the tug boats, our staff have been reluctant to take this journey and have therefore gone without any rest periods for some of the time. This has meant that the UN staff have had to work very long hours and have had to work in very poor conditions. The regular terminal staff have found this equally as frustrating as the UN staff. This has meant that when it's time to go to work every week, this has not been a pleasant experience for the UN staff. This has not been a pleasant experience for the UN staff who have to work here.

For the UN Staff the changes have meant that for most of the time the 6 staff have had to live. The solution to the problem would be to find a way to transport the UN staff to the terminal and back to the terminal. I ask you to help with regards to this time.
 It is noted that in the more years just for the Southern region that marine transport is also listed. I would suggest that having reliable staff on men as possible may be a splendid solution.
 Your reply and opinions to this item would be highly appreciated.

Yours sincerely,
 Captain Paul Edwards,
 for and on behalf of IF

SALCOP

Author: SAVERS, W.L.G. at SAVILDRON
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 Your reply and opinions to this item would be highly appreciated.

Yours sincerely,
 Captain Paul Edwards,
 for and on behalf of IF

SALCOP

Author: SAVF001 MB,07 at SAVFLEDR
Priority: Normal
To: Peter Edwards
From: Peter Edwards
Subject: UN Resolution 986 Expires ending Iraq Message Contents

CONFIDENTIAL

Dear Peter,

Further to your enquiry to UN Baghdad on the Tom's behalf yesterday which was not answered.
I am sorry to hear that you were not able to go to the Gulf. I hope you will be able to go some time in the future. I have been talking to the people who are in charge of the UN in Baghdad today from the UN in Baghdad office.
It appears the Lloyds surgeons are travelling with the full approval of the UK in Baghdad where Lloyds have a representative resident.
By the sound of this news it appears that confusing and conflicting opinions and instructions are being issued to subcontracting firms by the UK.
This message is purely sent in confidence for information purposes only. It is not to be used for anything other than the purpose for which it was sent. I am sure that you will be pleased to hear that these things are being investigated.
Kind regards,
Paul Edwards.

5045635

Author: SAVF001 MB,07 at SAVFLEDR
Date: 03/07/98 16:17
Priority: Normal
To: Peter Edwards
From: Peter Edwards
Subject: UN Resolution 986 Expires ending Iraq Message Contents

Dear Peter,

As far as I know there is very little that can be done to expedite the repairs of this boat.
As I mention in every weekly report, they are sent/crowed either to Baza or to the motor launch service and repair is expected to be done as soon as possible. I am sure that you will be pleased to hear that the repairs will be done as soon as possible.
I am also under the impression that the SOC has very little influence over the boat at all. I am sure that you will be pleased to hear that the repairs will be done as soon as possible.
Knowing it seems that both the Terminal and SOC might have to wait until something is done. Please note that boats B11 and B12, which you mentioned in your report, have been under repair and out of service for quite a long time. I am sure that you will be pleased to hear that the repairs will be done as soon as possible.
Bazald or Baza has had very little effect, falling on deaf ears for most of the time.
The solution is of course to replace the boats with reliable new boats. I am sure that you will be pleased to hear that the repairs will be done as soon as possible.
Kind regards,
Paul Edwards

Author: SAVF001 MB,07 at SAVFLEDR
Priority: Normal
To: Peter Edwards
From: Peter Edwards
Subject: UN Resolution 986 Expires ending Iraq Message Contents

CONFIDENTIAL

Dear Paul,

Following comment was made on our previous weekly report:

Quote

Peter, I have another concern. In reviewing the status report of 27 Feb/98 under 3.
Observations, I note that it is indicated:
"3.3 Transport to/from Baza. The motor launch service now discontinued as and repair expected to take at least one month. Service now reverts to previous support from the UK, which extends transit time considerably."
I am sure that you will be pleased to hear that the repairs will be done as soon as possible.
The increasing time with the Security Coordinator's Office, I was told that the motor launch service is critical from a security standpoint - i.e., using a motor launch service constitutes a significant security risk in case of emergency. Is there anything that can be done to expedite these repairs?
Unquote

5045628

the attached documents. Additionally, the Oil Overseers will discuss with SOMMO amendments to the oil sales contract and to the Bill of Lading in order to clarify issues that an change of destination is permitted without 661 Committee approval.

Accept, Sir, the assurance of our highest consideration.

The Overseers



Morton Blue-Frazer



Alexander Krasser



Michael Mullins

SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT
S/AC.25/2001/OIL/COM/LL17
S/AC.25/2001/OIL/COM/LL17
S/AC.25/2001/OIL/COM/LL17

Letter dated 13 March 2001 from the Overseers addressed to the Chairman of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

***** S/AC.25/2001/OIL/1330/OC.23

13 March 2001

Sir,

In accordance with the Procedures to be employed by the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait in the discharge of its responsibilities as required by paragraph 12 of the Security Council resolution 986 (1995) the Oil Overseers would like to bring to your attention the following irregularity.

The company Menzies Trading (PTY) Ltd. (contact M/09/06, approved 2 January 2001) on 2 February 2001 lifted a cargo on the vessel the "Ocean Jewel" of approximately 2 million barrels of Basrah Light crude oil. According to the letter of credit, endorsed by the Oil Overseers, the cargo had a US destination. Rather than sailing for the US, the ship eventually set sail to the Far East for discharge in Singapore. The Oil Overseers were not aware of this until 1 March 2001 when they were informed by the ship's agent. The following day the process was reversed based on an invoice drafted for the US destination. The cargo was then re-destined to the United States. Following SOMMO's urgent request on 2 March, UN Treasury approached RNF Fisheries, New York Branch, for an appropriate amendment to the initial letter of credit in order to collect the proceeds. This amendment was received on the 6 March and has been endorsed by the Oil Overseers.

In order to provide proper monitoring of Iraqi crude oil sales, especially to avoid any potential damage to the revenue generated, and according to established practice, the Oil Overseers do not endorse any amendment to a letter of credit calling for a destination change after the ship has loaded and sailed. The irregularity in this case is that the Buyer did not ask permission to change the destination, possibly out of concern that the full would not be granted.

The Oil Overseers are concerned that this case may be seen as an inappropriate precedent which may be followed by other companies and could potentially be damaging to the income to the UN. In order to prevent this, the Oil Overseers in consultation with the Office of Legal Affairs, are now a "Notice" to be issued to all ship masters, which is explained in the attached documents. Additionally, the Oil Overseers will discuss with SOMMO amendments to

"1111 111111111111 111111111111 111111111111 111111111111"

"1111 111111111111 111111111111 111111111111 111111111111"

OFFICE OF THE Iraq PROGRAMME - BUREAU CHARGE DU PROGRAMME IRAQ

OFFICE OF THE Iraq PROGRAMME - BUREAU CHARGE DU PROGRAMME IRAQ

FACSIMILE

20 February 2001

To:	Mr. Peter Boks Skybolt Nederland B.V.	Fax:	3110 4481 399
From:	Stephane L. Scherer Chief of Office	Fax:	+1 212 963 1984
Subject:	Additional Skybolt oil monitors in Iraq	Tel:	+1 212 963 6560
Date:	20 February 2001	Number of pages (including cover page):	3

I refer to previous correspondence regarding the necessity to increase the number of Skybolt oil monitors in Iraq.

In this connection, please find attached a self-explanatory letter from the Executive Director to the Permanent Representative of Iraq, informing the Government of Iraq of this matter. We will keep you apprised of any developments.

Best regards,

Stephane Scherer

Copies to:
Mr. Sawa
Mr. Zarif
Mr. Nair

5046853

REP: BUZGAK 000/11

Excellency,

I have the honour to refer to Security Council resolution 986 (1995), and subsequent resolutions, relating to the humanitarian programme in Iraq and its full implementation, through co-operation between the Government of Iraq and the United Nations Secretariat, i.e. the Office of the Iraq Programme, as prescribed in the Memorandum of Understanding.

In this connection, I should like to refer to the tremendous increase in the scope of the programme, and thus, the exponential increase in the workload being handled by my office, as well as the work being handled in the field.

One of the areas in which the workload has increased significantly is that of the monitoring of oil and oil spare parts and equipment, which is handled by the secretariat inspection as well as by the field offices. In January 2001, the number of weekly communications from the Security Council Committee established by resolution 661 (1990) on which to follow up and report. By comparison, in January of this year, the number of communications was approximately 259, a 280 per cent increase. This percentage, however, does not reflect the fact that the number of communications has increased by 70 per cent from 154 in January 2000 to 224 in January 2001. Furthermore, a large number of the communications need special handling, i.e., end-use monitoring.

As a direct result of this increase in the workload of the oil spare parts monitors in Iraq, it has become necessary to increase their number from the present 18 to eight, with a total of 12 eventually. These additional monitors would be employed, should it become necessary, to ensure that the workload is handled in a timely and efficient manner. Your assistance in obtaining entry visas for the new inspectors, once identified, as well as internal travel permits, especially to new end-use sites, would be greatly appreciated.

His Excellency
Mr. Mohammed Al-Douri
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Iraq
to the United Nations
New York

5046954

181 720 633
501 1751

AMENDMENT NO. 1

TO

CONTRACT NO. FTD/117/0065/86

BETWEEN

THE UNITED NATIONS

AND

SAYBOLT EASTERN HEMISPHERE BV

FOR THE

PROVISION OF INDEPENDENT
INSPECTION AGENTS

CONTRACT FTD/117/0065-86

between

THE UNITED NATIONS

and

SAYBOLT EASTERN HEMISPHERE BV

FOR THE PROVISION OF INDEPENDENT INSPECTION AGENTS

Under provisions of Article 2 of the original contract, this amendment shall be in force for a period of six (6) months additional six (6) months period through 30 November 1987.

All other terms and conditions (including prices) shall remain unchanged.

IN WITNESS WHEREOF, the Parties have executed this amendment.

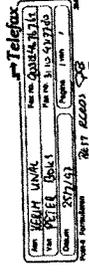
For: Saybolt Eastern Hemisphere B.V. For: United Nations

Signature: *[Signature]* *[Signature]*

Name: Peter V.G. Boks Alan R. Robertson

Title: Manager Business Development Operations-In-Charge, FTD/0088

Date: June 2, 1987 6 June 1987



This Contract is entered into by and between the UNITED NATIONS, an international inter-governmental organization, with its headquarters in New York, N.Y. 10017, U.S.A. (hereinafter referred to as the "United Nations" or "UN"), and SAYBOLT EASTERN HEMISPHERE BV, a private company incorporated in the Netherlands (hereinafter referred to as the "Contractor"). The Netherlands (hereinafter referred to as the "Contractor"). The United Nations and the Contractor are collectively hereinafter referred to as the "Parties".

WITNESSETH

WHEREAS the UN, in furtherance of the mandate of United Nations Security Council Resolution 986 (1995), wishes to engage the Contractor to provide services of individuals employed by the Contractor with particular expertise and qualifications to assist in the performance of petroleum and petroleum products from Iraq to the final end conditions set forth in this Contract;

WHEREAS, the Contractor represents that it is qualified, ready, able and willing to provide these services on the terms and conditions set forth in this Contract;

NOW, THEREFORE, the Parties hereto mutually agree as follows:

UN/1753

UN/1753

the expiration of the then current term. After the expiration of all such extensions, the UN shall terminate this Contract on the same terms and conditions for successive periods of six (6) months each by giving the Contractor written notice of its intention to do so not less than fifteen (15) days prior to the expiration of the then current term, subject, however, to mutual agreement by the UN and the Contractor to a revised price for the Contractor's services.

ARTICLE 3. Objectives of Contract

UN Security Council Resolution 986 (1995) directs the Security Council Committee established by UN Security Council Resolution 661 (1990) (hereinafter referred to as the "Committee"), inter alia, to monitor the sale by Iraq of petroleum and petroleum products. Under this Contract, the Contractor will provide personnel and all related supplies and services, to monitor on a day-to-day basis the movement of such petroleum and petroleum products in and out of the State of Kuwait and other oil-exporting countries referred to in Section I of the Procedures (hereinafter referred to as the "Overseas").

B. RESPONSIBILITIES OF THE CONTRACTOR

ARTICLE 4. Scope of Work

4.1. The Contractor undertakes to provide independent inspection agents (hereinafter referred to as the "Agents") as required to achieve the objective of this Contract. In particular, the Contractor shall provide all services and material set forth in the RFP and the Proposal.

4.2. The Contractor shall provide fourteen (14) Agents selected by the UN from among the individuals identified in the Proposal as experienced and qualified to conduct the inspection work. There shall be no substitution of the Contractor's personnel without the UN's prior written consent in each instance. The UN reserves the right, in its sole discretion, to increase or reduce the number of Agents at any time, in which event the Parties shall mutually agree on a proportional adjustment in the contract price set forth in Article 7.1, based on a labor cost of US\$375.00 per man-day.

4.3. The Agents shall monitor the exports of petroleum and petroleum products from Iraq in accordance with the requirements and specifications set forth in the Resolution, the MOU, the Procedures, the RFP and the Proposal, including without limitation the testing procedures set forth in the Proposal. Such monitoring will be based on the documentation provided by the Overseas, on direct observation, as well as on quality and quantity verification procedures. The Agents shall monitor the flow of petroleum and petroleum products through the pipeline at the Kuwait/Yamouk border and through the pipeline at the Kuwait/Yamouk pipeline end, by cross-checking the quality of oil measured by the meters with that measured at the Ceyhan tank farm, will verify that no petroleum is unaccounted for. If the Agents detect any irregularity, they shall immediately halt the loading of the petroleum or petroleum products and report such irregularity to the Committee and the UN Secretary-General.

4.4. The Contractor shall be responsible for making the necessary arrangements to ensure the fulfillment of its obligations under this Contract. The Contractor shall perform its obligations under this Contract in accordance with the highest professional standards.

3

CHRYSLER

A. GENERAL

ARTICLE 1. Contract Documents

1.1. This document and all annexes hereto, together with the following named documents, which are incorporated herein by reference, constitute the entire Contract (herein referred to as the "Contract") between the UN and the Contractor:

(a) The Request for Proposal issued by the UN and dated 11 June 1996, under reference "Request for Proposal for the Provision of Independent Experts to International Oil Trade", as modified by the communications transmitted to the Contractor by facsimile dated 25 June 1996, 15 July 1996 and 31 July 1996, (hereinafter referred to as the "RFP"); and

(b) The Contractor's Proposal dated 17 June 1996, as modified by the communications transmitted to the UN by facsimile dated 28 June 1996 and 18 July 1996 and by an undated facsimile sent in response to the UN's facsimile dated 31 July 1996, (hereinafter referred to as the "Proposal").

1.2. The following Annexes shall form an integral part of this Contract:

Annex I: UN General Conditions for General Contracts;
Annex II: Security Council Resolution 986 (1995) (hereinafter referred to as the "Resolution");
Annex III: Memorandum of Understanding between the Secretary of the United Nations and the Committee of Iraq on the Monitoring of Oil Exports from Iraq (hereinafter referred to as the "MOU");
Annex IV: Procedures of the 661 Committee (hereinafter referred to as the "Procedures");
Annex V: Transportation Release Form;
Annex VI: Medical Release Form.

1.3. In the case of any inconsistency among the documents constituting this Contract, the following order of priority shall apply:

(a) this document and Annexes I - VI hereto;
(b) the RFP; and
(c) the Proposal.

1.4. It is expressly agreed that this Contract embodies the entire agreement of the Parties with respect to the subject matter hereof, and that no promises, understandings, obligations or agreements, verbal or otherwise, exist between the Parties except as herein expressly set forth.

ARTICLE 2. Term of Contract

From the Effective Date of this Contract, specified in Article 15 below, this Contract shall be in force for an initial term of six (6) months, unless terminated in accordance with the terms of this Contract. The UN shall have the right, at its sole option, to extend this Contract on the same terms and conditions (including price) for up to three (3) successive periods of six (6) months each by giving the Contractor written notice of its intention to do so not less than fifteen (15) days prior to

2

CHRYSLER

6.5. The Contractor shall ensure that the Agents are at their stations and ready to commence work under this Contract within five (5) days of the Effective Date. The Agents shall be stationed as follows:

Location	No. Inspectors	No. Supervisors
Cyprus	3	1
Minor Al Bah	1	1
Major Al Bah	2	1
Major Al Bah	2	1

The UN reserves the right, at any time, to alter the assignment of the Agents set forth above, at no additional cost to the UN.

ARTICLE 6. Reporting Requirements

6.1. The Contractor shall submit to the Committee, through the Overseers, weekly report in writing, describing in detail the services performed under this Contract during the preceding week, including such information as the Overseers, the Committee or the Procedures may require. Such report shall be transmitted to the Overseers via satellite facsimile or, if available, electronic mail.

6.2. Immediately after the loading of oil under each sales contract approved by the Overseers is complete, the Contractor shall inform the Overseers on the details of such loading for comparison with its original approved sales contract. Such details shall include such information relating to the loader as the Overseers, the Committee or the Procedures may require. Such details shall be transmitted to the Overseers via satellite telephone, satellite facsimile or, if available, electronic mail.

5. CONTRACT PRICE AND PAYMENT

ARTICLE 7. Contract Price

7.1. In full payment for the complete and satisfactory performance by the Contractor of all its obligations under this Contract, the UN will pay the Contractor a price not to exceed a total of U.S. dollars One Million Eight Hundred Sixty-Nine Thousand (US\$1,869,000.00), subject to any adjustment in such price pursuant to Articles 4.2 or 12 hereof. This price includes all costs relating to the services to be provided under this Contract, including without limitation, salaries, benefits, taxes, social security, health, communications, security, transportation and equipment. Such amount shall be payable to the Contractor in accordance with the following schedule:

30%	-	after 3 months from the Effective Date of this Contract.
30%	-	after 6 months from the Effective Date of this Contract.
40%	-	upon satisfactory completion of this Contract.

4.5. In performing their obligations under this Contract, the Contractor and its personnel shall comply with the Resolution, the MOU, the Procedures and all procedures and instructions stipulated by the Committee and the Overseers.

4.6. Within four (4) weeks of the Effective Date, the Contractor shall submit to the UN for its approval a detailed plan describing the control and supervisory mechanisms it intends to implement. The Contractor shall implement the plan promptly after its approval by the UN, subject to any reasonable modifications the UN may require.

ARTICLE 5. Contractor's Personnel

5.1. No person shall be assigned by the Contractor to provide services under this Contract unless the United Nations has approved in advance the selection of such person in writing. Without limiting the United Nations' rights of approval under Articles 4.2 and 5.2, in addition to the four (4) Agents selected by the United Nations under Article 4.2, the United Nations shall have the right to select and approve from among the individuals identified in the Proposal who are acceptable to serve as replacement Agents under this Contract.

5.2. The United Nations may request, at any time, the withdrawal or replacement of any personnel of the Contractor assigned to perform services under this Contract. The Contractor shall, at its own cost and expense, withdraw or replace such personnel forthwith. The assignment by the Contractor of any person to the UN is subject to the UN's prior written approval. A request by the United Nations for withdrawal or replacement of the Contractor's personnel shall not be deemed a termination of this Contract.

5.3. The Contractor shall be fully responsible for all work and services performed by its employees, agents, servants and sub-contractors. The Contractor shall take all reasonable measures to ensure that they respect the host country's and conform to the highest standards of moral and ethical conduct.

5.4. The Contractor shall ensure that all personnel used to perform services under this Contract are adequately covered by insurance for any service-related illness, injury, death or disability. The Contractor shall submit proof of such insurance satisfactory to the UN before commencing any work under this Contract.

5.5. The UN shall not be liable for any action, omission, negligence or misconduct of the Contractor's employees, agents, servants or sub-contractors nor for any insurance coverage which may be necessary or desirable for the purpose of this Contract, nor for any costs, expenses or claims associated with any illness, injury, death or disability of the Contractor's employees, agents, servants, or sub-contractors performing services in connection with this Contract.

04/28/87

source

E. MISCELLANEOUS MATTERS

Article 10. Contractor's Obligations Upon Expiration or Termination

Upon expiration or termination of this Contract, the Contractor shall take immediate steps to terminate its operations in a prompt and orderly manner and shall provide such information and take such actions as may be necessary to ensure the proper completion of (a) the work under this Contract, and (b) the work already performed by the Contractor and the results thereof and (c) all property of the UN provided to the Contractor.

Article 11. Indemnification and Insurance

11.1 The UN reserves the right to inspect and test all services performed by the Contractor under this Contract to the extent practicable at all reasonable places and times during the term of this Contract. The UN shall perform inspections and tests in a manner that will not unduly hinder the performance of the services by the Contractor.

11.2 If any work or services performed by the Contractor do not conform with the requirements of this Contract, the UN shall have the following options:

- (a) If the UN determines that the improper performance can be remedied by way of re-performance or other corrective measures by the Contractor, the UN may request the Contractor in writing to take and the Contractor shall take, at no expense to the UN, the measures necessary to re-perform or take other appropriate actions to remedy the improperly performed work or services within fourteen (14) days of receipt of the written request from the UN. The UN may request that the Contractor take such measures as are specified in the written request if emergency conditions so require, as determined by the UN.
- (b) If the Contractor does not promptly take corrective measures or if the UN reasonably determines that the Contractor is unable to timely remedy the improper performance, the UN may obtain the assistance of other entities or persons and have corrective measures taken at the expense of the Contractor.
- (c) If the UN reasonably determines that the improper performance cannot be remedied by re-performance or other corrective measures by the Contractor, the UN may terminate the Contract in accordance with Article 15 of the UN General Conditions for General Contracts without prejudice to any of its other rights and remedies under this Contract.

11.3 Notwithstanding the RFP and Proposal, site visits by the UN to inspect the services performed by the Contractor shall not be funded under this Contract.

Article 12. Termination at UN

In addition to the termination rights provided in Article 15 of the UN General Conditions for General Contracts, the UN may terminate this Contract without cause, in whole or in part, upon thirty (30) days written notice to the Contractor. In the event of termination pursuant to this clause, the UN shall only be responsible for payment to the Contractor for services satisfactorily performed

7.2 Payments under this Contract shall be made only against receipt of Contractor's written invoices and certification by the UN that the services represented by the invoice have been satisfactorily completed. The Contractor shall submit its invoices to the UN, Accounts Payable Unit, 866 United Nations Plaza, Room A-6050, New York, N.Y. 10017, together with supporting documents and evidence of verifiable performance. All invoices shall refer to the number of this Contract (PTD/1127/0065-96) and shall be payable on a net thirty (30) day basis.

D. RESPONSIBILITIES OF THE UN

Article 8. Identification Cards

The UN shall provide the Contractor's personnel with appropriate identification cards.

Article 9. Access to Transport and Medical Facilities

9.1 The United Nations agrees to allow the Contractor's personnel to travel on UN-provided transport to, in and from Iraq strictly for the following purposes:

- (a) evacuation due to security developments, on the understanding that such evacuation shall be to the nearest safe area; and
- (b) medical evacuation due to serious medical conditions, provided that emergency medical evacuations of the Contractor's personnel will be from in-country sites to an in-country medical facility or transportation out of Iraq to an out-of-country medical facility in an appropriate neighboring country.

9.2 In consideration of the Contractor's personnel being permitted to travel on UN-provided transport, each of such personnel shall sign a release from liability in the form attached hereto as Annex V, prior to their transport on any UN-provided transportation. The Contractor understands that the release shall be signed by the employee and to deliver the signed original to the UN prior to the employee's initial use of any UN-provided transportation.

9.3 In the event that the Contractor's personnel require emergency medical treatment, the UN agrees to allow such personnel access to available UN medical facilities. In consideration of the Contractor's personnel being permitted to utilize such UN medical facilities, and prior to their using such facilities, each of such personnel shall complete and sign the release from liability in the form attached hereto as Annex V. The Contractor understands that the release from such employees and to deliver the signed original to the UN prior to the employee's initial use of any UN medical facility.

9.4 The Contractor hereby releases the UN and its officials, employees and agents from any and all liability of any nature arising in connection with the provision of any services to the Contractor's personnel by the UN and agrees that neither the UN nor its officials, employees or agents shall be liable for any claims, damages or expenses arising in connection with the provision of such services.

IF TO THE UN (communication/notice of an operational nature):

United Nations
42nd Street and First Avenue, Room No. 5-3055A
New York, NY 10017
Attn: Mr. Joseph Sappanakis, Chief
Contract Administration Office
United Nations Secretariat Services Branch
Fax No. (212) 963-1300

Notice by overnight mail or recognized overnight delivery service shall be effective on the date it is officially recorded as delivered to (or refused by) the intended recipient by return receipt or equivalent. All notices and other communications required or contemplated by this Contract shall be delivered in person, by messenger, by air mail, or by any other means of delivery that is delivered to and received by the addressee and shall be effective on the date of the actual receipt.

ARTICLE 13. Effective Date of Contract

This Contract shall take effect upon the UN's written notification to the Contractor that the Agent should complete mobilization (letter for return of the Agent's equipment, etc.). If the UN shall fail to complete mobilization within six (6) months of the signing of this Contract, this Contract shall be null and void.

IN WITNESS WHEREOF, the Parties have executed this Contract.

FOR SAVOULT-BALFERN HEMISPHERE BV

Name: [Signature]
Title: OAC / P.T.D.
Date: 16-8-1996

ATTACHMENTS

- Annex I : UN General Conditions for General Contracts
- Annex II : Memorandum of Understanding 866 (1995)
- Annex III : Memorandum of Understanding
- Annex IV : Procedures of the 465 Committee
- Annex V : Transportation Release Form
- Annex VI : Medical Release Form

6047644

in accordance with this Contract prior to the effective date of termination. In the event of partial termination, the contract price shall be proportionately reduced, based on a labour cost of US\$575.00 per man/day.

Article 13. Customs Clearance, Insurance, Etc.

The Contractor shall be responsible for customs clearance and obtaining all licenses, permits and authorizations from governmental or other authorities necessary for the performance of this Contract. The UN shall provide reasonable assistance to the Contractor, by issuing as appropriate with relevant authorities, in obtaining visas for the Contractor's personnel and permits for clearing through customs any equipment, material and supplies in connection with this Contract.

Notwithstanding the foregoing, the UN's sole obligation with respect to customs clearance shall be to provide the Contractor with the necessary information and documents to enable the Contractor to obtain such items as for the sole consumption or use of the Agent. If any further documentation is required in the future by Government authorities in Iraq or elsewhere, the Contractor will advise the UN and the UN will provide reasonable assistance to the Contractor in obtaining such documents.

ARTICLE 14. NOTICES

Except as otherwise specified in this Contract, all notices and other communications required or contemplated under this Contract shall be in writing and shall be delivered either by: (i) personal delivery; (ii) recognized overnight delivery service; (iii) postage prepaid, return receipt requested, certified mail; (iv) confirmed facsimile transmission, or (v) telegram, addressed to the Party or Parties for whom listed at the address shown below or such other address as the intended recipient(s) previously shall have designated by written notice previously given pursuant to this Contract.

IF TO THE CONTRACTOR:

Savolet Eastern Hemisphere BV
P.O. Box 151
3000 AD Rotterdam
The Netherlands
Attn: Mr. Graham Brett / Mr. Peter Bolka
Fax No.: 31-10-4334600

IF TO THE UN (communication/notice of a contractual nature):

Procurement and Transportation Division
866 United Nations Plaza, Room No. A-6104
New York, NY 10017
Attn: Mr. Allan Robertson, Office-in-Charge
Procurement and Transportation Division/OCS
Fax No. (212) 963-9858

6047644



FAX



REPORT OF UN INDEPENDENT INSPECTION AGENTS
PROVIDED BY
SAYBOLT INTERNATIONAL
OIL MONITORING

STATUS at May 19th, 2000

I. MONITORS ON STATION

1.1. Min Al-Baker's staff numbers in total. (one en-route)

- Russian
- Nepalese
- Russian
- Russian
- Russian
- Russian

1.2. Zubko: 3 staff members in total

- V. Alkayev
- V. Babitsky
- V. Poljotov
- V. Shchegolev
- A. Popov

1.3. Ceyhan: 5 staff members in total

- S. Busuyk
- P. Kuching
- P. Kuznetsov
- Gija Bostov
- A. Kuznetsov

2. ACTIVITIES

2.1. Vessels loaded in period:

NAME	LOAD DATE	SEV. BBLs
Hohmann Praxite	13/05/00	2,033,315
Enns Merak	14/05/00	1,997,755
Suez Chopard	15/05/00	1,333,223
Cherov Athanis	16/05/00	1,865,930
Tina	18/05/00	994,380
Stamater	19/05/00	2,219,071
		1,626,493

ZAKHO

2.2. Volume metered in the period was 6,027,991 barrels

CEYHAN

2.3. Volume received in storage tanks was 6,184,475 barrels

2.4. Vessels loaded in the period:-

NAME	LOAD DATE	SEV. BBLs
Enns Merak	13/05/00	1,997,755
Cherov Athanis	14/05/00	1,865,930
Suez Chopard	15/05/00	1,333,223
Tina	18/05/00	994,380
Stamater	19/05/00	2,219,071
Suma Cerevy	19/05/00	1,817,500

3. OBSERVATIONS

3.1. MINA AL-BAKER

Terminal fully manned, approximately 80 persons. Morning Meeting. No mooring boats on station at the terminal. Four tug on station off the platform.

Power. Power was cut several times this week. Operators are working on alternating basis.

Transport for staff. The vessel No. 403 is still out of service. Transport for staff (from reception terminal) to Fan Relief is available on Saturday (station). Sunday and Wednesday, but schedule is unreliable. The tug used for Fan is restricted to pass the river bar at high tide, and sometimes only at daylight high tide. No safe gateway or means of access available at either shore or terminal location for staff to embark or disembark.

Services. The new Water Purification Unit is operational and operates at the new rate of 1000 m³ per hour. The old unit is still out of service and after all the work done on it, it is still out of service.

Water supply. There is no pump to transfer the purified water from the RO unit to the storage tank as there is still no fresh water supply. The original RO unit is only intermittently as the vibrations resulting from it's operation damage the piping (whenever removed) within a few days. Fresh water from shore allows slightly improved quality, but still busy with a strong odour.

Food. Food is still being supplied in containers. No fresh water for drinking. Food is still being supplied in containers.

Waste disposal. All waste is still being disposed of in the same way. Improvement in cold storage facilities which remain 1

Fire. Fire is still being fought by the same means. Excessive outside oil and grime walks into the accommodation.

Hygiene. Insect population is still evident. No de-insectation carried out. Soap. No improved water is available. No fire in Platform "B" from where the fire was extinguished. The fire was extinguished by the Platform "B" from where the fire was extinguished. The fire was extinguished by the Platform "B" from where the fire was extinguished.

Security. The guards are still being provided by the same means. The guards are still being provided by the same means. The guards are still being provided by the same means.

Medical. The medical facilities are still being provided by the same means. The medical facilities are still being provided by the same means. The medical facilities are still being provided by the same means.

Communication. The communication facilities are still being provided by the same means. The communication facilities are still being provided by the same means. The communication facilities are still being provided by the same means.

Accommodation. The accommodation facilities are still being provided by the same means. The accommodation facilities are still being provided by the same means. The accommodation facilities are still being provided by the same means.

General. The general facilities are still being provided by the same means. The general facilities are still being provided by the same means. The general facilities are still being provided by the same means.

transportation and general trade company, Amman - Jordan, which has been established in Amman, Jordan, and is to be deposited in the account of that company in the Jordanian National Bank.

11. If and in so far as "viva" for transportation and general trade company, Amman - Jordan, are a Jordanian company and are not an instrumentality of agency of the Government of Iraq, the measures which have been imposed by the Security Council in respect of Iraq would not apply to the company. It is noted that the measures are conditional on observance of the limitations enumerated in paragraph 9 above. That having been said, it would appear from the statements to Amman - Jordan that the company is not a Jordanian company and that Amman - Jordan has entered into a contract with the Government of Iraq to provide port services in Iraq. The supply of services of this nature to Iraq of products and commodities that being so, it would appear that the rendering of such services in Iraq would be prohibited under the terms of the Security Council resolution. The letter of the Chairman of the 661 Committee - 4/JC.25/1982/rev.2/2, dated 21 October 1982, addressed to the Chairman of the 661 Committee - 4/JC.25/1982/rev.2/2, such services might only be permitted in the event that their application has been made to the 661 Committee in respect of the provision of port services by "viva" for transportation and general trade company, Amman - Jordan, and that the 661 Committee granted approval to any such arrangement.

12. That being so, the document should be made to the company mentioned above and until its content with the Iraqi authorities has been approved by the 661 Committee. In the absence of such approval, any such services should be suspended until the Security Council's resolution of the sanctions regime established by the Security Council.

cc Mr. Stephan L. Scher

S048742

Peer Buz
04/02/82 04:07 PM

To: whew@un.org
Subject: Port charges in Iraq

Dear Stephan,

It seems that until recently a fee of USD 1,500.- was asked for each container. This was not limited to Mith Al Bahr but also applied for a.S. Dem Quar. The practice was that some Captain's paid this fee from their party cash. Others refused to pay based on the embargo.

Only recently we learned that the port charges were increased and informed Al-Bahar accordingly.

It must however be said that it is common practice that port charges are levied on cargo. In charging the table attached to your table, the charges proposed are meant in competition to other ports.

Kindest regards,

Peer Buz

S048743

UNITED NATIONS NATIONS UNIES
 OFFICE OF THE IRAN PROGRAMME

URGENT

FACSIMILE

To:	Mr. Peter Mohs Stephens, Neill & Adams, N.Y.	Fax:	3118 4601 299
From:	Stephens, Neill & Adams, N.Y.	Fac:	+1 212 963 1884
Subject:	Port charges in Iraq	Tel:	+1 212 963 6550
Date:	7 June 2000	Number of pages (including cover page):	3

Dear Stephans,
 In addition to my previous email, port charges applied at e.g. Qary Island in Iran are \$0.22 per metric ton.
 for loading a vessel with 100,000 metric tonnes, this would give:

Country	Iran	Iraq
-----	----	----
Port charges	41,800.-	17,480.-

Fax to follow.
 Best regards,
 Peter Mohs

Please find attached a copy of a letter received by Mr. Kramer from Imranenko, which he forwarded for comment to the Office of Legal Affairs.

I am from the letter from Imranenko that "until recently vessels loading at this terminal was normally charge USD 1,500,00".

I would be grateful if you could provide us with some information as to standard practices, particularly how this money was being paid and at what point port costs were increased. I would also like to know how this compares in relation to other oil-producing countries.

I would particularly note that in view of the sanctions imposed on Iraq by the Security Council, it would appear that the payment of these charges would be in violation of these sanctions.

Thank you for your prompt attention to this matter and urgent reply.

Best regards,

Stephens

Copies to:
 Mr. Sevan
 Mr. Collins
 Mr. Kramer

Phone: 212 963 6550, New York, NY 10017 • Telex: 133 963 6550 • Fax: 212 963 6550 • <http://www.un.org/irprog>

UNITED NATIONS Page 1 30 May 2000

We are to present an issue recently discussed to the Association.

DRAWN DOWN COST INCREASES MAINLINE OIL TANKERS

Based on advice from the Big Ship Co. for Water Transport, March 2000, the cost of oil tankers at A/Bale Oil Terminal, Iraq has increased substantially. Until recently, vessels loading at this terminal was normally charge USD 1,400.00

Expect of the "hang over" cost cost in USD based on GT:

- Less than 50,000 11,250.00
- 180,001 - 190,000 17,500.00
- 270,001 - 280,000 21,600.00

The complete tariff is available by contacting INTERTANKO.

Email: info@intertanko.com

The 10% against increase that the sector behind the new tariff is to cover maintenance cost for the terminal (including the cost for expanding the mainline services (pilots, harbor master, mooring/lumpsum, etc.) to a foreign company.

INTERTANKO endeavor to have the implementation postponed in order for the industry to adapt to the new situation in the Middle East. Performance distribution amount calculated on the new tariff have already been received. INTERTANKO is also seeking advice from various sources including investigating the validity of such increase via the UN Sanctions.

INTERTANKO would like to have the recent action of the sanctions against Iraq, and we are in some urgency to clarify this issue in order for the Worldscale Association and INTERTANKO to advise the world of transport operators.

We kindly request your assistance in directing this file to the correct section/person within the United Nations.

Kind regards

Stefan E. Digné

Secretary General

Phone: +45 45 12 34 56

Fax: +45 45 12 34 56

Email: stefan.digne@intertanko.com

04/27/04

Air 337-27

INTERTANKO
The International Association of Independent Tanker Owners
FOR OIL TANKERS, CLEANER AND SAFE OIL TANKERS

HEAD OFFICE
P.O. Box 2904, Malmoe
2000 Oslo, Norway

Phone: +47 22 12 26 40
Fax: +47 22 12 26 41
E-mail: info@intertanko.com
Marketing Office: Duffell Lane
Alderley Edge, Cheshire, UK
Asian Representative: Mitsui & Co. Ltd.
Latin American Representative: Bunker & Oil
US Representative: Bunker & Oil

30 May 2000
32091 UNITER01.DOC

Dear Sirs,

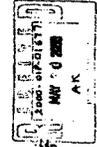
First of all we will introduce INTERTANKO (The International Association of Independent Tanker Owners), on what we do, what we stand for.

INTERTANKO today comprises 265 Member companies in 45 maritime countries, now operating over 2,000 vessels, totaling about 175 million DWT of tanker and combined tonnage, or some 75% of the oil tankers independently owned tonnage. We also have 302 Associate Members, which include oil companies, shipping agents, port authorities, charterers, oil refiners, oil processors, oil traders, oil suppliers and a host of other companies related to the tanker industry.

INTERTANKO primary goals are to promote a free and competitive tanker market, to work for safety at sea and the protection of the environment.

INTERTANKO serves as the spokesman for independent tanker owners and represents its members in international forums. We provide our members with a comprehensive information service in the form of our monthly circulars, letters, and acts as a forum for discussion on tanker related issues.

INTERTANKO is represented on all major IMO committees and sub-committees, and Member companies often participate actively in INTERTANKO work within the IMO.



6552905

6552905

United Nations, Office of the Iraq Programme Page 2 Thursday, October 05, 2000



TELEFAX
NUMBER OF PAGES: 2
 Ms Stephanie L. Schier
 United Nations, Office of the Iraq Programme
 New York
 U.S.A.

HEAD OFFICE
 Rosendalen 71 B
 P. O. Box 804 Majorstua
 0308 Oslo Norway

Phone: +47 22 12 26 46
Fax: +47 22 12 26 41
Web Site: www.intertanko.com

Managing Director: Svein A. Ringbakk
Asst Representative: Milner A. Alfano
London Representative: Robert M. Bishop
US Representative: Steven A. Ringbakk

Fax No: 00 1 212 963 1994

Thursday, October 05, 2000
GAMZT UNITE901.DOC

Best regards

 Gunnar A. Knudsen
 ☎ (direct): +47 22122638
 E-mail: gannar.knudsen@intertanko.com
 Manager, Ports and Terminals Section
 INTER-TANKO

Dear Ms Schier,

Further deterioration in Misa al Bakr

Reference is made to my fax dated 2 October 2000.

INTER-TANKO has today received further alarming reports related to port operations in Misa al Bakr. A member vessel was about to be chartered for a crude oil cargo from Misa al Bakr but was finally turned down by the charterers as the Iraqis refused the ship load port clearance. The reason was the vessel's refusal to pay requested port disbursement during its previous call in June 2000. The owner understands that the black listing is pegged to the vessel and not to the owner, at least in the mentioned case.

We are extremely concerned to find that the announced black listing has developed into far more than an empty threat. In combination with the recent seven day "punishment" of another tanker, we see every reason to expect that the black listing is about to be escalated. It is most disturbing that main victims are owners refusing to breach UN Sanctions.

INTER-TANKO therefore reiterates the urgent need for UN action against this Iraq aimed to remove black listing and bring port conditions back to normal.

We shall thank you to give this matter your urgent attention, and are awaiting your response.





TELEFAX
NUMBER OF PAGES: 2

HEAD OFFICE
 Rogalandveien 27 B
 P.O. Box 2804 Majorstua
 0108 Oslo Norway

Ms Stephen L. Schierz
 United Nations, Office of the Iraq Programme
 New York
 U.S.A.

Phone: +47 22 12 26 40
Fax: +47 22 12 26 41
Web Site: www.intertanko.com

Managing Director: Svein A. Rugebakken
Asia Representative: Robert A. Bishop
Latin American Representative: Robert A. Bishop
US Representative: Svein A. Rugebakken

Fax No: 00 1 212 963 1994

Monday, October 02, 2000
GDDFT\UNIT901.DOC

Dear Ms Schierz,

Deviation of tanker at Mina al Bakr due to non-payment of port disbursements

We are INTERTANKO, the International Association of Independent Tanker Owners. INTERTANKO today comprises 260 Member companies in 45 maritime countries, now operating some 2,050 vessels, totalling about 162 million DWT of tanker and combined tonnage, or approximately 70% of the eligible tonnage. We also have 307 Associate Members, including shipping agents, charterers, brokers, insurers, shipbuilders, insurance companies, consultants, marine suppliers and a host of other companies related to the tanker industry.

The issue of threatened black listing of ships has recently taken a turn for the worse as INTERTANKO has received a fresh report of a tanker being kept waiting for seven days due to non-payment of the dues. The owner's daily requests for berthing prospects were met with total silence and no explanation for the waiting time was offered.

The fact that the Iraqi suppliers now have decided to punish an operator who refuses to operate in Iraq is clearly contrary to the spirit of the UN Sanctions. The UN Sanctions are aimed at the Iraqi Government and the Iraqi people, not at the innocent tanker owners and charterers. As per the Legal Department of the UN, payment of port dues as per the new tariff of 1 July 2000 has been termed illegal and in violation of the UN Sanctions, unless settled in Iraqi Dinars. As far as the writer and others consulted are informed, this currency is inaccessible for international banking purposes and can therefore not be considered a viable solution.



As an organisation representing the tanker industry, INTERTANKO finds it unacceptable that owners and charterers are faced with two impossible choices. Ships apparently risk either being detained for an unspecified period at the daily loss of some USD 600/0,000, or be forced to violate the UN Sanctions in order to ensure loading as per charter party. Alternatively owners may refuse to pay the requested port cost and take the chance of not being detained, which will introduce further uncertainty.

It will in light of the current situation we hereby invite the UN to inform us which efficient means can be used to prevent the detention of ships in the Gulf of Oman and the Persian Gulf. These should be limited to port an immediate stop to the unacceptable harassment of owners lifting crude from Mina al Bakr under the Oil-Freeze-Programme, or to introduce a method of payment, which owners can legally follow.

We hereby urgently invite your guidance and appropriate action on this vital issue, which will be brought to the prompt attention of the INTERTANKO membership.

In case you should wish to discuss the issue on the phone, I shall be pleased to hear from you.

Best regards

Gumar A. Knudsen
 Manager, Ports and Terminals Section
 ☎ (direct): +47 22122638
 E-mail: gumar.knudsen@intertanko.com
 INTERTANKO

UNITED NATIONS NATIONS UNIES

OFFICE OF THE HEAD OF DEPARTMENT

EXCELLENCE

The (SOURCE: PROTECTED)	
From: Richard L. Bahr Chief of Office	Date: 11/23/2000 Time: 11:52 AM EST
Subject: Iraq port charges	
Date: 6 September 2000	Number of pages (including cover page): 2

I refer to your checklist of ready and the standard letter forms regarding the contents of draft of health light credit from Iraq. This had been sent to the Government of Iraq.

In this connection, the question of port charges of Iraq. This had been sent to the Government of Iraq.

We would like to see the draft of health light credit from Iraq. This had been sent to the Government of Iraq. In their view, and in accordance with paragraph 4 of Security Council resolution 663 (1990) of 4 August 1990, the draft of health light credit from Iraq should be submitted to the Security Council. The draft of health light credit from Iraq should be submitted to the Security Council. The draft of health light credit from Iraq should be submitted to the Security Council.

The Office of Iraq Affairs, in a letter to the Chairman of the Security Council Committee established by resolution 661 (1990), dated 6 November 1997, took the position that the draft of health light credit from Iraq should be submitted to the Security Council. The Office of Iraq Affairs, in a letter to the Chairman of the Security Council Committee established by resolution 661 (1990), dated 6 November 1997, took the position that the draft of health light credit from Iraq should be submitted to the Security Council.

Any such action and changes, should, in principle, be limited to changes in the draft of health light credit from Iraq. Any such action and changes, should, in principle, be limited to changes in the draft of health light credit from Iraq.

Quinn Knudsen <Quinn.Knudsen@un.org> on 09/10/2000 12:56:08 PM

To: **Richard L. Bahr** <Richard.L.Bahr@un.org>
Cc: **Nilly Tany** <Nilly.Tany@un.org>, **Management** <Management@un.org>

Subject: INTERFACED request to UN TR, situation at Maza al Harz

Dear all,

As a matter vessel recently was detained at Maza al Harz due to non-payment of Iraqi port dues, INTERFACED has sent the attached request to the Government of Iraq, to clarify a legal procedure for the handling of port dues.

You will be kept informed of all developments.

Kindest regards

Quinn A. Knudsen

INTERFACED
P.O. Box 9074, Myrtlewood
20154 OLEO MIAMI
Tel. + 1 305 34 56 / Fax. + 1 305 34 41
E-mail: quinn.knudsen@un.org
mailto:quinn.knudsen@un.org

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CONTACT OF THE IRAQI REGIMES

Therefore, the payment of port fees to the Iraqi authorities *etc.* is not inconsistent with the sanctions regime imposed by the Security Council against Iraq, so long as the charges in question do not constitute an advance credit in the circumstances set out above and are paid to Iraq in full.

We have learned, however, that the Government of Iraq is requesting that port charges be paid not to the Iraqi authorities, but to the American and French trade company, Amara - Foray, which has been named in the resolutions of the Security Council. That payment should be stopped in the amount of that company in the Jordan National Bank.

It is in an effort to "fill the transportation and general trade company, Amara - Jordan", a Jordanian company and not an American or French company, that the Government of Iraq has requested that the Security Council suspend the payment of port fees to the American and French trade company, Amara - Foray, which has been named in the resolutions of the Security Council. The supply of services of this character would appear to be essential to the port services in Iraq. The supply of services of this character would appear to be essential to the port services in Iraq. The supply of services of this character would appear to be essential to the port services in Iraq. The supply of services of this character would appear to be essential to the port services in Iraq.

Therefore, no payment should be made to the company concerned unless and until in accordance with the Iraqi authorities has been approved by the Security Council. In the absence of such approval, any payment deposited in the Jordan National Bank would be in violation of the sanctions regime established by the Security Council.

In a letter dated 27 June 2000, addressed to the Permanent Representative of Iraq to the United Nations, the Executive Director stated that the nature of concern he brought to the attention of the relevant authorities in Iraq.

Copy to:

Best regards,


502567

0125205

Quaham Burt
 15/09/2000 06:37 PM
 quaham@un.org

Subject: PORT FEES AT MINA AL-BADR, IRAQ.
 To: REPRESENTATIVE, CEO,
 FAO; CAPT STEPHEN LIN, DIRECTOR
 CC: PETER BORN, SAVOULT, ROTTERDAM
 CC: STEPHEN A. LINN, UNITED NATIONS, NY
 CC: CHA DOW BORN, NY, BANGALAI
 RE: LEGALITY OF CHARGING PORT FEES AT AL-BADR, IRAQ

Dear Sir,

In response to your fax dated 11th August, 2000, regarding the so-called "Port Fees" at Mina Al-Badr, and the copy of a message from the Security Council dated 11th August, 2000, regarding the "Port Fees" at Mina Al-Badr, we feel that it would be inappropriate for us to comment on any remarks made by Mr. Don Born.

Regarding the issue of the "Port Fees" we can only reiterate that we have been verbally advised by the United Nations that, in the opinion of their legal department, any payment of such fees to any entity in name would be in violation of the sanctions regime established by the Security Council. Resolutions concerning the situation in Iraq.

Kindest regards,
 Graham Burt

All our activities are carried out under the terms and conditions of our general conditions of practice. The general conditions can be consulted at <http://www.savoul.com>, and will be sent upon request free of charge.

The information in this message is confidential and may be legally privileged. If you are not the addressee, please do not disseminate this message to any other person. Access to this message by anyone else is unauthorized. If you

Rate, is within [] ok?
Graham Kent
2011/2000 10:47 AM
To: akh@un.org
Subject: 180 Day Report

Dear Stephanie,
Please see below input for 180 day report. I have incorporated the figures from our Baghdad office (which you received under copy) and made some alterations to the SOP's (as discussed over the weekend).
Please note we have only been able to calculate the arrival details for period June 1st to Oct 11th 2007. If you specifically require from June 8th this will require a lot of reprogramming in Baghdad but can be done. Please share your comments and direct, especially as the cut-off date is somewhat before the 180 day, is critical.

OIL PRODUCTION & RATE OF PETROLEUM AND PETROCHEM PRODUCTS

- 1.1. Mina al-Bahr
1.1. During the period of revised crude oil loadings have continued from the Mina al-Bahr oil tanker and the equipment used under the supervision of the Saybolt monitoring team which consists of six members.
- 1.2. During the review period the total net volume of Crude Oil delivered to the vessel was 1,285,111 barrels per day. This equates to an average of 1,285,111 barrels per day.
- 1.3. There has been little, if any, improvement in the loading conditions encountered on Mina al-Bahr. The replacement Messers Omecor unit continues to function, and the original unit remains under repair. The meter quality output from a 2/0 unit is acceptable for general use, albeit somewhat discoloured on improvements have been noted in the general safety arrangements on the platform, nor in the transportation arrangements to and from shore. The two life boats delivered under the SOP are stored on platform. The two life boats for the platform, however, have yet to be delivered to Mina al-Bahr. The quality of food remains poor.

2. NE-1 Metering Station - Babo

- 2.1. During the period under review the transfer of Crude Oil from Iraq via the NE-1 Metering Station, Babo, was 20,317,318 barrels. This was done under the supervision of the Saybolt monitoring team which consists of three members.
- 2.2. During the period the volume of Crude Oil monitored through the metering tanks at the NE-1 Metering Station, Babo, was 20,317,318 barrels.

3. NE-1 Metering Station - Turkey

- 3.1. During the period under review the receipt of Crude Oil from Iraq via the NE-1 Metering Station, Turkey, was 1,285,111 barrels. This was done under the supervision of the Saybolt monitoring team, which consists of five members.
- 3.2. During the period the volume of Crude Oil monitored into the metering storage tanks, was 1,285,111 barrels, equating to an average of 841,760 barrels per day.
- 3.3. The total net volume of Crude Oil delivered to vessels was 120,569,340 barrels, as ascertained by reference to the vessel's calibration charts. This equates to an average of 87,288 barrels per day.

- 4. DORRAL Crude Oil Receipts
4.1. The total net volume of Crude Oil imported from Mina al-Bahr and Cocha during the period, as mentioned by Saybolt, was 304,632,217 barrels at an average of 2,122,399 barrels per day.
- 4.2. of the total volume imported, 19.4% of the volume was via Cocha and 10.5% of the volume was via Mina al-Bahr.

MONITORING OF THE SPARE PARTS & EQUIPMENT

- 5.1. Analysis
5.1.1. Complete inventories delivered and accompanied by the relevant contracts arrived, but not checked or awaiting technical report from receivers
5.1.2. Total shipwrecks
5.1.3. These values calculated as per formula applied in previous 90 and 180 day reports.
5.1.4. This is a negative value thrown up by the system as the value in this period - for the sector - is less than value for previous period.
Please note: from 1 to 14th November 2006, an amount of US \$ 30.2 M of contracts were opened, the bulk accounted for by US \$ 14.25 M for the period 1st to 14th Nov 07, US \$ 4,712 M for items 20 02/04 and US \$ 4.19 M for Comm No 47037.

6. Frequency of monitoring visits.

- 6.1. During the period the Saybolt monitoring team carried out 866 site visits throughout Iraq.
- 7. Number of monitoring and shipment journeys.
7.1. The Saybolt oil spare parts & equipment monitoring team is based in Baghdad.

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AM, 2, 2, 2

United Nations Nations Unies

18 April 1977

TO: Mr. Joseph Stiglitz, Deputy Chief of Staff, Security Council Subsidiary Organs Branch

FROM: Suzanne Blahopis, Treasurer

SUBJECT: Anticipated claim from Trafalgar, Ltd.

1. On Tuesday 13 April 1977, Mr. Maurice L'Esperance, Oil Overseer, advised me that the bill of lading for oil purchased by Trafalgar, Ltd. may have overvalued the quantity actually loaded on the ship by 1,000 barrels. The bill of lading was issued on 25 March 1977 from Seydlitz, Tatum. The attached report, number 29034877 dated 25 March 1977 from Seydlitz refers.

2. The bill of lading, commercial invoice from S.O.M.O., 30 days' draft and the other documents required under the letter of credit had already been presented to Banque Nationale de Montreal for payment. The amount of the bill of lading was \$1,000,000. The amount of the letter of credit number L203131 and the payment in the amount of \$1,027,000.14 would be made into the United Nations Inq. Account on 23 April 1977.

3. The UN Oil Overseer were advised by Trafalgar, Ltd. that the figure of 1,000 barrels was based on a survey of the ship's cargo tanks. My understanding from the Overseer is that Trafalgar, Ltd. claims to have been overcharged by approximately 28,000 barrels or about \$1,000,000. Trafalgar, Ltd. has provided the Overseer with the attached report which appears to bear the number 29070977 dated 28 March 1977 from Seydlitz.

4. Under the circumstances, it would be advisable to reserve \$1,000,000 of the amount anticipated to be deposited into the United Nations Inq. Account until the potential claim is resolved.

5. I should appreciate it if the Overseer would notify Treasury at the earliest possible moment if there should ever be a demand regarding the value of cargoes shipped, in light of the expedited procedures. Such notification would reduce the risk that funds might be allotted or distributed which should be reserved for the settlement of claims.

cc: Mr. Yulianovich
The Overseer
Mr. Runklow
Mr. Hanson
Mr. Cright

Vessel: 385,182 barrels
which equates to 28,076 barrels or 1.8%.

6) The discrepancy was contacted with the UN Overseer and SOCO. The UN Overseer advised that the figure should be based on the vessel's figures (following normal procedures) at the time of loading. The SOCO advised that on arrival at the vessel they would take an independent survey of the vessel either by volume on a future lifting, or financially.

7) The bill of lading was prepared and issued by SOCO at Ceylan. 8) C. J. Ferris, acting on behalf of Trafalgar, issued a letter of reserve to SOCO, Ceylan, regarding the discrepancy between ship and shore.

There is no doubt that the vessel figures are overstated as a result of the discrepancy between the vessel's figures and the SOCO figures. The SOCO figures are based on a calibration chart. Trafalgar advise (as per their independent inspector, Tom's Oil Maritime S.R.L.) was 346,318 barrels.

Vessel's figures on arrival at Constanza were reported as 390,183 barrels against 385,182 barrels after loading at Ceylan. This gives an outturn shortage against vessel figures at loadport of 37,644 barrels (9.6%) and outturn shortage against vessel arrival figures of 41,615 barrels (10.7%).

Ship sailing figures at Ceylan (385,182 barrels) only differ from ship arrival figures at Constanza (390,183 barrels) by 3,271 barrels (0.8%).

Comparison between the shore figure at Ceylan (385,182 barrels) and discharged quantity at Constanza (388,538 barrels) gives a difference of 3,356 barrels (0.9%).

Given that there is an established difference between:-

- shore Ceylan and shore Constanza of 1.9%
- ship loading figures and shore Constanza of 3.8%
- ship loading figures and shore Ceylan of 2.8%

the apparent overstatement of the vessel figures, used to establish the Bill of Lading at loadport, equates to the 1.8% barrels difference between the vessel figures and the SOCO figures. The SOCO figures (385,182 barrels) would therefore be the most equitable estimate, given above circumstances, of shipped volume.

On the matter of the most recent pipeline shortage we are advised that the repairs will be completed today; on resumption of deliveries via the pipeline we will advise you immediately. The apparent spillage of oil here as a result of the incident.

Should you require any further information on the "Historia Prestige" please do not hesitate to contact us.

Regards,

Graham Bruce
Coordinator
Seydlitz UN

8254467

is advised that the loaded figure shown on cases on the vessel is 298,106 barrels and ROMO verbally advised that on establishment of the output of the vessel they would make an adjustment which would result in a total of 298,106 barrels. It is noted that the Bill of Lading was prepared and issued by ROMO at Ceyhan. It is noted that the Bill of Lading was prepared and issued by ROMO at Ceyhan. It is noted that the Bill of Lading was prepared and issued by ROMO at Ceyhan.

There is no doubt that the vessels figures are overstated as 298,106 barrels against 286,102 barrels after loading at Ceyhan. This gives an output shortage against vessels figures at loading of 37,444 barrels (13.2%) and output shortage against vessels arrival figures of 41,813 barrels (14.3%).

Ships sailing figures at Ceyhan (286,102 barrels) only differ from ships arrival figures at Constanta (286,102 barrels) by 3,971 barrels (1.4%).

Comparison between the above figure at Ceyhan (298,106 barrels) and discharged quantity at Constanta (286,102 barrels) gives a difference of 27,444 barrels (9.2%).

Given that there is an established difference between:-

- ship loading figures and above Constanta of 3,824 barrels
- ship arrival figures and above Ceyhan of 3,824 barrels

the apparent overstatement of the above figure at Ceyhan (298,106 barrels) would therefore be the most equitable estimate, given above circumstances, of shipped output.

Regards,
Ceyhan Brett

Handwritten: b/c

Author: Graham Brett at ANVERSON
 PRIORITY: Normal
 TO: COMBAT PLAN-UT 1212513100 AT COMBAT
 TO: PATER BOGA AT LAMP
 TO: COMBAT PLAN-03 1125241010 AT COMBAT
 TO: COMBAT PLAN-02 1125241010 AT COMBAT
 TO: COMBAT PLAN-01 1125241010 AT COMBAT
 TO: COMBAT PLAN-00 1125241010 AT COMBAT

TO: UNITED NATIONS NEW YORK
 MR. JOSEPH STEINBERGER
 TO: UNITED NATIONS NEW YORK
 MR. JOSEPH STEINBERGER
 TO: ROMO, BUREAU
 MR. ROMO
 TO: TRAFICOM, LONDON
 STUART WELTLOCK
 TO: MR PETER ROMO
 FROM: RAYMOND BASTEN HUNGHERS BY
 DATE: APRIL 24TH 1987
 TYPED BY:
 RE: NY TELETYPE UNIT, A/C TRAFICOM B/L NO 26/03/87
 LONDON COMMERCIAL CHAMBER

Contents:
 Regarding the loading of the above vessel at Ceyhan which was reported to have been 298,106 barrels for the account of L/C BNP Reference No 125241010 and 298,106 barrels for the account of L/C BNP Reference No 125241010, it would like to clarify the following points:-

- 1) The agreed format between ROMO and the ship for the calculation of loaded quantities at Ceyhan, in the absence of a certified quantity and VPE.
- 2) The vessel's master's certificate presented at Ceyhan after an inspection by the port authorities, which was found to be in accordance with the deck village points to allow for the calculations were made to appear as the vessel's calibration chart, as presented, were not full cargo movements; they were not available to the last ton (10) in view of 2) and 3) above. Shores tank measurements were taken on completion of loading there was an apparent difference between the vessel's figure (by reference to calibration charts) and above figure, as follows:-

Ships
 298,106 barrels
 Shores
 286,102 barrels

which equates to 28,076 barrels or 9.4%.

Mr. Pater Boga was contacted both the in Overseas and ROMO representatives at Ceyhan to advise this large discrepancy. The

8254486

MEMORANDUM OF UNDERSTANDING
BETWEEN THE SECRETARIAT
OF THE UNITED NATIONS

AND
THE GOVERNMENT OF IRAQ
ON THE IMPLEMENTATION OF
SECURITY COUNCIL RESOLUTION 986 (1995)

Section I
General Provisions

1. The purpose of this Memorandum of Understanding is to ensure the effective implementation of Security Council Resolution 986 (1995) (hereinafter the Resolution).
2. The Distribution Plan referred to in paragraph 6 (a) (ii) of the Annex which has to be approved by the Secretary-General of the United Nations, constitutes an important element in the implementation of the Resolution.
3. Nothing in the present Memorandum should be construed as infringing upon the sovereignty or territorial integrity of Iraq.
4. The provisions of the present Memorandum pertain strictly and exclusively to the implementation of the Resolution and, as such, in no way create a precedent. It is also understood that the provisions of the present Memorandum are not intended for, in the Memorandum is an exceptional and temporary measure.

Section II
Distribution Plan

5. The Government of Iraq undertakes to effectively guarantee the distribution of essential supplies to the Iraqi population throughout the country of medicines, health supplies, foodstuffs, and materials and supplies for essential civilian needs (hereinafter humanitarian supplies) through the process of the sale of Iraqi petroleum and petroleum products.
6. To this end, the Government of Iraq shall prepare a Distribution Plan and shall submit it to the United Nations. The Government of Iraq shall ensure that the Distribution Plan is implemented in accordance with the provisions of the present Memorandum. The present Distribution System of such supplies, the prevailing market conditions and the Government of Iraq shall be taken into consideration with due regard to the sovereignty of Iraq and the national unity of its population. The plan shall include a categorized list of essential supplies and shall provide for the purchase and import for this purpose on a six-month basis.

deductions mandated by the Security Council under paragraph 8 of the Resolution shall be made from the "Iraq Account", which will be administered through the United Nations Financial Institutions and Rules of the United Nations.

13. The Iraqi authorities shall designate a senior banking official to monitor the Iraqi account and to report to the Secretary-General on all banking matters relating to the "Iraq Account".

14. In accordance with the United Nations Financial Regulations, the Board of Auditors will be audited by the Board of Auditors who are external independent public auditors. As provided for in the Regulations, the Board of Auditors will submit reports on the accounts of the Government of Iraq to the Secretary-General. Such reports will be submitted by the Board to the Secretary-General who will forward them to the 661 Committee and to the Government of Iraq.

15. Nothing in this Memorandum shall be interpreted to create a liability on the part of the United Nations for any purchase made by the Government of Iraq pursuant to the provisions of the Resolution, on its behalf or through its agents.

Section IX

661 Committee and Petroleum Products originating in Iraq

16. Petroleum and petroleum products originating in Iraq will be exported via the Kirkuk-Turkmenlik pipeline through Turkey and from the Mina al-Bahr oil terminal. The 661 Committee will monitor the exports and ensure that the Resolution's provisions are fully implemented. The Resolution's provisions concerning the transportation costs in Turkey will be covered by an additional amount of oil, as foreseen in the Resolution and in accordance with procedures between Iraq and Turkey. The 661 Committee will continue to monitor the use of Turkish oil installations has been provided to the 661 Committee.

17. Each export of petroleum and petroleum products originating in Iraq shall be approved by the 661 Committee.

7. The part of the Distribution Plan related to the three non-oil commodities shall be subject to the approval of the Secretary-General in accordance with Annex I, which constitutes an integral part of this Memorandum.

8. The Distribution Plan shall be submitted to the Secretary-General of the United Nations for approval. If the Secretary-General is satisfied that the plan adequately and equitably distributes the commodities to the countries of the region throughout the country, he will so inform the Government of Iraq.

9. It is understood by the Parties to this Memorandum that the Secretary-General will be in a position to report as required in paragraph 13 of the Resolution unless the plan prepared by the Government of Iraq meets with his approval.

10. Once the Secretary-General approves the plan, he will forward a copy of the categorized list of the supplies and goods, which constitutes a part of the plan, to the 661 Committee, which will monitor the situation between Iraq and Kuwait (hereinafter the 661 Committee) for information.

11. After the plan becomes operational, each Party to the present Memorandum may suggest to the Secretary-General a modification to the plan, in order to improve the situation and to ensure the adequacy of the distribution of supplies and goods.

Section III

Establishment of the secret account and audit of bank accounts

12. The Secretary-General, after consultations with the Government of Iraq, will select a major bank in Iraq and establish there to be known as the United Nations Iraq Account (hereinafter the "Iraq Account"). The Secretary-General will keep the Government of Iraq advised of his actions in choosing the bank and opening the account. All transactions and

18. Detailed provisions concerning the sale of Iraqi petroleum products and the distribution of such products, which constitutes an integral part of this Memorandum.

SECTION V

PROCUREMENT AND ACQUISITION PROCEDURES

19. The purchase of medical, health supplies, foodstuffs, and other essential supplies for essential civilian needs of the Iraqi population throughout the country, as referred to in paragraph 20 of resolution 687 (1993), will, subject to paragraph 20 below, be carried out in accordance with the relevant provisions of the resolutions of the Security Council and the relevant resolutions of the Security Council and procedures of the 661 Committee.

20. The purchase of humanitarian supplies for the three northern Governorates of Arbil, Dohuk and Sulaymaniyah, as provided for in the Distribution Plan, will be carried out in accordance with Annex I.

21. The Government of Iraq will, except as provided for in Annex I, be responsible for directly with suppliers to arrange the purchase of supplies, and will conclude the appropriate contractual arrangements.

22. Each export of goods to Iraq shall be at the request of the Government of Iraq pursuant to paragraph 3 (a) of the Resolution. Accordingly, exporting states will submit all necessary documents under the Resolution to the 661 Committee for appropriate action according to its procedures. It is understood that payment of the supplier from Iraq shall be included in the categorized list referred to in Section II of the present Memorandum. Should exceptional circumstances arise, applications for the export of such goods may be submitted to the 661 Committee for its consideration.

23. As noted above, the 661 Committee will take action on applications for the export of goods to Iraq in accordance with paragraph 12 of the Resolution. The 661 Committee will inform the Government of Iraq, requesting states, and the Secretary-General of the United Nations of the results of its actions.

24. After the 661 Committee has taken action on the applications for export in accordance with its procedures, the Government of Iraq will be responsible for the procurement of the goods. Such requests shall be referred by the bank holding the 'Iraqi Account' to the United Nations, which will issue a letter of credit, allowing payment from the 'Iraqi Account' upon presentation of 'credit-conform' documents. The letter of credit will require the bank condition of 'Payment Account' of the documents to be determined by the procedures established by the 661 Committee, including the confirmations by the agencies mentioned in paragraph 20 above. Iraq shall determine the clauses to be inserted in all purchase orders, contracts and letters of credit regarding payment from the 'Iraqi Account'. Whereas all charges outside Iraq are for the account of the beneficiary.

25. The shipment of goods in Iraq purchased under the plan will be confirmed by independent inspection agents to be appointed by the Secretary-General. No payments can be made until the independent inspection agents have confirmed that the exported goods concerned have arrived in Iraq.

26. The independent inspection agents may be stationed at ports, airports, customs points, customs areas or other locations where the functions set out in paragraph 27 of this section can be performed. The number and location of such agents shall be determined in consultation with the Government of Iraq.

27. The independent inspection agents will confirm delivery to the beneficiary of the goods, and will compare the appropriate documentation, such as bills of lading, other shipping documents or cargo manifests, and the documents issued in Iraq. They will also have the authority to perform other actions necessary for such

33. The distribution of humanitarian supplies in the three months following the cessation of hostilities shall be undertaken by the United Nations Inter-Agency Humanitarian Programme on behalf of the Government of Iraq under the leadership of the United Nations Secretary-General and in full respect of the territorial integrity of Iraq in accordance with Annex I.

Section VII

Observation of the equitable distribution of humanitarian supplies and determination of their adequacy

GENERAL PROVISIONS

34. The United Nations observation process will be conducted by the United Nations personnel in Iraq under the overall authority of the Department of Humanitarian Affairs at United Nations Headquarters. The procedures for such observation shall apply to the distribution of humanitarian supplies financed in accordance with the procedures set out in the Resolution.

35. The objectives of the United Nations observation process shall be:
- (a) to decide whether the equitable distribution of humanitarian supplies to the Iraqi population throughout the country has been ensured;
 - (b) to ensure the effectiveness of the operation and determine the adequacy of the available resources to meet Iraq's humanitarian needs.

OBSERVATION PROCEDURES

36. In observing the equitable distribution and its adequacy, United Nations personnel will use, inter alia, the following procedures.

confirmation, including quantity inspection by weight or count, quality inspection including visual inspection, sampling, and, when necessary, laboratory testing.

38. The inspection agents will report all irregularities to the Secretary-General and the United Nations Secretary-General. The agents will also report to the 661 Committee and the Government of Iraq are informed, but normal commercial resolution procedures (the claims) go on. The inspection agents will hold the shipment in question pending guidance from the 661 Committee.

39. As regards the export to Iraq of parts and equipment which are essential for the safe operation of the Kirkuk-Ummalqala Pipeline system in Iraq, the requests will be submitted to the 661 Committee by the Government of Iraq for approval by the Committee in accordance with its procedures.

40. If the 661 Committee has approved a request in accordance with paragraph 29, the provisions of paragraph 24 shall apply. However, since the supplier can expect payment for the goods, as stated in paragraph 29, the bank will be required to issue an irrevocable letter of credit stipulating that payment of the amount of the irrevocable credit shall be made by the United Nations Secretary-General upon approval of the payment.

41. The requirement of substantiated confirmation of arrival of the equipment shall apply also to the parts and equipment mentioned in paragraph 29.

Section VI

Distribution of humanitarian supplies purchased under the Kirkuk-Ummalqala

22. The distribution of humanitarian supplies shall be undertaken by the Government of Iraq in accordance with the Distribution Programme in Section II of the present Resolution. The Government of Iraq will keep the United Nations observation personnel informed about the implementation of the plan and the activities that the government is undertaking.

that humanitarian needs observations will focus on confirmation that such materials and supplies are delivered to the pre-designated destinations in accordance with the Distribution Plan and that they are used for their intended purposes, and on the determination of minimum standards of living and health care in the various geographical areas of the Iraqi population.

COORDINATION AND COOPERATION

42. The United Nations observations activities will be coordinated with the United Nations Office for Iraq, United Nations Headquarters in New York. Observation will be undertaken by United Nations Personnel. The exact number of such personnel will be determined in consultation with the Government of Iraq and the relevant Iraqi authorities. The Government of Iraq will be consulted in this regard.

43. The Iraqi authorities will provide to United Nations personnel the assistance required to facilitate the performance of their functions. United Nations personnel will coordinate with the Iraqi competent authorities.

44. In view of the importance of the functions which United Nations personnel will perform in accordance with the Distribution Plan, the Government of Iraq shall, in connection with the performance of their functions, unrestricted freedom of movement, access to documentary material which they find relevant having regard to the purposes of the Distribution Plan, and the possibility to make such contacts as they find essential.

Section VIII

Privileges and Immunities

45. In order to facilitate the successful implementation of the Resolution the following provisions concerning privileges and immunities shall apply:

Food Items

37. The observation of the availability of food distribution will be based on information obtained from local markets available to the United Nations and its specialized agencies on food imports, and on sample surveys conducted by United Nations personnel. The observation will also include the quantity and prices of food items imported under the Resolution.

38. To provide regular updated observation of the most pressing needs, a survey undertaken by United Nations personnel will serve as a baseline for the continuing observation of nutritional status of the population of Iraq. This information will take account of the Public Health Survey conducted by the Ministry of Health (MNH) and the relevant United Nations agencies.

Medical supplies and equipment

39. Observation regarding distribution of medical supplies and equipment will include visits to hospitals, clinics as well as medical and pharmaceutical facilities where such supplies and equipment are stored. Such observation will also be conducted by United Nations agencies. Data from MNH and surveys by relevant United Nations agencies.

Water/sanitation supplies and equipment

40. Observation of distribution of water/sanitation supplies and equipment will include visits to water/sanitation facilities for their intended purposes. Confirmation will be carried out by collecting data on the incidence of water-borne diseases and by water quality control checks by visits to relevant United Nations agencies. In this regard the United Nations will rely on all relevant indicators.

Other materials and supplies

41. With reference to materials and supplies which do not fall within the above areas indicated above, in particular, those needed for the rehabilitation of infrastructures essential to

SECTION IX

Consultations

49. The Secretariat of the United Nations and the Government of Iraq shall consult each other in order to determine the most effective implementation of the present Memorandum.

Section X

Final Clauses

50. The present Memorandum shall enter into force following the ratification of the present Memorandum by the Government of Iraq and shall remain in force until the expiration of the 180 day period referred to in paragraph 3 of the Resolution.

51. Pending its entry into force, the Memorandum shall be given effect by the United Nations and the Government of Iraq provisional.

SIGNED this _____ day of _____ 1956 at _____

For the United Nations For the Government of Iraq

Hans Correll Under-Secretary-General The Legal Counsel
Abdul Mahr Al-Abbari Ambassador Plenipotentiary Head of the Delegation of Iraq

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(3) officials of the United Nations and of any of the Specialized Agencies performing functions in connection with the present Memorandum shall enjoy the same privileges and immunities applicable to them under Articles 1 and 17 of the Convention on the Privileges and Immunities of the United Nations, or Articles 1 and 17 of the Convention on the Privileges and Immunities of the Experts on Mission appointed by the Specialized Agencies to which Iraq is a party;

(4) independent inspection experts, technical experts and United Nations or by heads of the Specialized Agencies concerned and performing functions in connection with the present Memorandum shall enjoy the same privileges and immunities accorded to experts on mission for the United Nations or to experts on mission for the Specialized Agencies of the United Nations or the relevant Annexes of the Convention on the Privileges and Immunities of the Specialized Agencies respectively;

(c) persons performing contractual services for the United Nations or for any of the Specialized Agencies of the United Nations or for the Government of Iraq, shall enjoy the privileges and immunities referred to in sub-paragraph (3) above concerning experts on mission appointed by the United Nations.

46. In addition, officials, experts and other personnel referred to in paragraph 45 above shall be accorded the same privileges and immunities as shall be issued visa by the Iraqi authorities promptly and free of charge.

47. It is further understood that the United Nations and its Specialized Agencies shall enjoy freedom of entry into and exit from Iraq without delay or hindrance of supplies, equipment and means of surface transport, and that the Government of Iraq shall, in accordance with the Convention on the Privileges and Immunities of the United Nations, temporarily, import such equipment free of customs or other duties.

48. Any issue relating to privileges and immunities, including safety and protection of the United Nations and its personnel, not covered by the provisions of this Section shall be governed by paragraph 15 of the Resolution.

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appropriate, to warehouses in Kirkuk and Mosul. The warehouses shall be managed by the Programme. The Government of Iraq shall ensure the prompt customs and administrative clearances to enable the rapid and quick transit of such supplies to the three northern Governorates.

6. The Programme shall be responsible in the three northern Governorates for the equitable distribution of humanitarian supplies, distribution and confirmation of equitable distribution of humanitarian supplies. The Programme will keep the Government of Iraq informed on the implementation of distribution.

7. Whenever possible and cost-effective, the Programme shall use appropriate local distribution mechanisms which are comparable to those existing in the country. In order to ensure that the Programme will pay a fee for internal transportation, handling, and distribution in the rest of the country, the Programme shall make arrangements with the Government of Iraq to ensure that the Programme's personnel, hospital in-patients and other vulnerable groups in need of supplementary food are appropriately met, and will keep the Government of Iraq informed.

8. The Programme will observe that humanitarian supplies are used for their intended purposes, through visits to sites and by means of reports from the field. The Programme will keep the Department of Humanitarian Affairs at United Nations Headquarters in New York and the Government of Iraq any violation observed by the Programme.

Annex I

1. In order to ensure the effective implementation of paragraph 4 (b) of this Annex, the following information shall be supplied in respect of the Iraqi Governorates of Arbil, Dinkak and Sulaymaniyah. These arrangements shall be presented with due regard to the principle of equitable distribution of humanitarian supplies throughout the country.

2. The United Nations Inter-Agency Humanitarian Programme shall collect and analyze pertinent information on humanitarian needs in the three northern Governorates. On the basis of that information, the Programme will determine the humanitarian requirements of the three northern Governorates in consultation with the Government of Iraq and subsequent incorporation in the Distribution Plan. In preparing estimates of food needs, the Programme shall take into account the special circumstances in the three northern Governorates and in the rest of the country, in order to ensure equitable distribution. Specific rehabilitation needs in the three northern Governorates shall receive the necessary attention.

3. Within a week following the approval of the Distribution Plan, the Programme will request the Government of Iraq to hold discussions to enable the Programme to determine how the procurement of humanitarian supplies for the three northern Governorates can be undertaken most efficiently. The Programme will take into account the special circumstances in the bulk purchases by the Government of Iraq of standard food commodities and medicines may be the most cost-effective means of procurement. The Programme will request the Government of Iraq to make arrangements for the procurement of humanitarian supplies for the three northern Governorates, may be more suitably procured through the United Nations system in view of technical aspects related to their proper use.

4. To the extent that purchases and deliveries are made by the Government of Iraq in response to the Distribution Plan, the cost of the delivered goods will be deducted from the amount allocated to the Programme from the "Iraq Account".

5. Humanitarian supplies destined for distribution in the three northern Governorates shall be delivered by the Programme to warehouses located within these Governorates. Such supplies can also be delivered by the Government of Iraq on the Programme, as

ANNEX II

1. The State Committee or, if the oil committee so decides, the national petroleum purchaser authorized by the oil Committee, shall be responsible for the application and submission to the oil Committee of the application including the relevant contractual documents covering the sales of such petroleum and petroleum products, for the purpose of purchase of Iraqi petroleum and petroleum products, to the Marketing Organization (Marketing 2000) on behalf of the Government. Such endorsement could be done by sending a copy of the application to the Marketing Organization. The application shall include details of the purchase price at fair market value, the export route, opening of a letter of credit payable to the Iraq Account, and other necessary information required. The application shall be included in the information provided to the oil Committee covered by contractual documents. A copy of these documents shall be included in the information provided to the oil Committee. The information shall be provided to the Marketing Organization. Inspection agents described in paragraph 4 of this Annex. The contractual documents should contain the following information: quantity of contract, credit and payment terms and pricing mechanism. The pricing mechanism for petroleum should include the following points: market crude oil and type of quotations to be used, adjustments for transportation and quality, and pricing basis.

2. Irrevocable confirmed letters of credit will be opened by the beneficiary in favor of the Marketing Organization. The proceeds of the letter of credit will be paid directly to the Iraq Account. For this purpose, the following clauses will have to be inserted in each letter of credit:

- Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit shall be irrevocably paid into the Iraq Account with Bank.
- All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the purchaser.

multigrained children under five years of age (21.6 per cent) during the period under review. Available supplies of high-protein biscuits reportedly were adequate to cover the requirements of these targeted beneficiaries. The need for their shipment will be implemented through the nutrition supplies, Inadequate transportation and storage facilities and the lack of incentives for the FMO to transport WFP in a new small-quantity container to various government offices and health centres continued to adversely affect implementation of the targeted nutrition programme. In all 13 governments in the east-western transportation of nutrition supplies is a local task to support the programme. The problem of whom are yet to be reimbursed owing to lack of information on the distribution plan for phase VII, could be returned from hold.

72. While still well below the target of 3,000 that had been set for phase IV, the number of functional health centres increased from 2,418 to 2,418. The expansion was adversely affected by the irregular supplies of high-protein biscuits, delays in the procurement of transportation facilities and lack of incentives for transportation. The United Nations Children's Fund (UNICEF) continues to provide training and material support for the programme.

73. In line with the discussions held during the period of the high-protein biscuits for the beneficiaries was assessed by the health subcommittee with United Nations observers. At a meeting held in Addis Ababa, the United Nations Coordinator for Iraq, the Minister of Health acknowledged that the acceptability of high-protein biscuits for the target group was around 80 per cent. The United Nations Coordinator for Iraq, the Minister of Health, informed that the quality of the biscuits had improved in comparison with the previous period. The 218 existing water treatment plants indicated a 10 per cent average increase in their overall production of water. This has also been an overall reduction of the water supply in the country. The United Nations Coordinator for Iraq, the Minister of Health, is instituting a targeted improvement in water quality.

74. In the three northern governments, 5,861 metric tons of assorted food commodities were distributed to a monthly average of 156,270 beneficiaries through the supplementary feeding programme of the United Nations Coordinator for Iraq, the Minister of Health, the garbage

has that 2 per cent of needs and urgent rehabilitation programmes, despite indications by the Government to the United Nations Humanitarian Coordinator for Iraq that it had signed many contracts. Unless the Government warehouses has improved as a result of the arrival of programme funds, commodities and supplies, the Government will be unable to meet the needs of the population. In addition, the Government has also indicated that 292 of a total of 1,424 approved vehicles for the programme have not yet arrived in the country. However, the authorities without means, which had to be removed from the country as a condition for the lifting of hold on the importation of commodities, have been ordered for the Ministry of Health and SDI are still on hold.

64. The problem of inadequate systems for the management and monitoring of voluminous supplies of commodities for the programme, which has amounted to \$7.8 million, which have remained on hold for almost 12 months, needs to be reviewed.

65. The stock of human vaccines in the country falls far short of annual requirements. Only 2.5 million doses of measles vaccine (MM) were available as at 20 April 2001. The present stock of oral polio vaccine (OPV) is also inadequate. The Government has ordered for the purchase of 12 million doses of OPV and 12 million doses of hepatitis-B vaccine (HBV) for the year 2001. The Government has also ordered for the purchase of 12 million doses of OPV and 12 million doses of HBV for the year 2001. The Government has also ordered for the purchase of 12 million doses of OPV and 12 million doses of HBV for the year 2001.

66. During the reporting period, United Nations observers carried out six observation visits to Samarra and Tikrit. The visits were conducted in order to assess the progress of the programme and to identify the main constraints to the implementation of the programme. The visits were conducted in order to assess the progress of the programme and to identify the main constraints to the implementation of the programme.

67. The visits were conducted in order to assess the progress of the programme and to identify the main constraints to the implementation of the programme. The visits were conducted in order to assess the progress of the programme and to identify the main constraints to the implementation of the programme.

68. The visits were conducted in order to assess the progress of the programme and to identify the main constraints to the implementation of the programme. The visits were conducted in order to assess the progress of the programme and to identify the main constraints to the implementation of the programme.

69. The visits were conducted in order to assess the progress of the programme and to identify the main constraints to the implementation of the programme. The visits were conducted in order to assess the progress of the programme and to identify the main constraints to the implementation of the programme.

70. Under the programme, three rounds of polio vaccination were conducted, reaching 95 per cent of the target population. The programme has also reached 100 per cent of the target population for the delivery of polio vaccine. The programme has also reached 100 per cent of the target population for the delivery of polio vaccine.

71. Roughly 5,000 metric tons of high-protein biscuits were distributed equitably to targeted

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to meet objectives of humanitarian assistance to national levels. The inter-agency broader coordination continues to involve continuing to conduct surveys and prepare contingency plans, with emphasis on electricity. With respect to electricity, the total generating capacity will remain far short of demand and interconnectivity remains poor.

B. Cross-sectoral considerations in the three northern governments

Programme coordination

118. As indicated in my previous report (S/2000/118, para 145), the United Nations Office of the High Commissioner for Human Rights (OHCHR) has been instrumental in a decision to set up an inter-agency task force to coordinate action to upgrade planning data and enhance humanitarian information systems. A joint

humanitarian information system was established in early January 2001 and has begun surveying the systems that will be compatible with the project programme framework. It is also developing a tracking system for inter-agency humanitarian projects. The absence of every vital for consultants in multi-sectoral planning, joint relations, agro-communications, and needs assessment. The United Nations Office of the High Commissioner for Human Rights (OHCHR) has been instrumental in a decision to set up an inter-agency task force to coordinate action to upgrade planning data and enhance humanitarian information systems. A joint

119. The increased scope and scale of the inter-agency humanitarian programmes in many instances placing a heavy strain on local counterpart institutions in terms of resources to operate and maintain the equipment to be used in the field. In some cases, they lack the skills and resources to operate and maintain the equipment to be used in the field. In some cases, they lack the skills and resources to operate and maintain the equipment to be used in the field. In some cases, they lack the skills and resources to operate and maintain the equipment to be used in the field.

120. Additional rainfall, while leading to a partial recovery of main-levée agriculture, has not been sufficient to meet the needs of the population. The humanitarian problem has worsened.

112. As outlined in my previous report (S/2000/118, para 145), the United Nations Office of the High Commissioner for Human Rights (OHCHR) has been instrumental in a decision to set up an inter-agency task force to coordinate action to upgrade planning data and enhance humanitarian information systems. A joint

113. The previous report I indicated the Security Council that the United Nations Office for the High Commissioner for Human Rights (OHCHR) has been instrumental in a decision to set up an inter-agency task force to coordinate action to upgrade planning data and enhance humanitarian information systems. A joint

114. The next step in the programme is the integration of the various components at both national and sub-national levels. The United Nations Office of the High Commissioner for Human Rights (OHCHR) has been instrumental in a decision to set up an inter-agency task force to coordinate action to upgrade planning data and enhance humanitarian information systems. A joint

115. The UNOPS mine action programme has now completed a survey that details the range and scope of the mine problem. The humanitarian problem has worsened.

Mine action

115. The UNOPS mine action programme has now completed a survey that details the range and scope of the mine problem. The humanitarian problem has worsened.

Annex I

Oil proceeds and humanitarian supply letters of credit, as at 30 April 2001

Oil proceeds
(United States dollars)

Phase	Date Expires	Number of letters of credit	Value of letters of credit, \$ million
I	31 June 1997	115	2 149 646 810.26
II	2 June 1998	16	2 176 646 110.26
III	30 June 1998	166	2 683 126 314.25
IV	24 December 1998	206	3 027 147 022.35
V	23 June 1999	333	3 947 022 365.13
VI	21 December 1999	333	7 401 894 081.57
VII	18 July 2000	253	8 201 861 931.46
VIII	2 December 2000	207	8 296 237 148.06
Total		1 864	37 333 886 476.06

Oil proceeds

(\$ million)

Phase	Date Expires	Number of letters of credit	Value of letters of credit, \$ million
VIII	20 December 2000	41	1 276 611 932.15
IX	As at 30 April 2001	103	3 253 795 483.77
Total		144	4 530 407 415.92

resolution 886 (1993) and in line with procedures adopted by the Committee. Of that amount, \$794 million has been paid to the Government of Turkey.

(b) The sum of \$129.5 million has been transferred directly to the account established pursuant to Council resolution 706 (1991) of 15 August 1991 for the payments envisaged under paragraph 4 of resolution 713 (1991) of 20 September 1991 and paragraph 4 of resolution 886 (1993) and subsequently in paragraph 34 of my report dated 1 February 1996 (S/1996/978). The total repayments made amounted to \$129.5 million.

Annex III
Sectoral observation table for the period 1 November 2000-30 April 2001

Remanufacture supply mixers of credit for 65B (03 per card) account and bulk government

Part	Number of units of equipment	Value of assets (Estimated value)	Value of assets (Actual value)	Value of assets (Estimated value)
I	678	1 225 078 786,79	1 206 735 287,84	
II	48	1 932 372 676,89	1 879 248 938,19	
III	422	1 049 246 115,50	1 049 246 115,50	
IV	478	272 892 216,68	312 854 562,35	
V	218	284 566 232,88	183 672 049,04	
VI	1 548	3 140 645 912,22	1 728 876 032,33	
VII	850	484 174 771,52	193 699 245,03	
VIII	2 067	3 714 692 187,04	1 964 254 061,27	
IX	681	2 444 424 674,19	98 594 895,12	
X	1 194	3 752 761 728,89	722 027 726,03	
XI	56	31 274 414,54		
IX	30	628 184 622,09		
Total	13 199	19 828 818 214,92	11 431 996 281,10	

Sector	Type of observation		Total
	Inspection	Self-report	
Food	92 227	15	92 242
Transport and food handling	240	28	268
Hotels	1 491	112	1 603
Ware and maintenance	1 881	235	2 116
Agriculture	1 165	699	1 864
Electricity	241	3	244
Telecommunications ^a	3	2	5
Education	518	1 411	1 929
Health	107	4 828	4 935
Total	182 728	7 699	1 424 127

^a With the arrival of equipment provided under the Insulinisation Programme, the Telecommunications Sectoral Working Group resumed observation activities on 24 April 2001.

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UN Doc. No. A/55/589

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No. M7173
Date: 5 November 2003

Sir,

On instructions from my Government, I have the honour to respond to you regarding a letter dated 3 November 2003 from Mr. and Mrs. Muhammad Saad, Member of Oil of the Republic of Iraq, inviting the attention of the Iraq State Oil Marketing Organisation (SOMO) to incorporate in their for the sale of oil a provision to the effect that the sum of 1.5 euro per barrel should be remitted to a special account designated to SOMO to meet the costs of the production, transportation and transportation of oil, the maintenance of oil-related installations and other essential expenditures within Iraq.

Accept, Sir, etc

(Signed) Saad H. Ki
Ambassador
Permanent Representative

Hig Excellency Mr. Kofi A. Annan
Secretary-General of the United Nations

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Mr. SHAYS. Mr. Pruniaux.

Mr. PRUNIAUX. Mr. Chairman and distinguished members of the subcommittee, my name is Andre Pruniaux. Since 1998, I have been employed as Senior Vice President of Cotecna Inspection in Geneva, Switzerland, which has some 4,000 personnel in over 100 offices around the world. I appreciate the opportunity to appear before the subcommittee today to clearly establish for the public record the difficult task of Cotecna as a contractor of the U.N. Oil-for-Food Program.

Mr. Chairman, my primary duties at Cotecna consisted of managing operations in Africa and the Middle East as summarized in my curriculum vitae included in my prepared statement. We hope to clarify Cotecna's responsibilities and authority under the Oil-for-Food Program in the United States and the CPA contracts. The documents we provided to the subcommittee clearly demonstrate our performance under the contracts has been fully consistent with our obligations.

Since the inception of its contract in Iraq, Cotecna has authenticated the arrival of goods in Iraq worth a total of \$29.2 billion, of which no single authentication has been proven to be erroneous. To fairly judge our performance, you must first understand what services Cotecna was and was not contracted to perform under the OFF program. Cotecna was not hired to perform inspection services in the traditional sense which would normally entail a broad range of tasks, in support of full customs inspection services, including, for instance, price analysis, quantity, quality inspection, and port-of-origin and/or port-of-destination.

The 1992 request for proposal on which Cotecna was the successful bidder issued by the U.N. did incorporate broader, more traditional customs inspection mandates. That contract was never awarded, however, because the Iraqi Government would not give its consent. A subsequent contract was awarded in 1996 to Lloyds Register and included the narrower scope of responsibility and authority for authentication of goods under the 986 OFF program. The parameter of this contract were originally established by the Security Council working with the U.N. OIP and Lloyd's. In 1998 Cotecna presented the strongest technical proposal at the lowest price, and on that basis was awarded the contract succeeding Lloyds.

Importantly, the term "authentication" in this context is unique to the U.N. OIP contract. In the world of customs inspection services, the term "authentication" does not appear. This reflects the limited role under the contract of authenticating the arrival of approved and permitted shipments in Iraq so suppliers could be paid.

Under the narrow scope of the contract, Cotecna played a limited technical role in verifying that the goods entering Iraq matched the list of goods authorized for importation, and in the case of food-stuffs, assessing their fitness for human consumption. Our prepared testimony includes these details.

Conversely, Cotecna was not involved in selecting the goods to be imported, establishing the specifications of such products, selecting the suppliers, negotiating the prices to be paid, nor designating any sales commissions.

Further, Cotecna was not involved in handling any funds for the payment for any goods, but only with verifying that items that had been approved for import were delivered in Iraq.

Mr. Chairman, it is important for this committee to understand that two types of goods were coming into Iraq under U.N. authority and approval. The first set of goods entered the country under the Oil-for-Food Program pursuant to Security Council Resolution 986. In addition, a separate volume of goods, valued by some to be worth double that of 986 goods, were imported under Security Council Resolution 661. These 661 goods were the subject of private contracting, were not financed by the OFF program and, therefore, Cotecna had no responsibility or authority to authenticate or inspect them.

Under the contract, Cotecna authenticated the shipments entering Iraq under the 986 program, and was required to perform physical examination on up to 10 percent of them, with the exception of quality control testing of food basket items, as I have already mentioned. We consistently fulfilled each of these mandates.

The company was operating in a difficult and challenging physical and political environment as detailed in part 4 of my prepared written statement. Relations with the U.N. officials, the Humanitarian Coordinator for Iraq, the UNOHCI-Baghdad, were sometimes difficult, because Cotecna was required to report directly to OIP only, while UNOHCI-Baghdad was assisting Cotecna activities and inspections for logistics, visas, transportation authorizations, and complaints from the Iraqi authorities related to Cotecna inspectors. Also the relationship with U.N. humanitarian agencies was delicate and a source of tension because these humanitarian agencies adopted a more sympathetic attitude toward Iraqi and Kurdish entities. UNOHCI, for example, presided over monthly coordination meetings in Baghdad between these humanitarian agencies and Cotecna. Congestion in the port of Umm Qasr became a very serious problem, and suppliers began to complain that the government was refusing to remove containers from the port unless suppliers paid a fee to the port authority, and the government continuously sought ways to influence the authentication and payment process for financial gain.

In direct response to concerns raised by Cotecna to U.N. OIP, this process stopped and the congestion situation immediately eased. Iraq frequently exerted pressure on Cotecna to resolve or retract authentication. Cotecna was directed under the contract to refer all such matters to U.N. OIP New York, but this did not alleviate the pressure from the government, particularly in Umm Qasr.

Mr. Chairman, Cotecna has consistently performed its limited technical role in the authentication of goods under the 986 OFF Program under difficult physical and political conditions. In so doing, the company fulfilled its contractual obligations as established by the U.N. Security Council. There were problems, and many. The company reported those problems. We have sought to cooperate with the subcommittee and have provided documentation of those communications to you.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions members of the subcommittee might have. I would respectfully ask that my full statement be included in the

record along with a letter I sent to you on October 1 regarding an article that appeared in the New York Post.

Mr. SHAYS. Your letter and all of your statements will be in the record in their entirety. Without objection, that will happen.

[The prepared statement of Mr. Pruniaux follows:]

Prepared Statement of ~~André B. Pruniaux~~
U.S. House Committee on Government Reform
Subcommittee on National Security,
Emerging Threats and International Relations

5 October 2004

Mr. Chairman, distinguished Members of the Subcommittee, my name is André Pruniaux. Since 1998, I have been employed as Senior Vice President of Cotecna Inspection, S.A. ("Cotecna") in Geneva, Switzerland. I sincerely appreciate having the opportunity to appear before the Subcommittee today to clearly establish for the public record the limited technical role and performance of Cotecna as a contractor under the United Nation's Oil-for-Food program.

Mr. Chairman, my primary duties at Cotecna consisted of managing operations in Africa and the Middle East, as summarized in my curriculum vitae, which has been presented to the Subcommittee as a part of my prepared statement.

My statement today will cover four main topics:

- (1) How Cotecna won the Oil-For-Food ("OFF") contract;
- (2) What role Cotecna did and did not play in the OFF process, and how the OFF contract therefore differed from Cotecna's other similar contracts;
- (3) What challenges Cotecna encountered, and how Cotecna and the United Nations ("UN") addressed them, including legal, ethical and due diligence procedures Cotecna followed; and
- (4) What changes to the OFF programme's structure might have better prevented Iraqi manipulation.

At the outset, I believe it is important for the committee to understand that Cotecna's duties under its contract were limited to verifying that goods entering Iraq matched the list of goods authorized for importation, and in a limited number of cases to assessing the quality of the goods. Cotecna was not involved in selecting the goods to be imported, establishing the specifications of such products, selecting suppliers, negotiating the prices to be paid, or designating any sales intermediaries or sales commissions. In addition, Cotecna was not involved in handling any funds for the payment for any goods, but only with verifying that items, which had been approved for import, had actually been delivered.

My main point will be that Cotecna played a limited, technical role, albeit a difficult, dangerous and important one, and that Cotecna deserves high praise for its performance. I will seek to correct the public record that has been so misinformed and distorted.

(1) How Cotecna won the OFF contract:

On 9 October 1998, the UN issued a Request For Proposals (“RFP”), addressed to several companies, including Cotecna, for a six-month contract to provide inspection services supporting the OFF programme.

Cotecna had submitted a similar proposal previously, in 1992, at which time the UN had selected Cotecna. Cotecna and the UN did not negotiate and sign a contract following Cotecna’s 1992 selection, however, because Iraq rejected the proposed programme.

Cotecna had submitted yet another proposal in August 1996, in response to a July 1996 UN RFP. At that time, however, the UN selected another company, Lloyd’s Register.

On 2 November 1998, Cotecna submitted its proposal in response to the UN’s October 1998 RFP. Cotecna based its submission on proposed authentication procedures as set out in the RFP, Cotecna’s own Information Technology (“IT”) programme and telecommunication equipment, its staff (mostly inspectors coming from its African, Asian and European affiliates and agents), and the public information available on the OFF programme.

In early December 1998, the UN narrowed the list of respondents and invited Cotecna and another company for direct interviews to detail their proposals, respond to UN queries, etc. Cotecna, it was understood, had submitted a strong technical proposal at the lowest price.

The UN chose Cotecna on the abovementioned basis and invited it to enter into preliminary negotiations with the UN during December 1998. The UN then had Cotecna come to New York City for final negotiations (28 to 30 December 1998) and for contract signature (on 31 December 1998). Contract performance started on 01 February 1999.

(2) What role Cotecna did and did not play in the OFF process, and how the OFF contract therefore differed from Cotecna’s other similar contracts:

Cotecna’s UN-OFF contract was limited to the authentication of goods, imported under the OFF programme and entering Iraq. As stated in the UN’s October 1998 RFP and Cotecna’s December 1998 contract, the UN’s Office of the Iraq Programme (“OIP”) implemented authentication procedures as required by Security Council resolution 986. Such procedures required documentary control at three land border posts and at the Port of Umm Qasr.

The different contracts that Cotecna signed with the UN clearly define Cotecna’s role in the OFF process. I would call your attention particularly to articles 3, 4, 5 and 6 of Contract PD/CON/324/98 dated 31 December 1998 and articles A.3 and B.4 of Contract PD/CO144/01 dated 15 August 2001 (as well as various amendments to these two basic contracts), copies of which I believe have been supplied to the Committee. The contracts foresaw certain

“traditional” inspection techniques, mostly related to food supplies that arrived in bulk at the Port of Umm Qasr and that laboratory analysis would confirm was fit for human consumption (“FFHC”). In other ways, though, Cotecna’s role was “untraditional.”

I will provide more details about Cotecna’s role later, when I address certain strengths and weaknesses in the authentication process. For now, I would note that Cotecna’s OFF Contracts were particularly tough for the contractor (Cotecna) and imposed severe obligations, heavy (standard UN) general conditions, and very limited resources and support for Cotecna in case of evacuations, medical and security assistance, etc. Cotecna and its staff of inspectors had significant previous experience and references in working in remote, desert conditions and in controlling land border posts and port facilities, inspecting “sensitive” imports (such as oil products), in such developing countries as Niger and Chad. The OFF programme, however, was Cotecna’s first involvement in a sanctions programme even though it had experience in commercial inspections in Saudi Arabia and elsewhere in the region also under difficult conditions.

(3) What challenges Cotecna encountered, and how Cotecna and the UN addressed them, including legal, ethical and due diligence procedures Cotecna followed:

The general working and living conditions for Cotecna inspectors were very harsh, and the environment hostile. Inspectors were awarded 15 days leave for every two and a half months of working on the sites. Cotecna and its inspectors encountered major problems in implementing its responsibilities under the contract. Among other challenges, the company:

- Had no insurance coverage for Cotecna’s capital investments in Iraq and, accordingly, no ability to recover any money after the war destroyed certain inspection sites and caused equipment to be looted, documents lost, etc.;
- Has had to bear high insurance costs, including recently kidnapping insurance, to cover inspectors;
- Has borne the cost of expensive security measures, requiring that Cotecna obtain and maintain top quality equipment and special facilities for transportation, water, power, cabins, etc.;
- Has had to carry tremendous telecommunications service and equipment expenses for the professional and personal use of our inspectors;
- Has been faced with providing and maintaining inspection equipment under the most extreme and, often, unforeseen conditions;
- Has been challenged with handling the administrative management of inspectors (leaves, salaries, dismissing, hiring, authorizations from OIP, etc.);

- Continues to successfully manage a highly diverse staff—some 30 nationalities—in the face of sickness, accidents, discipline problems and cultural tensions, both internal and with the Iraqis;
- Had to navigate Cotecna’s delicate web of contacts with UN’s Office of the Humanitarian Coordinator for Iraq (“UNOHCI”), Iraqi authorities, port officials, Iraq’s Ministry of Trade (“MOT”), to process visas, requests for dismissal, etc.;
- Had to maintain a positive working relationship with the UN Iraq-Kuwait Observation Mission (“UNIKOM”), for help during accidents and evacuations, and with Kurdish authorities (as well as with the Jordanian and Turkish officials);
- Had to deal with direct pressure from Iraqis;
- Had to provide its employees with the tools and training to survive extreme desert conditions, which sometimes poisoned the water and required organized catering;
- Had to deal with heightened dangers such as shootings, sandstorms, dangerous driving, and even camels and snakes – all of which made evacuations and the rotation of inspectors between sites difficult, as 1,000 kilometres separated Amman from Baghdad (all transportation in Iraq had to go through Baghdad); and
- Finally, had to deal with an inherited disarray of OFF records, and to respond appropriately when carriers presented incomplete or erroneous entry documents.

Faced with these challenges, Cotecna exhibited the highest degree of professionalism and followed all appropriate legal, ethical and due diligence procedures. Cotecna is a leading inspection companies and as such is a member of the International Federation of Inspection Agencies (“IFIA”) and adheres to its code of obligations and best practices. Cotecna is also International Organization for Standardization (“ISO”) certified. Cotecna properly enforced Standard Operating Procedures for UN contractors and wrote, distributed, implemented, and audited its own Specific Operating Procedures (“SOPs”) for each site. Cotecna inspectors were required to rigorously follow Cotecna’s detailed and highly specific Field Inspection Manual (FIM). Cotecna issued and regularly updated these confidential administrative procedures.

Generally, I would say that the UN also responded appropriately to the above challenges. When I describe authentication procedures later in my statement, I will discuss Cotecna’s coordination with the OIP, which I would characterize as fair. Meanwhile, relations with the UNOHCI were sometimes delicate, because Cotecna was required to report directly to OIP only, while UNOHCI-Baghdad was assisting Cotecna for logistics, visas, transportation authorizations, and complaints from Iraqi authorities related to Cotecna inspectors (discipline, behaviour, etc.). When receiving messages from Iraqi authorities regarding Cotecna’s authentication activities, UNOHCI passed them to Cotecna in a way that often reflected a sympathetic attitude toward the Iraqi complaints or requests. Finally, dealing with UN-agencies was always a delicate task and a source of tensions, because these humanitarian agencies adopted a more sympathetic attitude

towards Iraqi and Kurdish entities. In direct response to concerns raised by Cotecna, UNOIP arranged for monthly coordination meetings in Baghdad with the various agencies and Cotecna.

(4) What changes to the OFF programme's structure might have better prevented Iraqi manipulation

Under the terms of its UN contract (from 01 February 1999 to 21 November 2003), Cotecna maintained between 54 to 67 inspectors at five entry points located on Iraqi territory at the borders with Turkey, Syria, Jordan and Saudi Arabia (first opened in November 2002) and at the sea port of Umm Qasr in the Persian Gulf. Umm Qasr operated on a 24-hour basis, whereas the land border inspection sites mirrored the opening hours of the individual border crossings. The UN required suppliers to present all goods approved under the OFF programme for authentication by Cotecna at these entry points. To assist in the authentication process, the OIP in New York supplied Cotecna with a live copy of the OFF database. The OFF database tracked each contract via a unique reference number referred to as the Comm. (communication) number. Before the export of goods, suppliers were issued an approval letter by OIP referred to as the O.C. (Official Communication) letter. The O.C. letter specified the point of entry (as stated by the supplier in its application to OIP), the list of goods to be shipped (item by item) and the date of validity of the approval letter, generally one year from the date of issuance.

Importantly, Cotecna had no mandate to inspect trucks or board vessels to ascertain whether the goods on board were approved for export to Iraq pursuant to Security Council Resolution 986 ("986 goods"). In addition to 986 goods, a vast stream of "661 goods" approved by the Security Council 661 Committee for export to Iraq, were the subject of private contracting and were not financed by the OFF programme; therefore Cotecna had no responsibility nor, more important, authority to inspect them.

Upon presentation of goods for authentication at the entry points (the five sites), Cotecna verified that the Comm. number concerned had been approved, that a valid OC letter had been issued by OIP, and that the goods were presented at the appropriate point of entry. Suppliers routinely presented goods at the wrong entry point or with expired approval letters. Cotecna sought guidance directly and only from OIP in all such cases. OIP adopted a facilitative approach to such problems, exhibiting a reluctance to slow the pipeline of humanitarian deliveries to Iraq. OIP therefore typically instructed Cotecna to proceed with the authentication process while OIP arranged with the supplier and relevant permanent mission to the United Nations to change the point of entry or extend the validity of the approval letter in slightly slower time.

Once satisfied that the goods had a valid approval letter, Cotecna verified that the quantity and type of goods listed on the database/O.C. letter matched the bill of lading, invoices, packing lists and any other relevant documentation presented at the sites. All 986 goods presented were authenticated. Cotecna authenticated by replicating shipment inspection reports to OIP and the UN Treasury via the OFF database. Receipt of the shipment authentication report triggered an instruction from Treasury to BNP Paribas to release funds from the Iraq account reserved against the letter of credit.

Cotecna performed physical examination on bulk or containerized imports in connection with approximately 10 per cent of consignments (in number). In addition, Cotecna drew samples of all food stuffs (mostly at the Port of Umm Qasr) and deferred authentication until laboratory analysis confirmed fitness for human consumption. This methodology was agreed with OIP, which in turn briefed the 661 Committee. OIP did not require Cotecna to perform quality control testing other than in connection with food basket items. On occasion, however, carriers presented goods for inspection that had obviously been damaged in transit. Cotecna referred all such cases to OIP. According to my recollection, these cases were amicably resolved after liaison between OIP, the relevant permanent mission to the UN, and the supplier, and the suppliers eventually agreed to withdraw the shipments and to send replacement goods.

Laboratory analysis occurred at Cotecna's laboratories in Amman (since crossing the Turkish, Kuwaiti, Syrian and Saudi Arabian borders was strictly forbidden). This obligation delayed the results of the analysis by an average of 7 to 10 days. The working relationship between Cotecna and OIP was close and continuous, and Cotecna sought guidance in every case where Cotecna observed a deviation from normal practice. Cotecna did not withhold authentication in connection with any consignment unless OIP specifically instructed this, and most cases were eventually resolved. Problems routinely arose when inexperienced suppliers or transporters neglected to present 986 goods for authentication at the sites and when the error came to light only after the carrier had delivered the goods to the receiving Ministry (mostly in Baghdad) and the suppliers sought payment. In such cases suppliers had to return the goods to the entry point for inspection; Cotecna inspectors were dispatched to inspect the goods in situ; OIP liaised with the Ministries in question to receive confirmation of receipt of the goods; or, if through documentary evidence Cotecna was satisfied that a prima facie case existed that the goods had been imported, OIP authorized Cotecna to authenticate without inspection. The latter course of action mostly applied to goods imported on the eve of the war in Iraq that Cotecna could not authenticate at the sites after the evacuation. The 661 Committee approved this measure. Notably, Cotecna had the authority to withhold authentication but not to detain goods.

The Iraqi Ministries complained continuously that the authentication process favored the supplier, often claiming that they had received substandard goods or delivery shortfalls. Iraq frequently exerted firm pressure on Cotecna to withhold or retract authentication. OIP directed Cotecna to refer all such matters to the UN, but this did not alleviate the pressure from the Government of Iraq ("GOI") upon Cotecna, particularly in Umm Qasr. It was the policy of the UN that such matters were in fact commercial disputes between buyer and seller, which the relevant parties should address through normal dispute resolution procedures.

For example, in May 1999, the Iraqi Minister of Trade, accompanied by more than 20 heavily armed guards, approached Cotecna inspectors outside of the camp. He informed them that Iraq would no longer allow discharge of any vessel before completion of analysis in Baghdad. This was an aggressive show of force that left many inspectors in Umm Qasr badly shaken. This aggression and intimidation continued and reached a peak in 2001. These actions coincided with a significant increase in traffic leaving the port, which we reported to OIP.

The Government also lobbied strongly with Cotecna and OIP to introduce a deferred authentication period to facilitate quality control testing by the Ministries. Cotecna and OIP

vigorously resisted such a measure, because it might have permitted the Ministries to influence the payment process by requesting payment of illicit fees by suppliers to ensure that quality disputes were resolved and that payment might go forth. OIP and Cotecna repeatedly and firmly requested the Iraqi Ministries to appoint commercial inspection companies in their contracts with suppliers. The UN specifically asked Cotecna not to act as a commercial inspection company for the OFF imports into Iraq. Cotecna strictly honored this obligation.

The Government continuously sought ways to influence the payment process. For instance, for a period in 2001 OIP instructed Cotecna not to authenticate goods until a carrier had physically removed them from the port of Umm Qasr. Within a short period of time congestion in the port of Umm Qasr became a serious problem, and suppliers began to complain, off the record, that the Government was refusing to remove containers from the port unless the suppliers paid a fee to the port authority. In other words, the Iraqi authorities began to influence the authentication/payment process for financial gain. After discussions with OIP, this process stopped, and the congestion situation immediately eased. Despite the pressure that certain Iraqi officials brought to bear, Cotecna managed to maintain a fair working relationship with Iraqi officials at the entry points and within the Ministries. In fact, inspectors did not feel under particular threat before the war in Iraq.

Cotecna occasionally experienced delays in receiving guidance from OIP or received advice that did not precisely correlate with earlier stances taken by OIP, but, in general, an occasional lack of coordination and some disagreements between various UN offices did not affect the authentication process and the execution of the contract. Cotecna did experience some delays in receiving payment, through a lack of coordination between the different UN entities (UN-OIP, PD, OLA) and often had to adopt to agreed changes, in good faith, before the UN managed to adjust the contract accordingly. The UN also occasionally neglected to make formal written changes to the contract to reflect agreed procedures in the field and a breakdown in communications between departments coupled with the war in Iraq resulted in the UN failing to reimburse Cotecna fully for the construction of a site in Ar'ar. These were not, however, matters that affected Cotecna's performance in Iraq.

Since the inception of its contract in Iraq Cotecna has authenticated the arrival of goods in Iraq with a total of \$29.2 billion, of which no single authentication has been proven to be erroneous. Criticism of Cotecna normally stems from ignorance as to the limitations of our mandate. For instance, Cotecna had no involvement at all in the contracting or approval process or the valuation of the goods shipped, and yet blame has been apportioned by some in the media to Cotecna regarding the alleged over-pricing of goods. Cotecna has also received unfair criticism for not inspecting every truck or vessel entering Iraq when, as stated above, the mandate was reactive rather than proactive and Cotecna had no authority to inspect all goods.

OIP appeared to make every effort to facilitate the flow of goods while restricting any influence of the Government of Iraq over the payment process which might have involved coercing suppliers to pay illicit fees to ensure timely payment. It is my opinion that Security Council resolutions 661 and 986 relied upon member states to police exports through their export licensing arrangements rather than providing adequate security at the borders of Iraq. Since Cotecna had no authority to search any vehicle or vessel other than those presented for

inspection, weapons or banned products could simply have been transported across the borders since no mechanism for security inspection existed other than the multinational maritime interception force operating in the Persian Arabian gulf. It is also my opinion that the Security Council could have adopted a resolution extending the role of the Independent Inspection Agent to include physical inspection of all imports to ascertain that only approved goods were entering the country. But, again, such was not the case.

This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions members of the Subcommittee might have.

[CV APPEARS ON NEXT PAGE]

CURRICULUM VITAE

NAME: André E. PRUNIAUX
NATIONALITY: French
LANGUAGE: French, English, (Spanish/Italian/German)
CURRENT POSITION: Senior Vice President – Africa and Middle East
 Cotecna Inspection S.A., Geneva – Switzerland

GENERAL QUALIFICATIONS

- > Chemical Engineer – Ecole Nationale Supérieure Génie Chimique, Toulouse, France, (1963)
- > Licence in sciences, chemistry and mathematics, (1962)
- > Post graduate research (Doctorate) in nuclear engineering – Centre d'Etudes Nucléaires de Cadarache, France (1964-1966)
- > Courses in Business Administration, Washington D.C. (USA), (1968-1969)

BRIEF CAREER HISTORY

1965-1968	Commissariat à l'Energie Atomique, France; various posts
1968-1969	American Chemical Society, Washington, D.C., USA; processing of data, scientific journalism
1969-1971	American Chemical Society, Frankfurt, Germany; Bureau Head
1971-1974	Oronzio de Nora Group, Milan, Italy; Manager of chemical and electro-chemical projects
1974-1987	Universal Engineering and Finance Corporation (UNEFICO), Geneva, Switzerland (subsidiary of Swiss Bank Corporation). Head of African activities, Marketing Director, General Manager
1987-1988	Société Générale de Surveillance, Geneva, Switzerland; Manager, Manufacturing Industry Department
1988-pres.	Cotecna Inspection S.A., Geneva, Switzerland, Senior Vice President

SPECIFIC EXPERIENCE IN TRADE SURVEILLANCE

- > Manager with SGS in the Manufacturing Industry Department
- > Overall Management of full inspection contracts for the Governments of Nigeria, Kenya, Benin, Pakistan, Comoros, Niger, Togo, Ghana, Tanzania, etc.

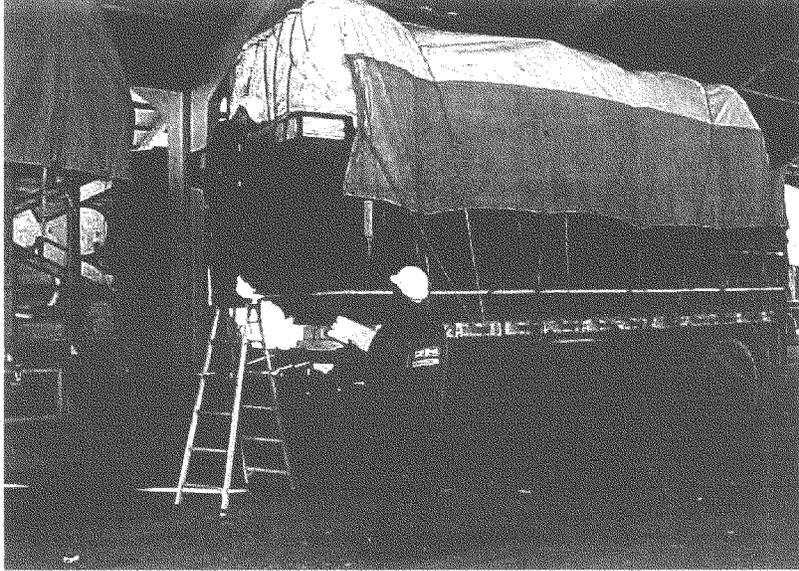


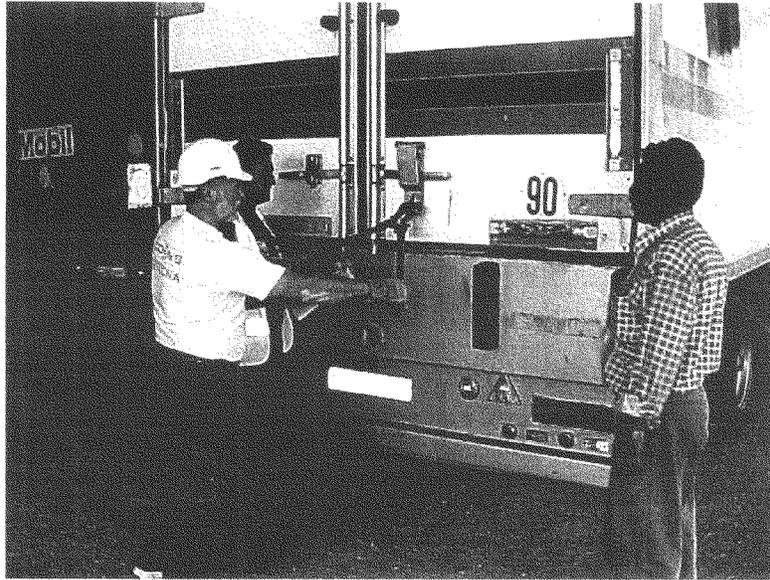
COTECNA

22nd July 2004

INSPECTIONS' PHOTOS

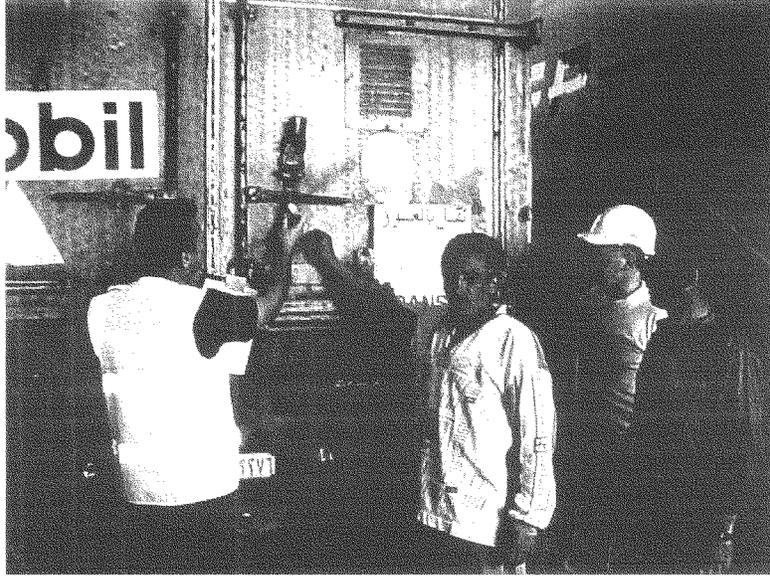
PHOTO N°	LOCATION	DESCRIPTION
1	AL WALEED	Physical Inspection Shed
2	AL WALEED	Refrigrator truck (medicin)
3	DUBAI	Inspection at sea (Launch)
4	DUBAI	Inspection at sea (Launch)
5	UMM QASR PORT	Inspection Seal Verification
6	AL WALEED	Inspection Seal Verification
7	ZAKHO	General Cargo Tires Inspection
8	ZAKHO	General Cargo Tubes Inspection
9	DUBAI	Offshore Inspection (Rice)
10	DUBAI	Offshore Inspection Approaching Vessel
11	ZAKHO	Truck - General Cargo





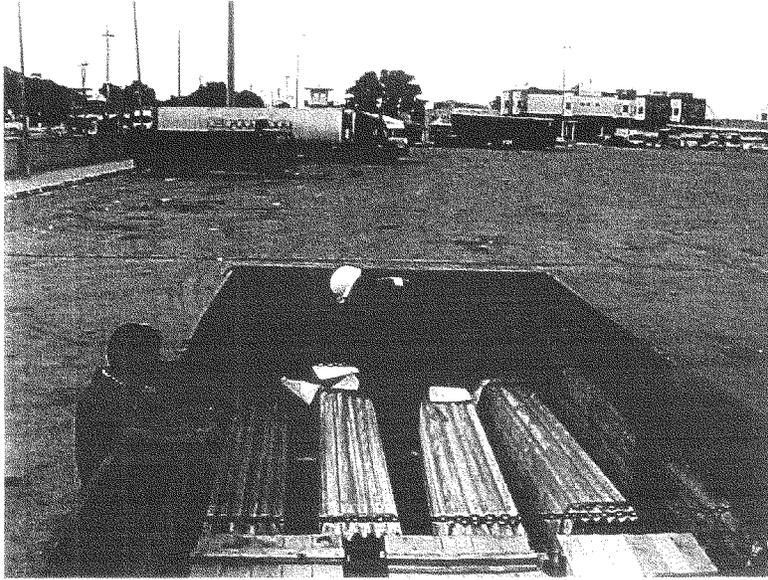


















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Subcommittee on National Security, Emerging Threats,
and International Relations,
Committee on Government Reform

Tuesday, October 5, 2004, 11:00 a.m.

**Cotecna
Inspections S.A.
Documents**

"Kaith, T" <kaith@baghdadforum.com> on 12-02-2004 11:39:21 AM
To: "A. Coine" <acoin@un.org>
Cc: "Frank Caro" <carof@baghdadforum.com>; "Wardick, James (CV)" <wardick@china.centrcom.mil>
Subject: RE: FM: UN No. SIAC.252002989/CC.1001883

From: "Kaith, T" <kaith@baghdadforum.com>
Sent: Friday, February 11, 2004 11:39 AM
To: "A. Coine" <acoin@un.org>; "Frank Caro" <carof@baghdadforum.com>; "Wardick, James (CV)" <wardick@china.centrcom.mil>
Subject: RE: FM: UN No. SIAC.252002989/CC.1001883
Importance: High

Hi Tom,

THOMAS C. KEITH
DIRECTOR, OIL FOR FOOD COORDINATION CENTER
CPA BAGHDAD
PHONE: 703-270-0487, c. 914-366-3028
EMAIL: keith@baghdadforum.com

-----Original Message-----
From: A Coine [mailto:acoin@un.org]
Sent: Friday, February 11, 2004 8:38 PM
To: Kaith, T
Cc: "Salih Joe" <joesalib@coincsa.com>
Subject: Re: FM: UN No. SIAC.252002989/CC.1001883
Importance: High

Hi Tom,

I spoke with Gazali. Tommasi and I on this topic (twice, in fact).

My personal preference would be to have the trucks return to the border as well. If for technical reasons, then I foresee that this sort of thing will happen. I think the inspectors should be able to get away with it without causing the trucks to be damaged. And, as you mentioned, there is a need for some abbreviated 3rd party to confirm arrival of goods in general, and specifically with this shipment. I spoke to our inspectors out at the border after talking to Gazali, and learned that there is a bit of a "tagging mess" just east of the Syrian Customs port in the "no man's land" in between the two ports. It is a routine thing for trucks to return as far as that location (when they have neglected to follow some procedure (either ours or one of the gov't agencies) before leaving Syria.

Our inspectors have been allowed into that staging area before without any

Pruniaux André
 From: Pruniaux André
 Sent: Thursday, February 12, 2004 1:40 PM
 To: Saliba Joe
 Subject: RE: FV: UN No. S/CAC.252002986/OC.1001983

File Arabic Ho
Sym - Demu
R. J. J. J.
UNIMIC

Joe,
 Thanks. Which port area is Ron referring to?
 André E. Pruniaux

-----Original Message-----
 From: Pruniaux André
 Sent: Thursday, February 12, 2004 12:27 PM
 To: Pruniaux André
 Subject: FV: FV: UN No. S/CAC.252002986/OC.1001983
 Importance: High

André,
 Your information. I will keep you posted.
 Joe Saliba

-----Original Message-----
 From: Pruniaux André
 To: Keith@egididatum.com
 Cc: "A. Colne" <colne@md.un.org>; Gary "gnort" <gnort@md.un.org>; James "swatcki" <jos.saliba@md.un.org>
 Sent: 02/20/2004 10:09 AM
 Subject: RE: FV: UN No. S/CAC.252002986/OC.1001983
 Importance: High

Hi Keith,
 I can confirm that all traffic has been cleared at the Syrians since morning. Our inspectors report that the trucks are now lined up to beyond the port area. Nobody is giving us any explanations. Perhaps US Embassy has someone who has this information, or can make enquiries at a senior level.

Any inspection requires on authentications will occur in 15 days time. We will be back on processing them. Doing inspections right now presents challenges as well, as the port area is already apparently filled to capacity. We would have no way of knowing if an inspected truck did actually enter Iraq, or turned around and went home.

Sorry to be the bearer of bad news.
 Warm regards,
 Ron

HA010637

18 inspectors always available therefore total is 24 inspectors

AI World

15 inspectors

Quiet border, goods coming mainly from Syria. Mainly night work.
 Goods: Wheat, salt, all produced in Syria or some are imported through Lutzabic (Also some Lebanese products)

General information
 Sampling - always - analysis - case by case (with microscope)
 There is no support in Zakho
 If goods do not fit for human consumption & can not be authenticated.
 Loyda is proceeding to benchmark with export. Fully inspecting export of 9 main food products imported: Wheat / sugar / Rice / pulses / Peas / Soy powder / vegetable gas / Adult milk and cheese / toilet soap liquid.
 Loyda is hired 2 IT people in Iraq for all sites.

Joe

Notes:

- Cds of Loyda agent suggests work within will be completed after contract signature
- Loyda provides also well as UN operations manual will also be available to water contract signature
- The UN ops are in excellent condition, well maintained and well equipped - Catering is fine
- Security are not necessary. Petroleum supplies - additional permits - Some custom inspectors should have experience in electricity contracts (to verify progress reports of each project as the known all Baghdad)
- # 18 units related to (text on contract)

(6)

HA006407

Reciprocally several OC letters one ship (Ex containers)
Goods can be substantiated daily when ship is fully unloaded.

11 inspectors already present therefore total of 15 Lloyds inspectors if necessary.
Lloyds camp is located in New port (5 from Basrah)
Inspectors can have access to UN/IAI shops and areas.
Site can only be reached by Amman
Food is provided by Gulf catering
Camps are prefabricated buildings manufactured in Jordan and Lloyds rents some local houses. *all camps are in a valley of castles and include bas, TV, facilities, etc.*

2 persons in each cabin (Bathroom)
One mess, and one office for leisure.
Local water can not be consumed.
Generator backup in case of electric national network failure.
Svt phone are necessary as network is not reliable enough
Kuwait mobile phones would work in the area (But not allowed)
3 cars available.
All Data is UN property, all containers come from Dubai where they are checked by UN inspectors. *no control in Dubai and Iraq*

Manager: Senior Swedish customs officer. Excluded (When on leave, he is replaced by another Swedish)
Regular Connection with UN and Ministries
Administration tasks (Visas, permits...)
Occasionally performs inspection. Certain trucks may escape control at Al Waleed by Trebil and arrive in Baghdad with no authentication. The manager will analyze and understand what happened. He will call an inspector from Trebil and communication will be performed. *no Trebil*

Monthly meetings held in Baghdad with all team leaders, Chief LO and UN units involved
Min-M Staveland is available / Or UN phone and E-mail can be used
Lousa mail is available in Baghdad
Ons car is available in Baghdad *no secretary*

In Iraq there are 4 boats
Boats are located in Al Basrah Hotel (around 40m/ night)
Boats are called Canal Boat
It is prohibited on Iraq territory to have local desks, recreations, etc...
bthci

Trebil
This site is only a border, there is no town.
Camps are prefabricated houses from Jordan. Gulf Catering
Satellite TV, gym, ... Are available for entertainment
Inspection are performed by Iraqi customs and afterward by IIA.
More problems at this site
4 cars

HA006406

14 inspectors always on site plus replacement during holiday : Total 18
Turkish currency.
Mainly Kurdish trucks are used to inspect with goods of Turkish origin.
OC letter must be provided to IIA at Zabho with CHR transportation documents
packing list and driver name and address. *at Zabho Iraq*

After authentication goods are escorted from the Turkish border to Zabho Iraq
border 70km from Zabho after crossing the Kurdish territory. *at Zabho Iraq*
Lloyds has Swedish customs officers team leaders : some inspectors are Swedish and Norwegian. *at Zabho Iraq*

Trucks are not always unloaded and they are taking samples. Count only high values goods (ex : Generators, compressors...)
Samples are sent to Amman for analysis.
Lloyds owns 2 cars in Zabho (one local, one for spare dispatch, one to escort to Iraqi border). Cars are driven by Iraqi drivers (50 USD/ month)
Gulf catering is providing food.
Prefabricated and local houses are used by Lloyds
This site is mostly day time work.

Some communication is by satellite.
Sat phone Back up systems are needed in case of breakdown.
2 x phone per site are needed, one for voice and one for data.
Temperature is hot in summer and cold in winter. Heater and air conditioner are needed.
Lloyds has excellent contacts with UNICEF in Iraq.

Uman Qsar
3 seaports
Very hot, up to 62 degrees, very busy, extreme conditions.
Main one is New port.
Goods : Rice (Vietnam), some origin (Iraq, BR, Yash, pumps, spare parts in containers). *get*

Silo port
Boats : With USSR, US, boats are unloaded and loaded on trucks
Boats are equipped with generators
Boats are equipped with pumps
Boats are equipped with pumps
Boats are equipped with pumps
Boats are equipped with pumps

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Boats are equipped with pumps

HA006405

Felicy

--- Forwarded by Felicy JohnstonOIP on 2/21/2003 04:50 PM ---

Felicy Johnston
 T. Leach, Peter S.
 (O-4) -> jmonro@onsa.com; mib@UNMMLHJB
 01/02/2003 12:50
 -> spmston@un.org -> Von Trench, Robert L. (O-4)
 -> vontrsch@onsa.com; mib -> Wayne, Victoria P. (SES)
 -> waynev@onsa.com; mib -> Subject: RE: 2 Tig Boats
 with Comm# 702091 LCAU72825 (Document link: Felicy Johnston)

O'cours and thank you - Pete
 Best
 Felicy

"Lennon Peter S.
 (O-4)"
 L. O-4 -> vontrsch@onsa.com; cc: "Von Trench, Robert
 L. O-4" -> vontrsch@onsa.com; mib -> "Wayne, Victoria
 P. (SES)"
 -> waynev@onsa.com; mib -> Subject: RE: 2 Tig Boats
 with Comm# 702091 LCAU72825
 2/10/2003 12:14
 PM

Finally spoke with John Glaghan today regarding this issue. He's been
 trying to track down the Captain of the Port to verify the claim, but
 couldn't find him. I'll try to get a hold of him later. I want to be in Umm Qasr
 before the weekend. I'll be in Umm Qasr Tuesday and Wednesday
 for a few days. Thanks, Pete

From: Felicy Johnston [mailto:felicyjohnston@un.org]
 Sent: Wednesday, October 15, 2003 4:40 AM
 To: Lennon Peter S. (O-4)
 Subject: RE: 2 Tig Boats with Comm# 702091 LCAU72825

Dear Pete
 "Refer to our earlier correspondence concerning the tug boats, please see
 the attached report from Cobocra regarding recent conversations this team
 member (Dimit) had with the supplier. The Deputy manager of the port and

HA006136

Attached below is your final draft of our letter to the Committee which
 provided them a prima facie case that the goods were delivered to
 the port. We are not required to have confirmation of arrival from CPA for
 the goods to be considered for the ad
 hoc system and for goods entering Umm Qasr under the revised
 Authentication system.

I am naturally concerned that the agent lied to us and that we have no idea
 where the boats are at present but we do appear to have a strong case
 that the goods were delivered as we had for the other stranded cases.

The supplier is in a state of rising hysteria and claims to have been
 losing \$3,000 per day for 7 months. I am trying to avoid deals from the
 number and telephone some 50 times a day which is very tiring. They are
 dispatching a further agent to meet with us on Wednesday in the presence of
 the mission.

I would very much appreciate if you can give some consideration as to what
 we can do to help the supplier. We are currently in a very difficult
 getting any meaningful assistance from CPA I fear. We can discuss it on
 Monday if you like.

My thanks
 Felicy

(See attached file: Authentications-stranded-030503.doc)

--- Forwarded by Felicy JohnstonOIP on 2/10/2003 07:22:22 ---
 "Lennon Peter S. (O-4)"
 P -> jmonro@onsa.com; mib -> Felicy Johnston -> spmston@un.org
 2/10/2003 07:15 AM
 Subject: RE: 2
 with Comm# 702091 LCAU72825

Felicy, just return to the port. I discussed this with John Glaghan
 and he knows about these vessels. Where do we go from here?
 Pete

From: Felicy Johnston [mailto:felicyjohnston@un.org]
 Sent: Wednesday, October 22, 2003 11:55 PM
 To: Lennon Peter S. (O-4)
 Subject: 2 Tig Boats with Comm# 702091 LCAU72825

Dear Pete
 I anxiously await your feedback on the tug boats.
 The supplier and his representatives are over calling me hysterically
 morning, noon and night and claim to be incurring huge interest charges
 on a daily basis.
 Your assistance will be greatly appreciated.
 Best regards

HA006134

document and in the light of the available information, available to him, to make an independent decision on authenticating the arrival of the big boats in Iraq. Thanks, FZ

Friday, 24/10/2003 05:04 PM
To: Farid Zaiti@OIP, Denis Moubou@OIP@OIP
Cc: Karim Hagg@OIP@OIP
Subject: Urgent - Sit rep on the big boats

Dear Farid

As per the attached e mail, CPA is unable to add anything to the equation and I am unsure how to progress.

Latest is that the supplier submitted a letter to us in Arabic the translation of which is as follows:

Greetings,

I hereby inform that the following has been received:

Two Tug Boats with Spare Parts
2 Tug Boat: 4000 HP with Spare Parts from Peromont Corporation at Umm Qasr
2 Tug Boat: 4000 HP with Spare Parts from Peromont Corporation at Umm Qasr
720225 are we assure that the former Iraqi Army has used the Tug Boats during the war.

Engineer Abdul Razaq Al Kalah
General Manager
General Manager
(Responsible for Iraq Ports
(Responsible for Iraq Ports
(Responsible for Iraq Ports

Specialist in the field of General Manager
Aziz Roustem Mohamed
Manager of Warehouses and Purchases
(Responsible signature)
(Responsible signature)
(Ministry of Transport and Communication)
General Company for ports (Iraq)

At a meeting between me and Mr. Mohamed al Haidi, MOU Manager at the port authority, I was informed that the supplier had indicated that Mr. Aziz Roustem Mohamed should be the appropriate person to provide confirmation of the goods to the vessel.

Because of the information from the supplier it was considered necessary to contact Mr. Aziz Roustem Mohamed.

On 10 October 2003 I met Mr. Roustem on 10 October who confirmed that the latter was genuine and that Port operations manager, Captain Ali, had received the boats.

Besides the documentation presented by the supplier in support of their claim, we have verified and written communications from the port authority that the boats were hijacked.

The supplier had employed a reliable shipping agent to handle their case. We have that it was stated in a moment of mechanics to try to speed things up and had a solidary the reserve effect.

HA006133

All the above documents, duly stamped and signed, confirm the delivery of the tugboats, with no remarks to the contrary.

I further refer to an email dated 02/10/2003, in which our then Liaison Officer, Mr. Aziz Roustem Mohamed, advised that the supplier had indicated that the boats were hijacked. I am not sure if this meeting, and that both the officials are eligible for issuing statements.

Under the above cargo files, these documents together with receipts confirm the delivery of the goods to the vessel. It is noted that there is a "prima facie" case for authentication, that the goods were delivered to Iraq. We are not required to have a confirmation of arrival from CPA for stranded goods.

One of the main issues we need to, into locate the said boats, or obtain confirmation from the port authority, that the goods were delivered to Iraq. This was not successful and the response from the Iraq officials, was that it was perhaps used the war, and/or taken by Iraq Navy, and/or sunk. These are their operations, now ours.

I note further that on an email dated 24/10/2003, a letter was submitted to me by Mr. Aziz Roustem Mohamed, stating that he had received two copies of a letter from the port authority, dated 24/10/2003, which had two officials named as: 1. Engineer Abdul Razaq Al Kalah 2. Aziz Roustem Mohamed. Both of Iraq Ports.

Therefore, with all the above information, there is a "prima facie" case that the said cargo was delivered to Iraq, under the rules of "stranded goods".

Based on all the information, written and verbal, presented to me by them, my judgement, based on the cargo being stranded in Iraq, under "stranded goods", a "prima facie" case exists for authentication of the goods. That is as I have on this, most difficult and problematic case.

Kind Regards
Hamid Alire

From: Farid Zaiti@OIP on 25/10/2003 01:28

To: Farid Zaiti@OIP, U Conn@OIP@OIP@UN-MAL-HUB
cc: coleira@go.com.jo, Pruniaux Andre, andre.pruniaux@colesca.ch, UN-MAL-HUB, Sabia, boe-ops@abcc@colesca.ch, UN-MAL-HUB, Ibero, Ibero@OIP@OIP, Karim Hagg@OIP, Jean-Pierre@OIP@OIP@OIP
Subject: Re: Urgent - Sit rep on the big boats (Document 6: U Coins (CP))

Mr. Fza, I'll meet sometime on Monday, meanwhile, I am asking Coleca if they would like confirmation, on the basis of their professional

HA006132

consignment movement reports and/or other pertinent documentation which would satisfy Coiteca to validate the claim by suppliers that their goods were delivered to Iraq, the Office of the Iraq Programme should like to proceed in support of Coiteca's recommendation to effect retroactive authentication of such deliveries, on an exceptional basis. Consignment of supplies reported to have been delivered to Iraq after 20 March 2003 will not be considered in this category.

I should be grateful if you would circulate this letter to the members of the Committee for their consideration of the approach described above, under a no-objection deadline of 27 April 2003.

Please accept, Excellency, the assurances of my highest consideration.

Yours faithfully,
R. B. H. ...
Secretary-General

UN

UNITED NATIONS NATIONS UNIES



OFFICE OF THE IRAQ PROGRAMME - BUREAU CHARGE DU PROGRAMME IRAQ

THE EXECUTIVE DIRECTOR LE DIRECTEUR EXECUTIF

REF: ED/2003/66/1

5 April 2003

Dear Mr. Chairman,

Pursuant to paragraph 8 (a) (ii) of Security Council resolution 986 (1995), paragraph 25 of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council resolution 986 (1995), and paragraph 34 of the procedures of the Security Council Committee established by resolution 661 (1990), the arrival of humanitarian supplies in Iraq must be accompanied by the independent inspection agents appointed by the Secretary-General as a condition of their receipt under letters of credit issued for purchases of humanitarian goods under United Nations 986 (1995).

On 17 March 2003, the United Nations independent inspection agents (Coiteca Inspection, S.A.) were withdrawn from the Port of Umm Qasr and on 18 March 2003, from the remaining four authorized entry points in Iraq. As a result of their withdrawal, consignments shipped under 26 contract applications, which were being delivered soon thereafter, but neither of which have been authenticated so far by Coiteca, as detailed in the attached table, of the total of 56 cases filed, 34 relate to goods consigned to the Port of Umm Qasr, 20 to Trebil and 2 to Al-Whadi.

Coiteca inspectors reported the arrival of 23 consignments and were well into the process of authenticating the other consignments but were unable to complete the inspection process due to their withdrawal. Based upon direct observations by Coiteca and/or documents which were provided by the suppliers concerned, the Office of the Iraq Programme is satisfied that the consignments under 29 contract applications, with a total value of \$19,846,000, have been delivered in Iraq. Therefore, the Office of Iraq Programme supports the recommendation by Coiteca to carry out a retroactive authentication of these 29 cases.

Yours faithfully,
R. B. H. ...
Secretary-General

With regard to the remaining 27 cases worth a total of \$37,066,407.60, the Office of the Iraq Programme has requested further information and documentation. Should a prima facie case be established on the basis of customs declarations, bills of lading, receivers reports,

While I am constantly striving to improve the operational efficiency of the site, it appears as if every logical decision made by American are of the nature of "I don't know" or "I don't know how to do it". I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it". I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it". I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it".

It is the opinion that every inspector is required to do a job and that the only way to do it is to follow the instructions given by the site manager. I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it". I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it". I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it".

I would appreciate your comments. I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it". I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it". I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it".

CONFIDENTIAL

Markovic Tanis
 From: U Olin [mailto:uolin@unl.edu]
 Sent: Wednesday, June 16, 2010 18:56
 To: 'Tanis, Markovic'
 Subject: CONFIDENTIAL

As discussed previously my views on the mission, Apologies for a lengthy report but I feel it cannot be shortened. I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it". I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it". I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it".

Since I have been TI, I have submitted the following: I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it". I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it". I have been in the site for over 10 years and I have never seen a decision made that is not based on a "I don't know" or "I don't know how to do it".

CONFIDENTIAL

COTECNA INSPECTION S.A.



P.O. Box 6155 - 1211 Geneva 6
Tel.: (004122) 940400 Fax: (004122) 940426



UN SCR 986 PROGRAMME

**Minutes of the meeting held in Geneva, 29th December 2000
COTECNA S.A./UN SCR 986 Programme contract - Iraq**

Participants:
Robert Massey Chief Executive Officer
André E. Prunhaux Senior Vice President
Mark Adamovic Contract Manager
Joe Saliba Post-Contract Manager

Meeting was to emphasise and clarify in detail the scope of work, reporting, information, field, personnel, technical and procedures.

- A- Administration: Contract, Sites structure - Contract Manager (Amman) Report to AEP
- Assistant Contract Manager (Geneva) Report to AEP
- Liaison Officer (Baghdad) Report to Liaison/Geneva
- UN SCR 986 Deputy TL and Acting Deputy TL

(Sites) Report to Amman/Geneva.

- B- Field: How sites are run smoothly i.e. reporting, communication, personnel, IT and communications.

C- Recent correspondence from UN-OP-ANY to UN and Geneva enquiring about their goods if impounded and substantiated.

D- Complaints were made of delays in goods shipment to Iraq, in fact this was very rare. It was suggested (AEP) that a letter be faxed/ sent to whom is enquiring/complaining about Cotecna's work and a letter to be sent to OIP for their approval on the said letter.

E- UnimQar is experiencing operational delays in the port due to broken down equipment. Recent arrival of ships has created a backlog thus an average of 10% of arriving equipment is being impounded. Consequently inspector cannot take place until proper paperwork is submitted. Goods to be released and authenticated.

F- Geneva's proposals to UN-OP-ANY, the procedures have been maintained- goods are authenticated. Field they have the port (through they have been inspected earlier).

G- UN 661 committee released all applications for cranes to Iraq, virtually few of these cranes to remain in the UnimQar Port to replace the current ones.

Once goods are authenticated, sites report to OIP by signed faxes on a weekly basis unless instructed to do otherwise for a particular case i.e. (equity through a permanent mission). OIP will report to UN-OP-ANY on a weekly basis. It could take two to three weeks from the day OIP receives authenticated items to BNP releasing payments.



CO:INS Email Reference source not found.AEP - Meeting ROBERT MASSEY 29DEC 2
January, 2001

H- Email Authentication is presently running in parallel with faxing on all sites. Once it is proven accurate, sites will be instructed by OIP to switch fully to Email Authentication. The full switch is anticipated in January 01.

2- Personnel:

A- As of inspection teams in UnimQar we have 9 teams emailing two inspectors daily and whom are responsible for the allocated ship since arrival until departure. Inspectors could take one to two weeks on one particular ship with an average of 40 containers per ship. Inspectors whereas other sites have shift basis involving 4 to 5 inspectors working from the front office daily.

B- As of Dnaa shift, each site has a minimum of two people working in the evening and reporting daily and weekly.

C- OIP has agreed to have additional 8 inspectors proposed to cope with the workload on sites in Iraq. The total number of inspectors is currently 60. The number is to be increased to 68 with 21 inspectors in UnimQar. Total inspectors will be increased to 81 as of February 2001.

3- Technical and Procedures:

A- Weekly report to be copied regularly to:

B- Monthly report for Iraq. OIP to be faxed and submitted regularly to RM/AEP.

C- Copy of sites Procedures attached.

Markovic, Travis

To: Puniaux, Andre
Cc: JOHNSTON, Kelly
Subject: CONFIDENTIAL - Incident in Trebil - Gary Graboski and John Ahrens

Hi,
I have requested that those 2 respect leave take by 6/9 Month at the latest.
This was communicated verbally to Mr. Tim Nylor, UNMPCO coordinator. After giving due consideration to the "reasons" presented by HQA, Colonel Nasar decided to deny and not to sign.
These two requests are made in Ahrens or on their way to Ahrens.
They will be replaced.
This is for your information. We can discuss on the phone if you want.
Best regards,
Travis Markovic
N.E. Ahrens
or Vice President

To whom it may concern,

In regards to the false allegations concerning myself with a connection to a star of David. In trying to recall any association with this star, or of the like, it was of great surprise and confusion. The only time I can recollect even hearing the words Star of David, is in Trebil Iraq in December during the holidays. In preparation for the holidays, the camp of Trebil had some decorations for this occasion. The camp had set up Christmas lights, some paper decorations, and a Christmas tree. This tree had a tent on top made of some wood or foam and I have anything to do with it. I was completely out of the placement of the star or any thing. It was brought to my attention the next day that an outlet had some work in the office and this outlet was by the tree, in which lights were to be plugged in. I was in the liaison officer between Cudocia and the Camp staff. I was our camp manager Nasar to fix the outlet in which he said he would. After 3-4 days of this outlet not being fixed, I approached our camp manager and asked him why this job was not done. When it is normally a five-minute job. Nasar, being an electrical engineer, such a job should be very easy, and with some dissection, he finally fixed the outlet. After a number of days our back office was to be painted by the local staff. During this job, the local staff had to enter the Trebil office and move furniture, rugs etc. around the room to paint the room. During this time I noticed that our tree decoration was removed and was told by our ATDL, that the local staff did not approve of the star on top of the tree, therefore it was removed.

The conclusion is all that I can associate with the Star of David. In early January I was relocated to Zakho site by my request. It should be noted that Nasar, the camp manager in Trebil, was dismissed by the Team Leader some time in Feb. For the record I am nothing to do with the decorating of the office, the decoration of the tree, nor placement of such a star. This all that I can associate with anything to do with the term star of David or of the like.

Gary Graboski
March 4 2001

HA004407

HA004436



Date : 03 March 2001
 To : Mr Tun Myat
 United Nations Humanitarian Coordinator
 UNORCI, Baghdad
 From : Andrie E Fruiniaux
 Senior vice President - Coitena SA - Geneva
 CC : Milan Radenovic, Joe Saliba, Jean Azoufi
 FAX : 00 1 212 963 3009
 Page(s) : 1-1
 Our ref. : J003 00 S
 Subject : Star Incident - Trebil, Iraq

Confidential

Dear Mr Tun Myat,

I refer to our telephone conversation of today. We deeply regret this unfortunate incident. As a result, two of our good inspectors have to leave the mission.
 As you can see from the attached ~~document~~ information, the star was already on the site among other Xmas decorations. It was unintentionally placed on the tree.
 We have thanked the two inspectors to leave Iraq before Saturday the 10th March and they are on their way to Athens.

Please forward our sincere regards to the Iraqi Government insuring them that our Inspectors on sites are not only working for the United Nations but also for the Iraqi Government, to assure that we are doing our best in all times to ensure a mutually beneficial relationship in Iraq.

I take this opportunity to thank you for your kind assistance.

[Signature]
 Andrie E Fruiniaux
 Senior Vice-President

HA004405

Seliba Joe
 T. Coitena UNDPA/CP@unhcr.org
 Monday, March 05, 2001 11:09 AM
 To: Joe Saliba
 CC: Gary Grzesinski & John Aherne
 Subject: Gary Grzesinski & John Aherne

You are already informed about the MOFA's request. I spoke by phone to Basko who was in charge of the Site at that period and Jennie who was his Deputy and they independently told me the same facts. Following is what happened:
 Gary Grzesinski and John Aherne were in charge of Christmas at New Year's celebration. They already have Christmas Tree (Green) and decorations that were on the Site since at least last Christmas. That means that The Star (David's Star according to MOFA) was already on the site in any Christmas celebration. The Star was placed on the tree during the last Christmas celebration. Since among other decorations there were also previous years, Gary and John thought to decorate the Tree.
 Basko and Jennie realized that the local Iraq staff started to look at the Star in a strange way making comments in Arabic at the same time. That was the signal for Basko and Jennie to take down the Star. There were no further problems. Local co-operation in organizing the celebration was very good and it is very strange that such accusations were made against those 2 inspectors.
 I was talking to John Aherne about the issue and he told me that what happened was not done with any intention to provoke local people.
 One relevant fact is that Nasar, Camp Manager at that time was fired by the end of January. One other relevant fact is that the Star was placed on the tree with British. Mentioned 2 inspectors have nothing to do with that fact.

Best Regards,
 Gary Grzesinski
 Trebil

colocata@go.com] on behalf of Colocata Inspection Jordan (colocata@go.com)]
 From: "Mariano's Team" <colocata@go.com>
 To: "Andre E. Pruniaux" <pruniaux@colocata.com>
 Subject: RE: Flights to Baghdad - Info

Confirmed receipt on 10/10/00 at 19:00. Regards,
 Milan

-----Original Message-----
 Sent: Monday, October 16, 2000 5:48 PM
 To: "Andre E. Pruniaux" <pruniaux@colocata.com>
 Subject: RE: Flights to Baghdad - Info

> From: Andre E. Pruniaux

I wish to confirm that under no circumstance we are going to give any report.

This is a very delicate political matter which as to be handled through Geneva.

Kindly confirm reception of this email.

Andre E. Pruniaux

-----Original Message-----

Sent: Wednesday, October 11, 2000 5:55 PM
 To: ANDRE
 Subject: Flights to Baghdad - Info

From: Colocata Inc. <colocata@go.com>

Date: Sat, 10 Oct 2000 10:40:00

To: "Andre E. Pruniaux" <pruniaux@colocata.com>

Andre,
 As you are attending landing of one innocent aircraft which landed this morning in Baghdad, I have also seen the arriving commodity and people, and I have not seen any of the people who are expected to arrive in Baghdad. No aircraft was expected to arrive in Baghdad. However, he realizes our position - I instructed J. About not to have any more arrivals and will be contacted by OIP through Geneva)

Regards,
 Milan

landed the Baghdad. He has also seen the arriving commodity and people, and he is going to report to Mr. Stewart the situation. I have not seen any of the people who are expected to arrive in Baghdad. However, he realizes our position - I instructed J. About not to have any more arrivals and will be contacted by OIP through Geneva)

Regards,
 Milan

SECRET DOCUMENTS

SECRET DOCUMENTS

COTECNA INSPECTION S.A.

58, rue de la Tomassière 1207 GENEVA - SWITZERLAND TEL: 41-22-849.69.00 Fax: 41-22-849.6909

FAX

Date : 16 October 2000
To : Felicity Johnson Chief Customs Expert
: Verne Kuryk Customs Expert
Page(s) : 1 (this one included)
Our ref : 006/17m
Subject : **Flight to Baghdad**

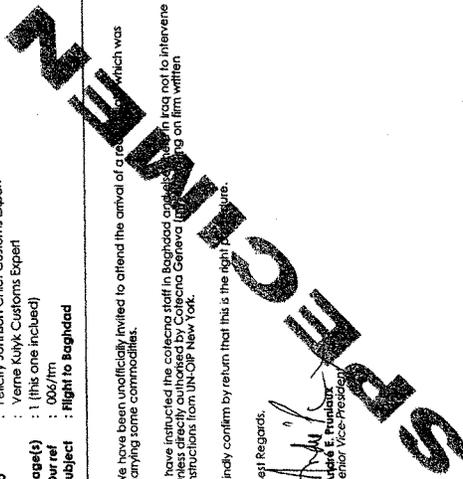
We have been unofficially invited to attend the arrival of a relief aircraft which was carrying some commodities.

I have instructed the cotecna staff in Baghdad and we will not intervene in Iraq not to intervene unless directly authorized by Cotecna Geneva (in accordance with the instructions from UN-OP New York).

Kindly confirm by return that this is the right procedure.

Best Regards,

André E. Pruniaux
André E. Pruniaux
Senior Vice-President



HA004151

Message Details
From: Jean Assad [assad@cotecna.ch]
Sent: Tuesday, October 17, 2000 8:40 AM
To: "Lloyd Adam" <lloyd@airmail.net>
Subject: RE: Flight to Baghdad - 17m
Importance: High

From: Jean Assad
I confirm the incident of the mentioned instructions and I wish to emphasize that Mr. Tun M. was informed that unless clear instructions from Geneva Headquarters and/or DIP NY we can't intervene in any activity related to the matter.
Regards,
Jean

Melioris Tunes <mailto:melioris@cotecna.ch> on 16-10-2000 (UTC)
To: "cotecna" <cotecna@cotecna.ch>
cc: Jean Assad [assad@cotecna.ch]; "Lloyd Adam" <lloyd@airmail.net>
From: Jean Assad [assad@cotecna.ch]
Subject: RE: Flight to Baghdad - 17m

I wish to confirm that under my orders we are going to intervene at the Baghdad airport. This is a very delicate position and we will not intervene unless directly authorized by Cotecna Geneva. Kindly confirm receipt of this message which has to be handled by Cotecna Geneva.
André E. Pruniaux

----- Original Message -----
Date: Tuesday, October 17, 2000 8:05 PM
From: "Lloyd Adam" <lloyd@airmail.net>
Subject: Flight to Baghdad - 17m
Sent: Sun, 8 Oct 2000 7:45:10 +0200
To: "Jean M. Pruniaux" <André.Pruniaux@cotecna.com>

Lloyd Adam has standing landing of one recent aircraft which

André,

HA004152

In any case Umm Qasr team need to show high vigilance and accuracy dealing with increased workload.

Regards,
Alian

From: Alian E. Pruniaux
Mail Date: Thursday, October 18, 2000 10:27 AM
To: "Celina Impedon Jordan"
Subject: RE: Umm Qasr Port - struggling with heavy traffic

- 1) Please re-format this message in a better way (statistics, presentation of our new measure, etc) and send it urgently to Felicity Johnson and Verve Kufyk, copy : AEP.
- 2) In your opinion, is this situation going to last? Do we need more permanent inspectors Umm Qasr? Can we move some from other sites, without expoding us on these other sites? (I am not sure about the possibility of moving inspectors from other sites, but I am sure that the situation is UN-COP-New York (S/1996/548) should be addressed).

May be the situation in Umm Qasr producing delays in unloading of cargo to UN-COP?

Many Thanks for your urgent attention.

Alian E. Pruniaux

----- Original Message -----

Sent: Wednesday, October 18, 2000 5:10 PM
From: Alian E. Pruniaux
To: Verve Kufyk
Subject: Umm Qasr Port - struggling with heavy traffic

Andra,

I want to address to Felicity Johnson the current situation in Umm Qasr, but for the moment I am not sure about the possibility of moving inspectors from other sites, but I am sure that the situation is UN-COP-New York (S/1996/548) should be addressed. Reason is increasing of the number of vessels waiting and start of discharge, which will without supplies and increase pressure on the port. I think that the situation will be ultimately blamed for delayed authentication. I am not sure about the possibility of moving inspectors from other sites, but I am sure that the situation is UN-COP-New York (S/1996/548) should be addressed. Using their own resources, they are not on contrary port teams and not UN teams as they were a year ago.

Enclosed are the statistics from our Weekly Report from 3/10/2000 until 12/10/2000.

Umm Qasr	03.10.2000	07.10.2000	14.10.2000	21.10.2000	28.10.2000	05.11.2000
Number of vessels	6	7	5	6	7	14
Number of containers	102,44	13,055,786				
Number of containers per day average (M/T)	17,074,576,559	12,466,346	5,791,560	10,690,969	11,509,102	
Number of containers per week (M/T)	5,644,282,979,931	10,084,435				
Number of containers per month (M/T)	1,693,280,792,913,823,385	3,037,240,792,913,823,385				
Number of containers per year (M/T)	20,319,375,913,823,385	36,446,879,292,913,823,385				

Number of vessels doubled in last 2 weeks, from average 7 to 14.

Present traffic (figures taken today 18.10.2000) :

HA004140

HA004141

STRECHIMEN

STRECHIMEN

Aguda

File = Readers - 2002

Carroll

Marićovic Traša
 Title: **Trade**
 Sent: **Thursday, November 16, 2000 10:15 AM**
 To: **consad@un.org**
 From: **TRAŠA MARIĆOVIĆ**
 Subject: **Urmi Ovar**

Craig

After consultation with UN OIP-AY and due to the fact that the tonfill does not work any more please apply the following procedure (as instructed by UN-OIP) :

You can only operate within the capability of the port authorities. Keep an eye on the tonfill and make the appropriate requests on inspection and inspection conditions. There is no need to be present to them, not to facilitate the off-loading or heading. As far as possible, the port authorities should be notified in advance of any increase in discharge. No need to adjust the numbers. Hopefully the port authorities will take some action.

Kindly comment, if necessary.

Best Regards,

Antoni E. Purduaz

HA004038

SPECIMEN

Original Message
 From: **U Ovar (SMIT:consa@un.org) <mailto:SMIT:consa@un.org>**
 Sent: **Tuesday, November 14, 2000 11:31 AM**
 To: **andre.purduaz**
 Subject: **Urmi Ovar - Forklift**

Dear Andre

Reference my previous correspondence on the above, the top-hall forklift has broken down and the container yard now has to use a new forklift to handle inspection conditions. They are heading for repair parts and are looking to have it working in a week or so. Effectively it means that the inspection of the container yard has been seriously impacted and delays can be expected.

Best regards

Craig Allary

HA004037

From: **Pruniaux, Andre E**
 Sent: **Thursday, November 16, 2000 8:21 AM**
 To: **'Nem Nuyk'**
 Subject: **RE: UN-Clear Case - Fortit**

Agudo

Verne,
 Thank you for message. I will tell the staff in Ultram Clear.
 Best Regards,
 Andre E. Pruniaux

Original Message
 From: **Pruniaux, Andre E**
 Sent: **Wednesday, November 15, 2000 3:52 PM**
 To: **Pruniaux, Andre; cantho.pruniaux**
 Subject: **Re: FW: Ultram Clear - Fortit**

Andre: I have advised Field and others of the situation. My view is that the
 also been advised and is contemplating communication with the port authorities
 capacity of the port authorities. All I can suggest is that you keep an
 eye on things and make the appropriate notes on the report. I will inspect
 authorities when the appropriate conditions are met. I will also inspect
 of the inspection staff in the situation. I will also inspect the report and
 undertake the goods that are involved. I will also inspect the report and
 this situation. My view is that the port authorities are not ready to respond to any increases
 according to the current workload. I will also inspect the report and undertake the goods
 port authorities will be able to handle.

Pruniaux, Andre E
 To: **'Nem Nuyk'**
 From: **Pruniaux, Andre E**
 Sent: **Thursday, November 16, 2000 08:44:55 AM**
 Subject: **RE: UN-Clear Case - Fortit**

Do you wish to comment on this message?
 Thanks,
 Andre E. Pruniaux

HA004036

- > 1. This message is CONFIDENTIAL in the context of the New South Wales Customs and Border Protection Act 1999.
- > 2. It is intended for the use of the person(s) named in the 'To' field.
- > 3. If you are not the named addressee, you should not disseminate, distribute or copy this e-mail.
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- > 10. If you are not the named addressee, you should not disseminate, distribute or copy this e-mail.

SPECIAL AGENTS

HA003962

Please verify that you are authorized for us to authenticate this information. For repeated calls:

Kind regards
Hamid Anis
Team Leader
Operations Building
Port Rashid Container Terminal, Dubai, UAE
Tel: +971 4 347 0369
Fax: +971 4 345 0351
E-mail: hamid.anis@dnv.com

Download MSN Toolbar FREE - search the Web from any page!
<http://toolbar.msn.com/06F-1546XAFD2185>

Pramitux Andrie

From: Pramitux Andrie (mailto:pramituxandrie@gmail.com)
Sent: Friday, 20 October 2011 11:17 AM
To: hamid.anis@dnv.com
Cc: m.haniffah@dnv.com; amir.ahmed@dnv.com; amir.ahmed@dnv.com; amir.ahmed@dnv.com
Subject: Possible Investigation

Re: Dubai - Iraq

Dear Sirs
I have had a strange phone call today at approx 11:00, from a number 056 614 5277.

The man said he is from Sudan, and wanted to know about some jobs to find. I explained to him, clearly, that we work under an UN mandate protocol, and our report is the CPA.

If he needed information, he should go to the UN website and get all the information he needs. I said to him we're a "contract" to go to find for him. He said he did not understand what he required but did not want to pay for it. He said he wanted to know a "contract" etc.

This sounded very funny to me, and I said like he was up to some things (I am not sure of this, but he had the idea). I told him to cooperate with "Jabal Al Mansour", and to this, he agreed. Then, I told him to be very careful, and to be very honest.

Then, I told him to be very honest, and to be very honest. I have subsequently had several calls from Mr. Shadiq, and I explained to him all these details.

Kindly contact me should you want anymore information.

Hamid Anis
Team Leader
Operations Building
Port Rashid Container Terminal, Dubai, UAE
Tel: +971 4 347 0369
Fax: +971 4 345 0351
E-mail: hamid.anis@dnv.com

Get more MSN Toolbar and more on MSN Search! <http://search.msn.com>

SEARCH ENGINE

COICNA INSPECTION S.A.
 P.O. Box 6155 - 1211 Geneva 6 - Switzerland
 TEL: (0041) 022 844 9224 FAX: (0041) 022 844 9225
 UN SD-986 PROGRAMME

COICNA
 Date : 29/09/1999
 To : Andre Prunier
 Attention :
 Fax No. : 1 202 232 0438
 CC :
 Page(s) : 1 + 7
 Subject : Brief summary of UN 986 mission in Iraq
 F.A.X. *Friedrich*

Dear Andre,

The following is a very brief pen picture of the stations and their operations

No. of trucks weekly average	Trebil	250	Al Wasrah	50	Umm Qasr	8 (ships)
No. of trucks this week		141		75		7 (ships)
Metric tonnage average weekly		5,200		1,250*	3,000	50,000
Metric tonnage this week		828		188*	3117	41175
No. of inspectors on site this week		23		12	15	21
		16		10	11	19

* Note the figures for Al Wasrah vary greatly from 40,000 tonnes per week to less than 100 tonnes for some weeks.

COICNA
 Date : 27/09/1999
 To : Coicna Inspection S.A.
 Attention :
 Fax No. : 1 202 232 0438
 CC :
 Page(s) : 1 + 7
 Subject : Brief summary of UN 986 mission in Iraq
 F.A.X. *Friedrich*

COICNA
 Date : 27/09/1999
 To : Coicna Inspection S.A.
 Attention :
 Fax No. : 1 202 232 0438
 CC :
 Page(s) : 1 + 7
 Subject : Brief summary of UN 986 mission in Iraq
 F.A.X. *Friedrich*

Dear Doreen,

Please note that due to several discrepancies in the reported and substantiated goods, a full audit on Comm 4417 has been carried out here in COICNA.

A similar audit should be done at your office if a comparison can be made, to clarify delivered and substantiated goods.
 There have been deliveries of 50,000 metric tons on the approval letter or in the database. An SOP should be made at your office to clarify the type of materials in the files.

Best regards,
 G. Hendon
 G. Hendon

0304

CITY GENOVA R.O.

25/05 '99 08:25 21:37 FAX 41 22 8489228

0807

CITY GENOVA R.O.

25/05 '99 08:25 21:37 FAX 41 22 8489228

SHIPMENT TO IRAQ IN WITH UN RESOLUTION N° 666
 PURCHASE ORDER 5/22802448
 Joint Stock Company "INTERENERGOSERVICE", Moscow, Russia
 Truck N° 47 KN 548 / 47 KN 548

OC. Number OC.4417

CONTACT PERSON: YURIY V. NIKONOV, GENERAL DIRECTOR
 PHONE NUMBER: (085) 128-86-27
 FAX NUMBER: (085) 536-00-10(085) 128-87-22

Shipment No. 128T

Page 1

ITEM N° AS PER UN COMMITTEE LETTER	DESCRIPTION OF THE GOODS AS PER UN COMMITTEE LETTER	QUANTITY UNDER AS PER UN COMMITTEE LETTER	UNIT OF MEASURE AS PER UN COMMITTEE LETTER	QUANTITY DELIVERED IN TODAY'S CONSIGNMENT	DESCRIPTION OF GOODS TODAY'S CONSIGNMENT
3,4,6,7,8,10,11,14,15,17,24,35a	2. The list of spare parts for boiler unit of "Nesaya" power station (TME 334) Convexion shaft front waterwall	72,350	PCS	5193 kg	Convexion shaft front waterwall (which is 1 pack Convexion shaft front waterwall)
61	Gas-massal burners with accessories including: metal parts of metalic structure	4	set	246 set	Gas-massal burners with accessories including: metal parts of metalic structure (which is 2 box metalic parts of metalic structure)

All enclosures, please find attached copies of technical passport on all spare parts, which were delivered in the mentioned above table. Originals of the technical documentation were packed with the goods for delivery.

V.I. BARILO
 General Director

5/5

5/5

TRUCK	06/04/96	61K1325/1325
QTY	35	17
Date inspected	09/05/99	30/05/99
Date authorized	17/05/99	30/05/99

Reason for delay: Mentioned line item was not in database. In order to avoid confusion about shipments were not authorized and put on hold.
 Some other inspections were put on hold for the similar reasons but the problems were resolved within several days.

SET OF SPARE PARTS (VANES, BLADES, BEARING) FOR POP, IDP, etc.
 Above mentioned line item doesn't appear in our database but 5 units were authorized as item SOOT BLOWING SYSTEM (SPARE PARTS) which was incorrect and it will be checked with OIP. You will be advised accordingly.

Best regards,

G. Bryk
 Group Chief
 Team Leader, Zakhvo

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HA012609

Operations
The operations are running fairly smoothly at this time. However we carry out reviews of our procedures and the newly published new SOP is the result of such an in-depth study. With these new Standard Operating Procedures and our new Sampling Procedures in place we feel that we have improved our examination operations. Early this month we started a program in the Urm Clear to increase the number of cargo ex ship. With 25 customs officers and another 7 officers with an in-depth knowledge of customs procedures on our staff - nearly half our staff - we feel we have a considerable amount of experience to call upon and we are using this experience fully.

Complaints from shippers / exporters

As I said the operations are running fairly smoothly. However we will have a number of calls from shippers and exporters concerning the delays in goods coming through Urm Clear. We remain open to complaints to the OIP.

In Urm Clear for a variety of reasons the shipper designs the amounts or enter into discussions on successful finished of all cargo coming through the port. For the former supply in Urm Clear is most irregular and the port equipment is in poor condition. These problems add up to a delay in the cargo being unloaded and moving containers. As a result our work, on occasions, can be delayed considerably.

In some instances it takes us two or three months for a ship to fully discharge at Urm Clear the time to fully discharge a ship is 10 to 12 days.

Complaints from importers
The problems that has caused us some concern and to which we devoted a considerable amount of time in the communication systems. We have suffered from a variety of problems. The first problem was the communication system outside of our control. For these problems within our control we are hopeful that the arrival of our new VSail system, which will be installed in Urm Clear in the first week of November, should improve the communication systems. However we are also presently in discussions with James Sullivan, York to discuss ways of improving our hard copy transmission systems. We have made progress and look forward to an early agreement.

OC 4417 - Russian spare parts through Zakhlo

One issue that may be raised by the OIP is that of OC 4417. This OC covers a consignment of spare parts for the Zakhlo. The information on the file of this consignment is that it appears that on information now available some items - parts or parts of parts - not listed on the OC were imported.

The OIP has sent a note requesting a full audit of the OC, which audit is presently pending completion in Zakhlo. You will note the tone of the final sentence of the last paragraph of the letter.

I asked Goran to give me a full report on the matter and I have received the previous related correspondence.

This consignment, the importation of which is ongoing, is being imported originally destined for importation through Trabl. Subsequently the place of importation was changed to Zakhlo. The goods were imported in the period of time covered in the Zakhlo database. However, the goods were imported in April the database was not complete (not implemented) until May.

This was and is not the only problem with the documents accompanying the goods show figures that cannot be worked. I have attached a copy of one document showing the details of the consignment ordered as '1' the unit of measurement is 'kg'. Without details of the consignment it is impossible to know what 0.0036 of a set represents. Therefore we can only authenticate against the document that are provided with the goods.

Now we have a problem that subsequently we have discovered that some of the goods presented were in fact incorrect.

I have discussed this problem with the UN OIP and they have assured me that they have no blame on our part. They have also assured me that they accept that the information is a copy from some of the blame on the OIP due to the initial delay in updating the Zakhlo database. When the OIP was made aware of the problems of trying to identify and subsequently authenticate small numbers of sets of the UN Spare Parts program, the OIP was aware of the problem. The UN Spare Parts program is a problem. The OIP wants to disengage itself from the problem. Torben has told me that we should not worry and that this will all be sorted out satisfactorily.

identify after its approval by the Security Council Committee established by resolution 661 (1990).

Q10. Please provide figures of estimated volumes imported annually through each duty station/border point.

- A. The following represents a rough estimate of the annual volume of traffic at each border entry point:
 - Umm Qasr: 400 vessels
 - Trahit: 30,000 trucks
 - Zahor: 20,000 trucks
 - Al Wasel: 15,000 trucks

Q11. Please clarify how the contractor should act on imports that are not a part of the Oil for Food Programme.

- A. Imports to Iraq that are not part of the Oil for Food Programme are not part of the mandate of the independent inspection agents for humanitarian supplies.

Iraq that pertain in any way to the leases or services contained in the RFP and the mandate of the independent inspection agents would have to be reviewed in order to determine whether a conflict of interests exists.

Q5. How will the transition between the current contractor and the new contractor be done - will there for instance be a period of overlapping?

- A. There will indeed be an overlapping period during which the current and new contractors will be working together very closely to ensure that the transition is seamless and that there is no interruption to the services provided by independent inspection agents for humanitarian supplies. This overlapping period may last from four to six weeks, as necessary.

Q6. What are the official opening hours at the border point/border points - 24 hours?

- A. The border entry points to Iraq are operated 24 hours a day, 7 days per week. Please remember that the RFP does not require that the contractor shall provide the services required on a 24-hour, 7-day per week basis.

Q7. Is it possible or allowed to communicate via the internet in Iraq?

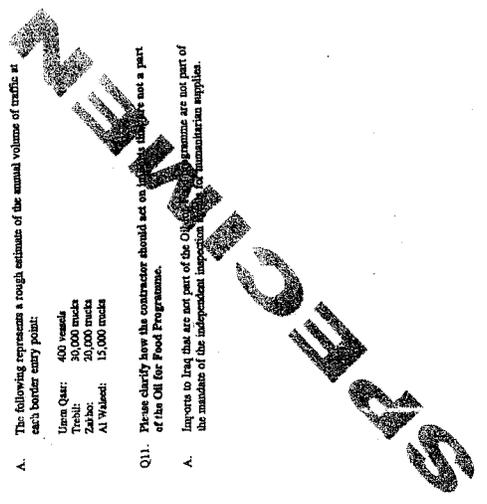
- A. Yes.

Q8. Are inspectors of Jordanian, Syrian, Turkish and Egyptian nationality allowed?

- A. Although the independent inspection agents seek wide geographical representation, it is representative of number to this question is no.

Q9. Please identify the vehicle of goods, products, equipment likely to be imported under the Oil for Food Programme.

- A. The mandate of the independent inspection agents for humanitarian supplies that are to be procured by the Government of Iraq and the United Nations agencies and programmes is limited to the distribution plan for any given phase of the Oil for Food Programme. For more information on the mandate of the independent inspection agents, please refer to the official website of the United Nations Office of the Iraq Programme (<http://www.un.org/press/oiip>). Under the heading "Information for companies and delegations", viewers will be able to click on any of the given distribution plans to review their content. The schedule of delivery is stipulated in the contract between the Government of Iraq and the supplier, a copy of which is made available to the independent inspection agents for humanitarian supplies.



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of the intention to do so not less than fifteen (15) days prior to the expiration of the then current term of the contract.

- Q15 Will the contract automatically be extended if the contractor is performing his duties satisfactorily and if so, for how long before it must go in public tender?
- A Please see reply to Q14 which answers this question.
- Q16 When is the contract anticipated to begin?
- A The contract is to begin on 1 August 2001, which represents the first day after the expiration of the current contract.
- Q17 Will Annex E form the basis of the contract?
- A Annex E which is the UN General Conditions of Contract is part of the contract.
- Q18 Is it possible to have a copy of the contract submitted to you?
- A We regret that we cannot give out a copy of the current contract.
- Q19 Will there be a mobilization fee?
- A There is no mobilization fee. For the current contract, payment to the contractor is made monthly. For the previous contract, payment to the contractor by the UN is made monthly. The amounts represented by the invoices have been satisfactorily completed. The invoices are payable under the normal UN payment terms of 30 days from the date of the UN's receipt of the invoice and all supporting documentation.
- Q20 Would the United Nations individual CVs from each inspector made by himself or you represent the United Nations CV with all details?
- A Not matter as long as the contractor provides the UN with the CVs of all unsubmitted inspectors.

Are the French, Kuwaiti, Iranian and Saudi Arabian nationalities excluded? Arabians nationalities or any other nationalities from that region are

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CLARIFICATION FOR Q2:

Q2 What is the implementation date foreseen for this programme?

A The implementation date for this programme is 1 August 2001 (not 1 July 2001 as earlier sent), which is the first day after the expiration of the contract between the United Nations and the current independent inspection agents for humanitarian supplies.

ADDITIONAL QUESTIONS

- Q12 Will the UN give permission for the export of the software, computer hardware which is necessary for the project (Microsoft, for example) to allow the utilization of their software in Iraq under performance given?
- A It should be noted that it is not the United Nations, but the Office of the Iraq Programme (OIP) which is the office responsible for such matters. The OIP has been authorized to grant the authorization is granted by the Security Council Committee established by resolution 661 (1990), also known as the '661 sanctions Committee'. The OIP cannot speak on behalf of that Committee or prejudice the Committee's right to grant the necessary authorization.
- However, it should be noted that in the past, the Committee has generally looked favourably upon requests by the United Nations independent inspection agents for the export of equipment that is necessary for the independent inspection agents to fulfil their duties.

Q13 For the independent agents, does the current 62 inspectors on duty all the time or are some of the inspectors redeploying until it is their duty?

A As indicated in the RFP, 62 inspectors are to be present at the four border entry points at all times. These 62 inspectors will take turns in performing active duty.

What is the anticipated duration of the contract?

A The contract shall normally be in force for an initial one-year period, with options to renew for successive one-year periods, under the same terms and conditions (including price), unless earlier terminated in accordance with the terms of the contract. The UN shall have the right, at its sole option, to extend the contract on the same terms and conditions (including price), for additional periods of one-year each, or of such shorter duration as may be determined in its sole discretion by giving the contractor written notice

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authentication procedures. In this regard, the duties of the agents will include, *inter alia*, the following:

- (a) The United Nations will notify the agents, through a monthly update, of the relevant item(s) by Comm. number that require special inspection and authentication procedures. Separate lists will be prepared for humanitarian supplies and oil spare parts and equipment. This monthly update will also be provided to the United Nations Inspection Agency, independent of inspection agents contracted separately by the United Nations.
- (b) The item(s) in question will be inspected and authenticated by the agents upon arrival at the border entry point to Iraq. The agents will report on a daily basis to the United Nations on the arrival of the consignment of humanitarian supplies and, with regard to oil spare parts and equipment, also to the oil inspection agents, until delivery of the consignment is fully completed. This will constitute an attachment to the reporting obligations outlined above.

(c) As required, the agents may be requested to provide a Unique Reference Number (URN) seal on a specified Iraq consignment (i.e. arrival at the relevant border crossing point to Iraq, in this case, the item(s) in question will be inspected and authenticated by the agents upon arrival at the border crossing point to Iraq). The agents will then affix the URN seal to the consignment and annotate the relevant documentation with the number accordingly. This seal may only be removed by the United Nations at the time of the visit to the consignment. Samples of the inspection and authentication of this equipment, the agents will receive from the United Nations and, upon arrival at the border of the relevant consignment and also obtain details of the equipment or store in question and, where available, details regarding end-use or the equipment.

Monitoring of defective commodities transported from Iraq

The Government of Iraq consider certain commodities to be defective and, in accordance with contractual specifications, it may make arrangements to return them to the supplier (or other specified destination). On such occasions, the agents will be required to inspect and authenticate the commodities to ensure the appropriate export of the item(s) in question. This will involve the same measures as indicated above but in reverse order. In this regard, the duties of the agents will be, *inter alia*, as follows:

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in (10) additional persons from among the candidates who are acceptable to serve as replacement agents.

For these purposes, the United Nations is soliciting proposals for the services of independent inspection agents to perform, *inter alia*, the tasks detailed below.

Authenticated confirmation of the arrival of humanitarian supplies

- (a) The agents shall confirm imports into Iraq, pursuant to Security Council resolutions 986 (1995), 1175 (1998) and subsequent related resolutions, of humanitarian supplies and oil spare parts and equipment, including full limitation, the verification, inspection and testing procedures (as set forth in the proposal).
- (b) In doing so, the agents will cross-check and compare the weight, weight or count, including gross weight, and which necessary information concerning the consignment, in order, the agents will and manifest with the letter of approval and other documents issued by the Committee against humanitarian supplies and oil spare parts and equipment arriving in Iraq.

(c) The agents shall, among other matters, conduct a security inspection by weight or count, including gross weight, and which necessary information concerning the consignment, in order, the agents will and manifest with the letter of approval and other documents issued by the Committee against humanitarian supplies and oil spare parts and equipment arriving in Iraq. The agents will immediately report any irregularities to the Secretary-General and the Committee. If the problem is related to normal commercial practices (i.e., short-laden goods), the Committee and the Government of Iraq will be informed but normal commercial practices (i.e., chimo) shall not be a concern. If the agents determine that it is of serious concern, they will take the equipment in question, or will withhold authentication, pending guidance from the United Nations.

(d) The agents will submit electronic reports to the Secretary-General and the Committee. The reports will include details of the delivery of supplies and the results of the inspection and authentication procedures. The reports will be submitted in a format of these reports will be agreed upon between the parties.

Special inspection and authentication procedures

On certain occasions, the Committee will identify an item(s) as being of a sensitive nature and make their approval conditional upon end-user / end-user observation and monitoring and reporting by the United Nations. In addition to the tasks outlined above, the agents will be required to undertake special inspection and

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- (a) Obtain from the Government of Iraq the location and schedule of delivery for the services to be provided.
- (b) Verify that the service commensurate with the conditions of approval by the Committee.
- (c) Report on a regular basis to the United Nations during the provision of the service, and also upon completion with full details of implementation.

The United Nations shall have the right to expand the responsibilities of the contractor at any point, subject to the United Nations' obligation to pay for any additional agents that may be required as a result thereof.

The contractor shall be responsible for making the necessary arrangements to ensure the fulfillment of its obligations. The contractor shall conform its obligations in accordance with the highest professional standards.

The United Nations may request at any time the withdrawal or replacement of any of the agents. The contractor shall, at its own expense, immediately replace any personnel furnished by it in the event of any replacement personnel shall be subject to the prior approval of the United Nations.

No agent shall be assigned to a service indicated in the RFP unless the United Nations has approved in writing the selection of such person in writing.

The contractor and its personnel shall be fully responsible for all work and services provided by the contractor, agents, servants and sub-contractors. The contractor is responsible for providing all reasonable measures to ensure that its personnel are fully covered by insurance for any service-related illness, injury, death or disability. The contractor shall submit proof of such insurance satisfactory to the United Nations before commencing any work.

The United Nations shall not be liable for any action, omission, negligence or misconduct of the contractor's employees, agents, servants and sub-contractors for any insurance coverage which may be necessary or desirable, nor for any costs.

- (a) Upon being informed by the Government of Iraq that an item(s) is to be exported from Iraq, the agents will issue a U.N. export permit to the Government of Iraq, locate the item(s) in question and apply a U.N. seal for shipment.
- (b) At the item(s) in question exits Iraq from the relevant border crossing point, the agents will verify the export of the item(s) by undertaking the necessary procedures, including a check on the status of the seal.
- (c) The agents will then report to the United Nations and, with regard to oil spare parts and equipment, also to the oil inspection agents, the details of the procedures undertaken.

On certain occasions, the Government of Iraq may make arrangements for the transport of an item(s) solely for the purposes of repair abroad and for special inspection procedures may also be required. On such occasions, the agents will inspect and verify the pre-shipment packing, preparation and sealing of the item(s) in question, with regard to humanitarian supplies, the duties of the agents will be, *inter alia*, as follows:

- (a) Upon being informed by the Government of Iraq that an item is to be exported from Iraq, the agents will issue with the Government of Iraq and verify in question.
- (b) The agents will undertake a visit to that location to document the identifying data, witness the packing of the equipment for shipment and affix a U.N. seal to ensure that it is secured in a secure manner.
- (c) As the item(s) is taken from the relevant border crossing point, the agents will verify the export of the item(s) by undertaking the necessary procedures, including a check on the status of the seal.
- (d) The agents will then report to the United Nations and, with regard to oil spare parts and equipment, also to the oil inspection agents, the details of the procedures undertaken.

The agents will liaise with UNOHCI and, if necessary, the supplier and the Government of Iraq, to obtain the shipping schedule for the return of the equipment to Iraq and inspect the re-entry of the item(s) in question.

On occasion, special inspection and substantiation procedures may be necessary for service-based contracts. In this regard, the duties of the agents will be, *inter alia*, the following:

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HA014850



COTECNA INSPECTION S.A.
Trebil Site

STANDARD OPERATING PROCEDURES

REFERENCES:

United Nations Security Council resolution 986 dated 14th August 1995
Memorandum of Understanding between the United Nations and the Government of Iraq on the implementation of Security Council Resolution 986 of 1995.
Contract between the United Nations and COTECNA Inspection S.A.

BACKGROUND:

The UN SCR 986, known as Oil-Food Programme, is a resolution adopted by the Security Council which supplies Iraq with oil in order to produce a sum sufficient to finance the import of petroleum products originating in Iraq for health supplies, foodstuffs, material and supplies for essential services in the country.
Relative to this, the Government of the United Nations and the Government of Iraq signed a Memorandum of Understanding (MOU) to effectively guarantee the equitable distribution of the Iraqi population throughout the country of the above stated products for their petroleum and petroleum products.
Among the provisions of the MOU is for the Secretary-General to appoint an independent inspection agent represented by COTECNA Inspection S.A. to be in charge of relevant Iraq entry points, customs areas to confirm the arrival of the goods purchased under the plan.

PURPOSE:

The purpose of this document is to establish standardised operational procedures in carrying out both the team as well as individual inspectors' duties in the different areas of work in Iraq.

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Pobin

expenses of claims associated with any illness, death, injury, death or disability of the contractor's employees agents, servants or sub-contractors.

The number of agents and the duty stations to which they will be deployed is as follows, bearing in mind that the proposers are requested to suggest the shift structure:

Table 1
Number of inspection agents

AL WALEED	TREBIL	UWAI QASR	ZAKHO
10	18	22	22

This table sets out the number of inspection agents to be on duty at each site. The number of agents assigned to each site may be adjusted by the United Nations if the structure will be devised for each individual site to meet the local requirements and to ensure 24-hour 7 days a week coverage. The structure is subject to change, as determined by the United Nations based on the requirements.
This group must include one information technology specialist capable of undertaking routine support tasks on hardware and software.

Table 2
Managerial and technical personnel

AMMAN	BAGHDAD	LABORATORY
1 field manager	1 inspection officer	1 chemist

This table sets out the number of managerial and technical personnel to be on duty daily.

The contractor personnel will provide the services indicated in the RFP with the highest professional standards. All agents are to possess the necessary expertise and knowledge in the relevant field of activity and a proven record in terms of performance, qualifications and integrity.

The contractor and its personnel shall supply all equipment, materials and supplies necessary to perform the services, including without limitation all equipment for weighing and storing samples, all vehicles for transporting the agents, all equipment for transmitting communication and other reports, and all other equipment, materials and facilities set forth in the proposal. The contractor shall ensure that the proposed equipment, materials and facilities are of the highest quality and be fully compatible with the equipment and software utilized by the United Nations in connection with this contract.

¹ To be provided by the Contractor at management and support at no charge to the United Nations.

PROCEDURES

I. GENERAL

In order to ensure that the role of COTECNA INSPECTION S.A., Trebizond, in the implementation of the UNSCR 986 Oil-for-Food Programme inspection is carried out in the most efficient manner the area of work is divided into different job responsibilities as follows:

Since all UNSCR 986 goods coming from the Jordanian Border are loaded on trucks, the job responsibility of this site is concerned with truck inspections.

At the border office, normally the truck driver will bring the necessary paperwork for his truck cargo e.g.:

- Iraqi manifest
- OC letter
- consignment letter
- consignment note
- CMR or Truck Bill of Lading

II. ROSTER

The duty of inspection at the border is divided into 4 shifts i.e.,

- A Shift 0900 - 1300
- B Shift 1300 - 1700
- C Shift 1700 - 2100
- D Shift 2100 - until last truck

III. INSPECTION

For the purpose of achieving uniformity in application of procedures and reaching the highest standard of efficiency, detailed procedures for inspection are specified as follows:

(1) For Regular 986 Commodities and Oil-for-Spares

The inspectors on duty will enclosed general tutorial for identification of the cargo groups

(a) check the Iraqi manifest for Iraq / Jordan no. #986. If there is no stamp on the manifest, the letter will be sent back to the Iraqi Customs to obtain the

(b) examine the paperwork with the contract:

- > check that signature of driver is attached (except for bulk consignment already in progress)
- > check that part of entry is Trebil
- > check if the correct OC no. is entered on the manifest
- > check if the correct OC no. is entered on the documents;

(c) check assignments - the CMR and weigh-bridge ticket

(d) check documents (despach powder soap, machinery etc) - Packing List, Consignment Note, Invoice, Bill of Lading, CMR, Copy of Contract, Certificate of Origin

(e) for medicaments - the Analytical Report

(f) check and complete the figures (truck #, manifest #, CMR#, weights, quantity etc.) on the documents

(g) if satisfied, inspectors will carry out physical examination of the goods, which without limitation, will include inspection of the following: weight, number of packages, date of issue, batch details about life, where applicable, sampling according to the sampling procedure; containers are checked starting from seal status, condition of container and load, including opening of selected collies, or full check and



(3) Discrepancies

In case of any discrepancy on the documentation and/or with the commodity, the work will be brought to the (Dep) Team Leader for consultation, verification and his further action.

(4) Hold

If documents are showing (lack of date, OC letter or wrong port of origin) or if the goods are not in accordance with the instructions given to warehouse, further clearance from the OIP. In such case physical examination of the cargo will take place, and copies of the submitted documents will be provided. Verbal advice to the OIP have to be followed by written instructions regarding cargo examined, status of delivery, OC number details and other information (if case).

(5) Completion of Inspections

Inspectors will remain responsible for the completion of any unfinished inspections commenced during their respective shifts.

IV. DATA SHIFT

See: "Email authentication procedure" a similar step by step guide Inspector on Data Shift

- (a) Copy of inspection records from front desk.
- (b) Verify details and accuracy of inspection reports against copies of the attached (This is second check, as inspector in charge has done initial verification during or immediately after the shift he was in charge of).
- (c) Notify authenticating official and upon his instruction:
 - > report to the OIP Authentication Team any anomaly encountered (OC not entered into database, discrepancy between contract and copy presented, missing description, prices, quantities, conditions and similar)
 - > Copy OIP Authentication Team with all correspondence made to the suppliers for additional documentation/certification (copies signed by authenticating official on site)



count, depending on type of commodity in case and authenticating procedure required in the approval letter (engines and machines are not subject of approval, but engines and machines are of sea). Any irregularities encountered during inspection of cargo which constitute deviation from approval letter will be reported to the OIP and obvious cases will be supported by photos taken by digital camera.

For foodstuff, medications, toilet soaps and detergent powder samples will be drawn. (Please refer to sampling procedures at Enclosure 2).

Samples are handed over to the sampling inspector in charge for onward processing and storage.

- (b) (i) if paperwork is acceptable, after the inspection of the goods, proves satisfactory, the inspector will enter the necessary date on the invoice form (Enclosure 1) and attach the necessary documents such as invoice, packing list, commodity certificate, etc. with the necessary documents to the OIP and retain one copy of all the documents for file.

Inspectors will immediately inform UNOCHI Baghdad by E-mail or Fax in case of end-use jump, irregular supplies and Stop/Out for olefins-pairs deliveries and goods not fulfilling oil spares.

(2) For Air Cargo

The inspection duty will

- (a) apply the same procedures for Phases 3, 4, 5, 6, 7, 8...
- (b) apply the same procedures for Phases 1 & 2 with the exception of (a) above. Inspectors will not carry out a physical inspection of the goods.
- (c) For commodities inherent to the 651 OC letter or 2.2 % account inspectors will not carry out physical inspection of the goods, neither will retain copies of the shipping documents.

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(1) Data Input :

Conditions: Server and data workstations separated and isolated from other offices.

Access to the server and to the workstations allowed to all authentication data entry and IT officials only, with graduated access levels. Data entry inspectors use user ID as starting level.

IT personnel in charge has exclusive access to the server. No modifications of the settings allowed unless strictly instructed by OIR/IT Section.

The inspector will then

- (a) enter details in Lotus Notes database
 - > packets: Shipment Inspection for each input, and Authentication Sheet per line item, and store authentication sheets in e-mail file.
 - > all inspection report files (truck sheets) will be signed by data entry inspectors, upload in databases.
 - > active inspection report sheets (for still active comms) will be returned to the desk for further inputs.
 - > Report Daily Summary Report for MDOU Baghdad.
 - > Inspection report to UNOCHI Baghdad - notification of end-use monitoring humanitarian supplies (if any)
 - > previous report for Support line - Notification of oil spare shipments (if any), Notification of end-use monitoring oil spares.

Authentication

The authenticating official (TL or DTL) will perform the following duties:

- (a) check 'Shipment Inspection' sheets, hard copies and 'Authentication' sheets (working copies or 'on screen' copies and verify against original), if discrepancies are detected and respective sheets will be returned for verification.

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- (b) authenticating official will then give final instruction for storing all authentication sheets in master file. All data have to be ready before automatic replication will start.
- (c) No modification of entered data will be allowed after replication from the site and pending strict consent from the OIP.

(3) E - Mail and Data Replication.

Transmission of the authentication sheets takes place DAILY.

- (a) All Authentication Sheets already stored in the file (after being checked and verified by the authenticating official, with one copy for each master file) are now ready - now are paginated and file is zipped.
- (b) Zipped file is named : T.Y. (year) M (month) D (day).
- (c) Authentication cover sheets are produced, presented to the authenticating official, checked and correct, stamped by site date stamp (set on current date) and signed by authenticating official himself. Cover page should bear the Subject of e-mail file : T2001MMD (month) D (day).
- (d) The same authentication cover page file is sent via e-mail and via ftp to the OIP Authentication Team, together with zipped master file.
- (e) Check on Media: a pending authentication/pending communication (PA/PCL) is produced with brief description of the reasons for delay and list is transmitted via e-mail or by fax to the OIP Authentication Team.
- (f) Zipped e-mail file is printed out (all pages), stamped and additionally signed by the authenticating official. Hard copies (fully identical) serve as back-up for any future reference.
- (g) Note: Hard copies of the authentication sheets are to be signed with authentication official whose name appears on the authentication sheet. The signature is accurately allocated to the respective authentication sheet. Any working copy of the authentication sheet should be discarded and removed from the



authentic back-up copies, which are the print-outs of the zipped file.

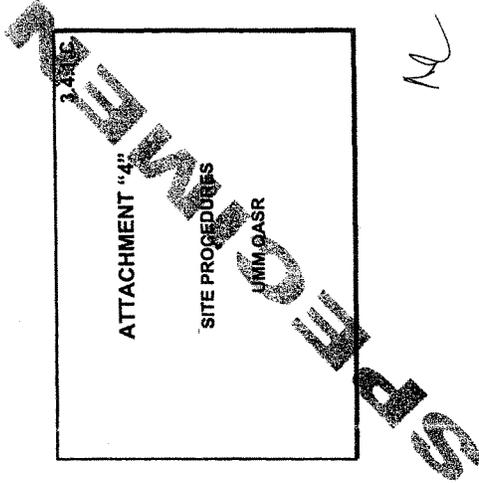
- (h) All respective inspection / input documents are filed by Data shift.
- (i) Completed comms are double-checked to verify if the "date of completion" is entered in one of the shipment inspections for respective comms and if all line items are completed and listed in the "Completed Comms" list for Trabi.

Completed comms are given to the inspector on the following day.

V. Other Duties and Reports

The following reports are produced and filed as follows:

- (1) Reports
 - (a) daily staff movement and submission report to Amman
 - (b) weekly report to Amman and Geneva
 - (c) monthly update list of completed comms - produced and sent to the CJP Administration Team at the beginning of each month for the previous month.
 - (d) monthly staff statements
 - (e) monthly inventory and car report
- Actions
 - (a) Daily, weekly and monthly back-up of the database
 - (b) statistics are compiled in respect to the following
 - number of completed comms (MissComms) is not complete unless confirmed from the IT CJP as complete)
 - Agency Goods Phase 1&2 (once a week, each Friday)
 - statistics for 'Weekly Report', based on 'Daily Summary Report'



ML

COTECNA INSPECTION S.A.

Umm Qasr Site

STANDARD OPERATING PROCEDURES

REFERENCES:

United Nations Security Council resolution 986 dated 14th April 1995.
Memorandum of Understanding between the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 of 1995.
Contract between the United Nations and COTECNA Inspection S.A.

BACKGROUND:

The UN SCR 986, known as Oil-For-Food Programme, is a resolution adopted by the Security Council which authorises states to permit the import of petroleum and petroleum products originating in Iraq, in order to produce a sum sufficient to finance the export to Iraq of medicines, health supplies, foodstuffs, material and supplies for essential civilian needs.

Relative to this, the Government of the United Nations and the Government of Iraq signed a Memorandum of Understanding (MOU) to effectively guarantee the equitable distribution of the available petroleum and petroleum products through the stated procedures of the Oil-For-Food Programme.

According to provisions of the MOU is for the Secretary-General to appoint an independent inspection agency to monitor the implementation of COTECNA's contract with the United Nations and Iraq. The inspection agency shall be responsible for the arrival of supplies in Iraq purchased under the plan.

PURPOSE:

The purpose of this document is to establish standardised operational procedures in carrying out both the team as well as individual inspector's duties in the different areas of work in Iraq.

COTECNA INSPECTION S.A.
17/04/01

COTECNA INSPECTION S.A.

Standard Operating Procedures
for
COTECNA Inspector
in
UN SCR 986 Programme in Iraq

Standard Operating Procedures at Umm Qasr

REVISADO POR COTECNA INSPECTION S.A.
17/04/01

COTECNA INSPECTION S.A.

Umm Qasr Site

STANDARD OPERATING PROCEDURES

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COTECNA INSPECTION S.A.
17/04/01

On return to the office the duty team will enter all information on the notice board in the inspectors' office. At that time the TL, DTL or ADTL will assign any new ship to one of the teams of inspectors. This team will then take reporting responsibility for that ship.

2. Duties of inspectors

(A) Procedure on arrival of a vessel :
When a team of inspectors is assigned to a newly arrived ship the team will carry out the following procedures:

- (a) board the ship as soon as possible after docking
- (b) visit the master and identify themselves to the vessel's inspectors under UN control
- (c) collect the following documents:
 - for bagged & bulk cargo
 - UN Committee letter
 - cargo manifest
 - stowage plan
 - bill of lading
 - bill of lading financial invoice
 - inspection certificate
 - cargo manifest
 - other shipment Committee letters
 - cargo manifest
 - bill of lading
 - stowage plan
 - packing lists

(d) check all documents carefully while on board ship

(e) if documents are missing, the team will immediately make a request for the missing documents

(f) Collect samples together with the relevant authorities

PROCEDURES

I. GENERAL

In order to ensure that the role of COTECNA INSPECTION S.A., Umm Qasr Port in the implementation of the UNSCR 986 Oil-for-Food Programme inspection is carried out in the most efficient manner the area of work is divided into different job responsibilities as follows:

Since all UN SCR 986 goods coming into Umm Qasr are transported by ship the job responsibility of this site is concerned mainly with ship-related inspections

II. ROSTER

The inspectors at the port of Umm Qasr do not work in shifts as on the other stations. A team of inspectors is allocated to the ship before it docks and the team of inspectors holds the responsibility of monitoring and recording all activities of that ship while it remains in port, including its loading, unloading, completion of discharge and the time of departure from Umm Qasr.

III. INSPECTION

For the purpose of carrying out the inspection in a uniform and efficient manner, the procedures and of inspection are specified as follows:

1. Allocation of ship-inspection duties

The allocation of vessels is done by whoever is in charge of the site at the time (TL, DTL or ADTL).

The team takes turns in being on duty and monitoring the movement of ships. Twice daily the team on duty will visit all sections of the port and make contact with port supervisors, foremen in sheds and the manager at the docks. They will obtain all the necessary and relevant information on the lines of cargo being carried and the number of the berth at which it is docked. They will also collect weightbridge tickets for the previous 24 hrs discharge for distribution to the respective teams.

(C) Procedure during discharging :

(B) Procedure at the office

- At the port the team of inspectors will:
 - (a) visit their assigned ship at least twice a day (first visit 08H30 to the latest)
 - (b) contact the master, port supervisor, foremen and agents to get information on how discharging is proceeding
 - (c) inspect cargo in all holds and view the work of the cargo handlers
 - (d) monitor all activity relative to the unloading of the ship. In the event of any difficulties arising they will be in a position to provide assistance at the matter.
 - (e) inspect the sheds regularly to check if any cargo waiting to be re-bagged
 - (f) give a copy of lists of cargo to be re-bagged for examination to the foreman of the warehouse office. They will get copy signed by master or foreman for office use. The copy is filed in the appropriate ship's folder.

- On return to the office the team will:
 - (a) examine all documents again
 - (b) in case of any missing documents immediately contact the supplier to obtain the missing documents or get clarification. At the same time copy OIP for regular update.
 - (c) Copies of the fax to be printed - 1 for the file and 1 for OIP update. All correspondence to be signed by T or DTL and standardised fax cover sheet to be used.
 - (d) highlight all essential figures as Comm No. Description of goods, manifested cargo weight, (gross for and net kilos), number of bags, etc.
 - (e) Advise datashift of arrival Comm No. and date and to check validity. All information to be sent to check all lines are approved. Any problems should be reported to OIP immediately by e-mail.
 - (f) complete the official OIGIS form for each Comm No.
 - (g) enter all details on the 'assess' arrival / report on the notice board by justifying the notice
 - (h) highlight collected samples to sample team for processing and for forward & bulk shipments - open weigh-bridge ticket file in computer, for each shipment
 - (i) for container shipments - make a list of containers selected for inspection for each Comm No.
 - (j) for spare parts - immediately inform Saybolt of arrival by e-mail according to Saybolt procedures.
 - (k) for end-use monitoring - datashift to advise UNOHCI by e-mail.

(D) Procedure when discharging has finished :

(A) Procedure when discharging has finished :

In port the team will

In port the team will

- (a) be aware of the time when discharging has finished

- (a) enter all daily figures and weigh-bridge tickets into the computer
- (b) file a printout with the ship's documents.
- (c) record the quantity discharged on the weekly status report which is pinned to the board in the inspectors' room.

The selected inspectors will be inspected as soon as possible after discharging. They will record its observations/reports regarding discharging.

In the warehouse inspectors will

- (a) enter all daily figures and weigh-bridge tickets into the computer
- (b) file a printout with the ship's documents.
- (c) record the quantity discharged on the weekly status report which is pinned to the board in the inspectors' room.

- (a) be aware of the time when discharging has finished



- (b) board the ship and check in all holds and on the deck for damaged cargo and sweepings
- (c) count all damaged bags and estimate the total quantity of damaged cargo and sweepings
- (d) check if good cargo is remaining on board and find out the reason for this
- (e) check/estimate quantity of good cargo remaining in the ship

The team has to be present on board when the master and officer are signing the 'Final Statement of Fact'. They will participate in any discussions with the parties but they will collect evidence and take notes from master or receiver).

The team will not sign any documents and will inform the parties concerned that they will submit their own independent report.

The team will check the departure of the ship and record it.

Within 2 days of the completion of the discharging, the team will obtain final computer-printout figures of discharged cargo from GB/IMOT.

At the office the team will perform the following functions :

- (a) check all documents once again for accuracy
- (b) hand over report with supporting documents to Team Leader for further action
- (c) check all documents once again for accuracy
- (d) make container vessel report
- (e) check all documents once again for accuracy
- (f) hand over report with all documents to Team Leader for checking and verification



(1) IV. DATA SHIFT

Conditions: Server and data workstations separated and isolated from Access to the server and to the data workstations allowed to the authentication/data entry and IT officials only, with graduated access level. Data entry inspectors use user ID as starting level. IT personnel in charge has exclusive access to the server. Modifications of the settings allowed unless strictly necessary. No modifications in IT Section.

The inspector will then:

- (a) enter details in Lotus Notes database:
 - > produce Shipment Inspection Authentication Sheet per line item, and store authentication sheets in the database.
 - > all inspection reports sheets will be signed by data shift inspector upon final database.
 - > active inspection reports sheets (for still active comms) will be registered in active files for further inputs.
 - > produce Daily Summary Report for MDOU Baghdad.
 - > produce report to UNOCHI Baghdad -notification of end-use monitoring humanitarian supplies (if any)
 - > produce report for Saypok Iraq - Notification of oil spare parts (if any). Notification of end-use monitoring of oil spare parts.

Verification

The authenticating official (TL or DTL) will perform the following duties:

- (a) check 'Shipment Inspection' sheets, hard copies, and 'Shipment Inspection' sheetkeeping copies or 'on screen' copies and verify against contract. Incorrect inputs will be corrected and respective sheets will be returned for verification.
- (b) authenticating official will then give final instruction for storing all authentication sheets in mainframe. All data have to be ready before automatic replication will start.

back-up copies, which are the print-outs of the zipped file.

- (h) All respective inspection / input documents are filed by Data shift.
- (i) Completed comms are double-checked to verify if the "date of completion" is entered in one of the shipment inspectors for respective comment and if all line items are entered and data entered). Complete copy is sent to "Completed comms list" for Umm Qasr.

Completed comms are given to the Inspector for availability

V. Other Duties and Reports

The following reports are produced and filed as follows:

(1) Reports

- (a) Daily Summary Report to Umm Qasr
- (b) Daily staff movement and car location report to Amman
- (c) Vessels arrival and departure report to Baghdad
- (d) Local vessel status report
- (e) Report on Thursdays.

Daily authentication comms list and completed comms list.

- (a) Data entry
- (b) Daily, weekly and monthly back-up
- (c) Data and e-mail replication daily
- (d) Check for updates (OC extensions etc.) daily after auto database replication.
- (e) Keep vessel board updated.

(c) No modification of entered data will be allowed after replication from the site and pending strict consent from the OIP.

- (3) E - Mail and Data Replication.
- Transmission of the authentication sheets takes place DAILY.
- Procedure in brief is as follows:

- (a) All Authentication Sheets already allocated to respective inspectors (after being checked and verified by the authenticating official, with electronic signature and date stamp) are now paginated and filed in respective sheets.
- (b) Zipped file is named: UYear?ZID
- (c) Authentication cover page is produced, presented to the authenticating official, checked and correct, stamped by site date stamp (year, month, day) and signed by the authenticating official. Cover page should bear the subject of e-mail: U2001/MALCD.
- (d) The signed authentication cover page file is sent via e-mail to the OIP Authentication Team, together with the respective hard file.
- (e) The authentication cover page file is produced on Mondays, on the following week, a pending authentication/pending comm list (PA/PCL) is produced together with a description of the reasons for delay and list is submitted via e-mail or by fax to the OIP Authentication Team.

Note: Hard copies of the authentication sheets are to be signed with authentication official whose name appears on the shipment inspection ("Inspector" in Shipment Inspection) and the hard signatures are accurately allocated in the respective authentication sheet. Any working copy of the authentication sheet should be discarded and removed from the authenticating official.

File Fax - UN

UNITED NATIONS OFFICE OF THE IRAQ PROGRAMME

To: Coloma Inspector General, U.S.A. Office of Customs and Border Protection, Senior Vice President AP		Ref: J01/EL
Fax: 011-41-22-849-6939		
Tel:		
From: Jeremy Orwen, Chief Customs Expert, OIP	Fax: + 1 212 903 6003	
	Tel: + 1 212 903 6003	
Subject: Provision of Independent Inspection Agents		
Date: 26 January, 1999	Number of pages: 1	Number of cover pages: 1

Dear Auntie:
Thank you for your facsimile message of 20/1/99. I have subject attaching curriculum vitae for the following:

- Mr. T. Zabanawald
- Mr. S. Zak
- Mr. A. Bha Haq
- Mr. N. H...
- Mr. L. ...

In my facsimile of 20/1/99, I raised concerns regarding the number of inspectors with relevant professional experience. I was therefore expecting subsequent inspectors proposed by Coloma to be of a higher standard than that met. I would be pleased to hear of any progress that you have made in this regard.
In the event of such an update, I would like to inform you that OIP will have to postpone the provision of the above mentioned inspectors.
Regards,

cc: Ms. Stephanie Sobier
Mr. John Atkinson
Mr. Didier Chabroux

Phone: 212 903 6003 • Fax: 212 903 6003 • Telex: 212 903 6003 • www.un.org/iraq/ipo

2003 PAS
ca. Egn/Kon/Int/Am/Alc
LF/ JAS/AP/RG/ NY

2

This Contract is entered into by and between the UNITED NATIONS, a body of the Organization of the United Nations, with its headquarters in New York, N.Y. 10017 (U.S.A.) hereinafter referred to as the "United Nations" or "UN", and COTECNA INSPECTION S.A., a corporation organized under the laws of Switzerland, having its headquarters at 59, Rue de la Chapelle, 1201 Geneva, Switzerland, hereinafter referred to as the "Contractor". The United Nations and the Contractor are collectively hereinafter referred to as the "Parties".

W.I.T.E.S.E.F.P.M

WHEREAS the UN, in furtherance of the mandate of certain United Nations Security Council resolutions, wishes to engage the Contractor to provide services of individuals employed by the Contractor to monitor the expenses and quantities of petroleum supplies and of parts and equipment in the petroleum industry and (ii) the performance of services ancillary to the import of such goods, all on the terms and conditions set forth in this Contract;

WHEREAS, the Contractor represents that it is qualified, ready, able and willing to provide these services on the terms and conditions set forth in this Contract;

NOW, THEREFORE, the Parties hereto mutually agree as follows:

A. GENERAL

Article 1 - Contract Documents

1.1 This Agreement and all annexes hereto, together with the terms and conditions incorporated herein, shall constitute the entire Contract between the UN and the Contractor; and the reference to the "Contract" or this "Contract" between the UN and the Contractor:

(a) The Request for Proposal issued by the UN and dated 9 October 1998, under reference "Request for Proposal for Provision of Independent Agents in International Authentication of Goods/Air", as modified or supplemented by

CONTRACT ID/CON/124/98
UNITED NATIONS
and
COTECNA INSPECTION S.A.

FOR THE PROVISION OF INDEPENDENT INSPECTION AGENTS

HA006483

HA006484

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Security Council

DATE: GENERAL 8/1986/ANS/ 12 August 1986 ORIGINAL, ENGLISH

LETTER DATED 8 AUGUST 1986 FROM THE CHAIRMAN OF THE SECURITY COUNCIL CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On behalf of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, I have the honour to communicate to you the following:

Pursuant to paragraph 12 of Security Council resolution 661 (1990), the Committee was requested to develop, in close consultation with the Secretary-General, a plan of action to be implemented by the end of 1990. The Committee has held several meetings since that time, and has held several sessions of intensive deliberations. I am pleased to inform you that after several weeks of intensive deliberations, the Committee, at its 12th meeting held on 12 August 1986, has agreed on a plan of action to be implemented by its resolution 661 (1990). A copy of the plan of action is attached herewith for the information of the members of the Council.

(SIGNED) YOUSSEF ZEIN Secretary-General Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

* Released for technical reasons.

94-2048 (1) 120781 130896

/...

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the annexes to queries dated 20 October 1986, (hereinafter referred to as the "RP"), and

(b) The Contractor's Proposal dated 2 November 1986, as modified or supplemented by the undated document titled "Annexes/Procedures - Cotecna's Position" (consisting of 11 pages) (hereinafter referred to as the "Proposal").

1.2 The following Annexes shall form an integral part of this Contract.

- Annex I: UN General Conditions of Contract; Security Council Resolutions 986 (1995), 1111 (1996), 143 (1997), 1153 (1998), and 1173 (1998) (as amended) and any amendments or supplements after the date hereof, (hereinafter referred to as the "Resolutions");
- Annex III: Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995) (hereinafter referred to as the "MOU");
- Annex IV: The Procedures to be Employed by the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation between Iraq and Kuwait in the Discharge of its Responsibilities under Paragraph 12 of Security Council Resolution 661 (1990) (as amended) (hereinafter referred to as the "Procedures");
- Annex V: Transportation Release Form;
- Annex VI: Medical Release Form;
- Annex VII: Form of Performance Bond/Guarantee.

1.5 In the case of any inconsistency among the documents constituting this Contract, the following order of priority shall apply:

(a) this document and Annexes I - VII hereto;

9. the contract price is fair in view of all relevant circumstances, in particular that it is consistent with a currently approved pricing mechanism, and that the contract is consistent with the provisions of the Memorandum of Understanding;
10. the transaction does not exceed the limits established by resolution 984 (1995), including the requirements set out in paragraph 6 of the resolution;
11. If the contract and supporting documents reviewed under paragraph 9 above are found to be in order, the overseers, on behalf of the Committee, shall immediately approve the contract and inform by fax the national oil company holding the Iraq account. The Committee and the parties concerned shall be informed immediately upon rejection of any contract by an overseer. In such cases, the overseers will make a full report to the Committee for appropriate action.
12. Contracts for the sale of petroleum or petroleum products which do not comply with the provisions of paragraph 9 above shall be rejected. The reasons for such rejection shall be recommended to the Committee. In addition, the factors in paragraph 9 above shall be taken into account in the pricing mechanism reflects fair market value. Such review should be completed within 24 hours. Upon receipt of the analysis and recommendations, the overseers shall immediately inform the Committee of the results of their review and the reasons for their recommendations. The Committee shall take appropriate action under its expedited re-objection procedure within two business days.
13. Once a contract is approved pursuant to these procedures, the national oil purchaser shall cause a letter of credit consistent with paragraph 9 above to be opened and transmitted to the bank holding the Iraq account. The letter of credit shall be subject to the conditions set out in paragraph 9 above. Immediately upon receipt of the letter of credit, the overseers shall immediately verify the amount of credit in order to determine whether it complies with the information given in the application.
14. If the credit letter of credit complies with the information given in the application, the overseers inform the bank holding the Iraq account which shall issue a letter of credit and, for information purposes, shall immediately inform the Committee of the issuance of the letter of credit. Furthermore, the overseers shall provide a copy of the contract and, if necessary, a copy of the letter of credit to the national oil company holding the Iraq-Turkey border, or at Min-al-Jah. If the overseers determine that the letter of credit does not comply with the information given in the application the overseers shall immediately inform the Committee.
15. The overseers will submit a substantive report to the Committee, in a standardized format, at least once a week on the contracts considered by them during the week. The report shall include the following information: authorized for export, and inform the Secretary-General accordingly.

16. the light of this report, any document submitted as part of an application to the Committee will be available for consultation by Committee members in the Secretariat.
17. The export of petroleum and petroleum products will be monitored by United Nations independent inspection agents, appointed by the Secretary-General, who will be based in the oil exporting country. The agents shall monitor their work at the oil exporting station at the Inspector's request. Such on-site monitoring will make use of the documents received from the overseers, direct observation, as well as quality and quantity verification. The agents shall also be responsible for ensuring that the relevant contract has been approved, and inform the overseers accordingly. The independent inspection agents shall also be responsible for ensuring that the relevant contract is not being used to circumvent the provisions of resolution 984 (1995). They will immediately report any irregularity to the Committee and the Secretary-General.
18. In accordance with paragraph 3 of resolution 661 (1990), and the provisions of resolution 665 (1990) shipments of Iraqi oil must not be performed by Iraqi vessels. In order to facilitate the efficient maritime export of oil from Iraq, the Committee will establish a list of independent inspection agents. Such information will be made available to the relevant shipping approved oil exports.
19. The Committee will be informed of the appointments of the independent inspection agents made by the Secretary-General under paragraph 6 of resolution 984 (1995).
20. The independent inspection agents shall report weekly to the Committee, through the overseers, on their assessment of the export operations. When the leading oil companies are notified of the results of the independent inspection agents' reports, they shall cooperate with the original approved contract.
21. Payment of the amount of each purchase of petroleum and petroleum products shall be made into the Iraq account as provided for in paragraph 6 of resolution 984 (1995).
22. Once the Secretary-General forwards to the Committee and to the overseers the statements of the Iraq account, including outlines of the payments to be made to the Iraq account, the overseers shall immediately inform the Committee of the amount of the payments to be made to the Iraq account. The precise arrangements, consistent with the provisions of resolution 984 (1995), can be elaborated at a later stage, and when the need arises.
23. The overseers will receive monthly reports from BMO on the actual volume and type of petroleum and petroleum products exported under the relevant sales contracts.

including the concluded contractual arrangements. Reports from the Iraq expert are to be included in the unclassified list, unless the Committee exceptionally decides otherwise on a case-by-case basis.

31. The Committee will take action on such applications in accordance with paragraph 20 of resolution 67 (1991), its existing procedures and the provisions of the relevant resolutions. The Committee will also refer to independent inspection agents at the instigation of the Secretary-General, if appropriate, the results of the actions taken on the applications submitted.

32. Such applications shall be submitted as follows:

- (a) Medicines and Health Supplies
The reporting State informs the Committee that the exporter requests payment from the Iraq account for the supplies of medicines and health supplies. The application must indicate the commodity code number and the intended point(s) of entry into Iraq, must be attached to this communication.
- (b) Foodstuffs
The reporting State notifies the Committee. The notification must indicate the commodity code number and the intended point(s) of entry into Iraq. Relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to the notification.
- (c) Other Materials and Supplies for Essential Civilian Needs
The reporting State submits an application for approval by the Committee under its non-objection procedure. The application must indicate that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to the application.

33. Experts in the relevant fields, in particular the details of the non-objection procedure, shall be consulted. They will also take into consideration the views of the Secretary-General provided for in paragraph 20 above, in order to ensure that the Iraq account for the contract is properly managed. They will inform the Committee of their findings.

34. The Committee acts upon the findings of the experts as set forth below:

- (a) Medicines and Health Supplies
If the Committee finds, under its expedited non-objection procedure within two business days from the circulation of the application, that the contract is in order, it immediately informs the parties concerned that the exporter is eligible for payment from the Iraq account. If the contract is

/...

23. At a meeting, the Committee may provide additional guidance to be followed by the overseers.

24. If any Committee member judges the circumstances to be serious enough, that member may call for a review by the Committee of the system for approving applications established in this section. At an urgent meeting, the Committee will consider such a request. The Committee will continue to monitor the system. In the interim, the procedures, whether to continue or revise the system, shall be decided on all contracts can only be made in accordance with paragraph 11 above.

SECTION II

IMPORTS OF PETROLEUM AND PETROLEUM PRODUCTS ORIGINATING IN IRAQ UNDER THE SUPERVISION OF RESOLUTION 661 (1990)

25. The import by Turkey of petroleum and petroleum products originating in Iraq shall be subject to the conditions set forth in the regulations in paragraphs 2 and 6 of resolution 984 (1995), so as to ensure that the quantities imported are verified as reasonable by the Independent Inspection Panel, after the quantities of petroleum products referred to in paragraph 2 of resolution 708 (1991) for the same quantities of petroleum products. The quantities of petroleum products will be authorized and monitored in accordance with the relevant provisions of section I of the present procedures.

SECTION III

EXPORT TO IRAQ OF HUMANITARIAN SUPPLIES

26. The Government of Iraq will prepare a categorized list of humanitarian supplies, which will be subject to the procedures set forth in paragraph 2 of resolution 984 (1995). This list will be approved by the Committee, together with the distribution arrangements referred to in paragraph 8 (f) (ii) of the resolution.

27. After approving the distribution plan, the Secretary-General will forward the list, which shall include a part of the plan, to the Committee, and will make it available to all States.

28. The Government of Iraq or the United Nations Inter-Agency Humanitarian Assistance Programme will coordinate directly with suppliers to arrange the purchase of humanitarian supplies. The Government of Iraq will provide the necessary financial support, and will contribute the appropriate contractual arrangements.

29. Suppliers of Iraq of medicines, health supplies, foodstuffs, and essential and other supplies for essential civilian needs (hereinafter humanitarian supplies) shall be eligible for payment from the Iraq account shall be undertaken in accordance with the following provisions.

30. Applications for each export of humanitarian supplies, to be financed from the Iraq account, shall be submitted to the Committee in accordance with paragraph 22 of the Memorandum of Understanding between the Government of Iraq and the United Nations. The Government of Iraq by the exporting States with all relevant documentation,

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ANNEX I
STANDARD APPLICATION FORM TO REQUEST APPROVAL OF CONTRACTS
FOR SALE OF IRACI PETROLEUM AND/OR PETROLEUM PRODUCTS

The attached contract with the Iraqi State Oil Marketing Organization (ISMO) for the purchase of petroleum and/or petroleum products is submitted to the Committee for approval in accordance with the procedure established by resolution 661 (1990) and the procedure of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, adopted at its ... meeting held on ... (8/....).

INFORMATION ABOUT THE PURCHASER

Name of purchasing entity:
Place of registration:
Address:
Contact person:
Telephones:
Telex:
Telefax:
Quantity of crude petroleum and/or petroleum products:
Quantity of refined petroleum and/or petroleum products:
Pricing formula and/or price per m.t. barrel:
Date(s) of loading:
Date(s) of loading at destination (if available):
Name of vessel:
Payment (bankly credit irrevocable letter of credit, etc.):

Please find attached a copy of the contract, draft irrevocable letter of credit to be opened and all supporting documents.

Signature
Country
Name
Title

/...

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SECTION V

APPROVAL OF REASONABLE EXPENSES OTHER THAN EXPENSES PAYABLE IN IRAQ

41. Pursuant to paragraph 8 (4) of resolution 661 (1990), the Committee may approve, under its no-objection procedure, the financing from the Iraq account of reasonable expenses, other than expenses payable in Iraq, which are determined by it to be directly related to the support by Iraq of the activities of the Multinational Interception Forces operating in the Persian Gulf in accordance with resolution 661 (1990) or to the support to Iraq of the arms and equipment referred to in paragraph 8 of resolution 661 (1990), and of activities directly necessary thereto.

42. Requests for meeting the expenses referred to in the previous paragraph shall be submitted to the Committee by the purchaser. The necessary documentation shall be approved on a case-by-case basis by the Committee under its no-objection procedure. The Committee will seek, if necessary, the advice of the overseers or the independent inspection agents in reaching a decision.

SECTION VI

GENERAL EXCLUSIONS

43. The purchaser will arrange for the establishment of the appropriate escrow account in order to meet the obligations of the purchaser. The independent inspection agents, the bank holding the Iraq account and the coordinator of the Multinational Interception Forces operating in the Persian Gulf shall be kept up-to-date with the Central Bank of Iraq and ISMO.

44. The Security Council, in accordance with the Committee on the details of the disbursements made pursuant to paragraph 8 of resolution 661 (1990).

45. Letters of credit mentioned in these procedures should conform with the Uniform Customs and Practice for Documentary Credits.

46. The Committee will amend or revise the present procedures, if necessary, in the light of future developments.

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ANNEX II

Information to be included in the letter of credit

1. As provided for in paragraph 2 of Annex II of the Memorandum of Understanding between the Government of Iraq and the Government of the United Kingdom, signed on 20 May 1996, the following clauses will have to be inserted in each letter of credit:

1. Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be irreversibly paid into the Iraq Account with ... Bank.
2. All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the beneficiary.
3. Other information to be included:
 - nature of the petroleum or petroleum product
 - forecast quantity of petroleum or petroleum product
 - date of loading
 - unit price
 - forecast amount of the transaction

ANNEX V
GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF
USE OF UN-PROVIDED TRANSPORT

I, the undersigned, hereby recognize that all my travel on the United Nations Mission in Iraq (UNMIK) under the authority of the United Nations and Coecma Inspection S.A., is solely for my own convenience and benefit and may take place in areas or under conditions of special risk. In consideration of being permitted to travel on such means of transport, I hereby:

(a) Assume all risks and liabilities during such travel;
(b) Recognize that neither the United Nations nor any of its officials, employees or agents are liable for any injury or death that may be sustained by me during such travel;

(c) Agree, for myself as well as for my dependents, heirs and estate, to hold harmless the United Nations, its officials, employees or agents, and Coecma Inspection S.A., in connection with any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this release shall be deemed a waiver, express or implied, of any rights, claims or interests of the United Nations, including its subsidiary organs.

Passenger

Date

12/30/88 16:38 FAX 1 312 352 9185
GENERAL LEGAL
ANNEX D (Cont) 3942

Notarized herein or related herein shall be deemed a waiver of an agreement to waive any of the privileges or immunities of the United Nations.

Signed on

Signed on
on behalf of
on behalf of
by

by

In the capacity of
in the presence of

In the capacity of
in the presence of

TEL: (312) 352-9185
FAX: (312) 352-9185
DALLAS, TEXAS 75201
CORRESPONDENCE:
P.O. BOX 1018-1101 BOSTON
MA 02118
YOUR REF. OUR REF.

COTEENA INSPECTION S.A.



Office in charge
Government Division
O.C.S.S./D.M.
United Nations
New York (N.Y.)
New York, December 30th 1988.

Power of Attorney

i. the undersigned E. G. MASSEY, in my capacity of Chairman of COTEENA INSPECTION S.A. Bureau, hereby gives full and complete Power of Attorney to Mr. Andrew PRUMPUX to sign on behalf of our Company a contract number Reference PD/CON/324/88 with the United Nations, New York (U.S.A.) relating to work & services to be made in 1989 within the Programme of "OIL FOR FOOD".
Made in one Original this 30th day of December 1988.

E. G. MASSEY
Chairman of
COTEENA INSPECTION S.A.

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station shall be equipped with either a V-SAT terminal (earth station) or INMARSAT capable of transmitting at minimum of 64 Kbps; at least one (1) MINI M (Inmarsat) or better equipment with a separate fax machine capable of transmitting data as a back-up to the V-SAT or INMARSAT B.

4.12 The Contractor shall safeguard the security of all documents, equipment, materials, and facilities used in connection with the performance of this Contract, including without limitation through the measures set forth in the Proposal.

Article 5. Contractor's Personnel

5.1 No person shall be assigned by the Contractor to perform the Services under this Contract unless the Contractor has, in advance, the selection of such person in writing, without limiting the UN's rights of approval under Articles 4.2 and 5.2 hereof, in addition to the sixty-three (63) Agents selected by the United Nations under Article 4.2 hereof, the United Nations shall have the right to select and assign replacement Agents identified by the Contractor who are acceptable to serve as replacement Agents under this Contract.

5.2 The United Nations may request any time the withdrawal or replacement of any personnel of the Contractor assigned to perform the Services under this Contract. The Contractor shall, at its own cost and expense, withdraw or replace such personnel forthwith. The assignment by the Contractor of any replacement personnel shall be subject to the approval of the United Nations. Replacement personnel shall not be deemed a termination of this Contract.

5.3 The Contractor shall be fully responsible for all work and expenses incurred by the Contractor in the performance of the Services under this Contract. The Contractor shall take all reasonable measures to ensure that the Contractor's personnel conform to the highest standards of moral and ethical conduct and respect the local customs which are not inconsistent with the provisions of this Contract, and shall be subject without limitation to the Resolutions, the ROU and the BSR.

5.4 The Contractor shall ensure that all personnel used to perform the Services under this Contract are (i) medically fit to perform the Services under this Contract, (ii) free from any service-related illness, injury, death or disability. The Contractor shall submit proof of such medical fitness and such insurance satisfactory to the UN before commencing any work under

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Contract, including without limitation the establishment of new desktop PCs, and the replacement of desktop PCs that are increased or decreased, as may be reasonably necessary, in the UN's sole discretion, in accordance with Article 4.2 hereof. In the event such a modification in the Contractor's responsibilities is reasonably cause the Contractor's expenses other than those included in the Proposal to increase or decrease, the Parties shall mutually agree on the corresponding change to the contract price payable to the Contractor.

4.11 The Contractor shall supply all equipment, materials, and facilities necessary to perform the Services, including without limitation all equipment for taking and storing samples, all vehicles for transporting the Agents, all equipment for the maintenance and communications and other Agents required under this Contract, and all equipment and other Agents required facilities set forth in the Proposal. The communications and electronic data processing equipment and software supplied and utilized by the Contractor in performing its obligations under this Contract shall be fully compatible with the equipment and software utilized by the UN compatible with this Contract. In particular, the Contractor shall supply the following equipment and software to perform the Services:

(a) Each duty station shall be equipped with at least three (3) desktop PC's (with additional PC's as work volume may require) one (1) server with minimum Pentium II, with 128 MB RAM running at 333 Mhz, with three (3) 9.1 GB hard disk drives and a 24x CD-ROM drive. Each PC/Server shall be capable of data transmissions. Each PC/Server shall be capable of 4.6 or higher, and be Y2K compliant. The Contractor shall create a Logrus Notes-based application to record authentication and transmit them directly to the UN Notes database. The Contractor shall be responsible for ensuring that the integrity of all administration data is maintained.

(b) Each duty station shall be equipped with UPS (Uninterruptible Power Supply) backup capacity of 1200 Watts. Each duty station utilizing local power shall also be equipped with a back-up generator with adequate capacity to power the entire station.

(c) Subject to the Parties' mutual agreement to an appropriate adjustment to the contract price and an amendment of this Contract to effect such price adjustment, each duty

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Article 7. Contract Price

7.1 In full payment for the complete and satisfactory performance by the Contractor of all its obligations under this Contract, the UN will pay the Contractor a total of U.S. Dollars Eight Million Eight Hundred Seventy-Seven Thousand Two Hundred Twenty-Six (US\$4,877,226.00), subject to any adjustment in such price pursuant to Articles 4.2 or 12.1 hereof. This price includes all costs relating to the Services to be provided under this Contract, including but not limited to: lodging, security, transportation, and communications, electronic data processing and other equipment. This price also includes all taxes, duties, levies, and other charges of any nature imposed by any authority, whenever payable in or in other countries in arrears in six equal installments of U.S. Dollars Eight Hundred Twelve Thousand Eight Hundred Seventy-One (US\$812,871.00) each, subject to any adjustment in the total price as provided in Articles 4.2 and 12.1 hereof.

7.2 Payments under this Contract shall be made only against receipt of the Contractor's written invoices and certification by the UN that the Services represented by the invoice have been satisfactorily completed. The Contractor shall submit such invoices to the UN to enable payment. To the Office of the Iraq Programme, United Nations, New York, NY 10017, Attn: Senior Customs Officer, 45th Street, New York, NY 10017. The Contractor shall submit with a copy to the Procurement Division, United Nations, 300 East 47th Street, New York, NY 10017, a copy of the invoice and a copy of the invoice and all required supporting documentation; receipt of the invoice and all required supporting documentation; provided that the UN shall be entitled to a two percent (2%) discount on any invoice amount of fifteen (15) days of its receipt of such invoice and documentation.

7.3 The UN may offset any amounts which are due to it from the Contractor with any payments due from the UN to the Contractor.

RESPONSIBILITIES OF THE UN
Article 8. Identification Cards

The UN shall provide the Contractor's personnel with appropriate identification cards.

this Contract.

5.5 The UN shall not be liable for any action, omission, negligence, or misconduct of the Contractor's employees, agents, servants, or sub-contractors, nor for any insurance coverage which may be necessary or desirable for the purpose of this Contract, nor for any costs, expenses, or claims associated with any illness, injury, or death of any employee, agent, servant, or sub-contractors performing Services in connection with this Contract.

5.6 The Contractor shall ensure that the Agents are at their duty stations in accordance with the Proposal, on 1 February 1992. The duty stations shall be staffed as specified in the RFP and the Proposal, and the Agents shall carry out their work in accordance with a shift structure acceptable to the UN. The Contractor shall reserve the right at any time to alter the shift structure or the number of Agents assigned to each duty station, at no additional cost to the UN. The Agent assigned to each duty station shall be responsible for the following tasks: (1) food technologist capable of undertaking routine support tasks on hardware and software, one (1) food technologist, and one (1) person fluent in Arabic.

5.7 It is understood and agreed that the Agents performing the Services, whose names will be communicated to the Government of Iraq pursuant to Section VIII of the MOU, shall be deemed "experts" within the meaning of Article VI of the Convention on the Privileges and Immunities of the United Nations, and shall enjoy all of the privileges and immunities accorded to "experts" therein.

Article 6. Reporting Requirements

The Contractor shall submit to the Committee, the UN Secretary-General, and the United Nations Office of the Humanitarian Coordinator for Iraq daily and weekly reports in writing, describing in detail the Services performed under this Contract. Such reports shall be transmitted to the UN in electronic and hard copy format. The reports shall be in such format and provide such information as the UN shall specify.

C. CONTRACT PRICE AND PAYMENT

and hold harmless the UN and its officials, employees, and agents for any claim or liability of any nature arising in connection with this Article 9.

E. MISCELLANEOUS MATTERS

Article 10. Contractor's Obligations Upon Expiration of Termination

Upon expiration or termination of this Contract, the Contractor shall take immediate steps to terminate its operations in a prompt and orderly manner and shall provide such information as may be requested by the UN, including but not limited to the preservation and protection of (i) the work and services already performed by the Contractor and the results thereof and (ii) all property of the UN provided to the Contractor.

Article 11. Liaison and Inspection

11.1 The UN reserves the right to inspect and test all Services performed by the Contractor under this Contract, to the extent necessary to ensure that the Contractor is complying with the terms of this Contract. The UN shall perform inspections and tests in a manner that will not unduly hinder the performance of the Services by the Contractor. The Contractor shall cooperate with all inspections and tests.

11.2 If any work or services performed by the Contractor do not conform with the requirements of this Contract, the UN shall have the following options:

(a) If the UN determines that the improper performance can be remedied by re-performance or other corrective measures by the Contractor, the UN may request the Contractor in writing to take, and the Contractor shall take, at no expense to the UN, such actions to remedy the improperly performed work or services within fourteen (14) days of receipt of the written request from the UN or within such shorter period as the UN may have specified in the written request if emergency conditions so require, as determined by the UN.

(b) If the Contractor does not promptly take corrective measures or if the UN reasonably determines that the Contractor is unable to remedy the improper performance in a timely manner, the UN may obtain the assistance of other

Article 9. Access to Transport and Medical Facilities

9.1 Without limiting the Contractor's obligation under this Contract to provide transport, the United Nations agrees to allow the Contractor's personnel, employees, and agents, to the extent practicable, to travel on UN-provided transport to, in, and from Iraq strictly for the following purposes:

(a) evacuation due to security developments; on the understanding that such evacuation shall be to the nearest safe area; and

(b) medical evacuation due to serious medical conditions, including the medical evacuation of the Contractor's personnel, employees, and agents, to a designated UN medical facility or transportation out of Iraq to an out-of-country medical facility in an appropriate neighbouring country.

9.2 In consideration of the Contractor's personnel being permitted to travel on UN-provided transport, each of which personnel shall sign a release from liability in the form attached hereto as Annex C prior to their transport on any UN-provided transportation. The Contractor shall ensure that each of its personnel, employees, and agents and to deliver the signed original to the UN prior to such person's initial use of any UN-provided transportation.

9.3 Without limiting the Contractor's obligation under this Contract to provide emergency medical treatment, the UN Contractor's personnel, employees, and agents shall agree, on an exceptional basis and to the extent practicable, to allow such personnel access to available UN medical facilities, to utilize such UN medical facilities, and for the UN Contractor to utilize such UN medical facilities, each of which personnel shall complete and sign the release from liability in the form attached hereto as Annex D. The Contractor undertakes to obtain the signed release from liability in the form attached hereto as Annex D from each of its personnel, employees, and agents prior to the person's initial use of any UN medical facility.

9.4 The Contractor hereby releases the UN and its officials, employees, and agents from any and all liability of any nature whatsoever that may be asserted against the UN, its officials, employees, and agents arising in connection with the provision of such services. The Contractor agrees to reimburse the UN for any costs incurred by it in connection with this Article 9 and to indemnify

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12.4 Without limiting any of the UN's other rights under this Contract, the Contractor shall be responsible for obtaining all licenses, permits, and authorizations from governmental or other authorities necessary for the performance of this Contract. The UN shall provide reasonable assistance to the Contractor, by liaising as appropriate with relevant authorities for clearing through customs any equipment, materials, and supplies in connection with this Contract. Notwithstanding the foregoing, the UN's sole obligation with respect to customs clearance shall be to provide the Contractor with a documentary verification for the sole consumption or use of the Agent. If any further documentation is required in the future by Government authorities in Iraq or elsewhere, the Contractor will advise the UN, and the UN will provide reasonable assistance to the Contractor in obtaining such documents.

Article 13. Customs Clearance, Licenses, Etc.

The Contractor shall be responsible for customs clearance and obtaining all licenses, permits, and authorizations from governmental or other authorities necessary for the performance of this Contract. The UN shall provide reasonable assistance to the Contractor, by liaising as appropriate with relevant authorities for clearing through customs any equipment, materials, and supplies in connection with this Contract. Notwithstanding the foregoing, the UN's sole obligation with respect to customs clearance shall be to provide the Contractor with a documentary verification for the sole consumption or use of the Agent. If any further documentation is required in the future by Government authorities in Iraq or elsewhere, the Contractor will advise the UN, and the UN will provide reasonable assistance to the Contractor in obtaining such documents.

Article 14. Performance Bond

Within fifteen (15) days of signature of this Contract by the Contractor, the Contractor shall provide to the UN with a performance bond in the form set forth in Annex VII hereof, or a similar guarantee acceptable to the UN, in the amount of U.S. Dollars Two Hundred Forty-Three Thousand Eight Hundred Sixty-One (US\$243,861.00) (i.e., Article 7.1 above) which bond or guarantee shall remain in force until at least two (2) months after the expiration of the Contract. The UN shall be entitled to claim the performance bond/guarantee upon the first written demand of the UN without having to provide any other documentation, and in accordance with the terms and conditions set forth in Annex VII.

Article 15. Notices

Except as otherwise specified in this Contract or instructed by the UN, all notices and other communications required or

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entitles or persons and have corrective measures taken at the expense of the Contractor.

(c) If the UN determines that the improper performance cannot be remedied by re-performance or other corrective measures by the Contractor, the UN may terminate the Contract in accordance with Article 15 of the UN General Conditions of Contract (Annex I) without prejudice to any of its other rights and remedies under this Contract.

Article 12. Termination at Will, Force Majeure and Other Special Circumstances

12.1 In addition to the termination rights provided in Article 15 of the UN General Conditions of Contract (Annex I), the UN may terminate this Contract without cause, in whole or in part, upon thirty (30) days written notice to the Contractor. In the event of termination pursuant to this clause, the UN shall pay to the Contractor the amount of any reimbursement for services satisfactorily performed in accordance with this Contract prior to the effective date of termination and any reimbursement to which the Contractor shall be entitled pursuant to Article 12.2 hereof. In the event of partial termination, the Contractor shall be proportionately reduced as set forth in Article 4.2 hereof.

12.2 In the event the UN terminates this Contract pursuant to Article 12.1 hereof prior to the expiration of the initial six (6) months of the Contract, the UN shall reimburse the Contractor for a portion of its costs for dwelling, furniture, vehicles, and other equipment in accordance with the following schedule:

Month Termination Taken Effect	Reimbursement Amount
March 2003	US\$ 727,542.00
April 2003	US\$ 582,033.60
May 2003	US\$ 436,525.20
June 2003	US\$ 291,016.80
July 2003	US\$ 145,508.40

12.3 Notwithstanding the provisions of Article 14 of the UN General Conditions of Contract (Annex I), in the event of any circumstance constituting a force majeure, the Contractor shall not be required to provide a performance bond/guarantee. The Contractor shall not withdraw any of its personnel from their duty stations except with the prior written approval of the UN, which approval shall not be unreasonably withheld. The Parties agree that it shall not be unreasonable for the UN to withhold its consent so long as UN personnel remain similarly situated in Iraq.

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12.4 Without limiting any of the UN's other rights under this Contract, the Contractor shall be responsible for obtaining all licenses, permits, and authorizations from governmental or other authorities necessary for the performance of this Contract. The UN shall provide reasonable assistance to the Contractor, by liaising as appropriate with relevant authorities for clearing through customs any equipment, materials, and supplies in connection with this Contract. Notwithstanding the foregoing, the UN's sole obligation with respect to customs clearance shall be to provide the Contractor with a documentary verification for the sole consumption or use of the Agent. If any further documentation is required in the future by Government authorities in Iraq or elsewhere, the Contractor will advise the UN, and the UN will provide reasonable assistance to the Contractor in obtaining such documents.

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Within fifteen (15) days of signature of this Contract by the Contractor, the Contractor shall provide to the UN with a performance bond in the form set forth in Annex VII hereof, or a similar guarantee acceptable to the UN, in the amount of U.S. Dollars Two Hundred Forty-Three Thousand Eight Hundred Sixty-One (US\$243,861.00) (i.e., Article 7.1 above) which bond or guarantee shall remain in force until at least two (2) months after the expiration of the Contract. The UN shall be entitled to claim the performance bond/guarantee upon the first written demand of the UN without having to provide any other documentation, and in accordance with the terms and conditions set forth in Annex VII.

Article 15. Notices

Except as otherwise specified in this Contract or instructed by the UN, all notices and other communications required or

FOR COPECMA INSPECTION S.A. FOR THE UNITED NATIONS

Andre E. Bruniaux
Name: ANDRE E. BRUNIAUX

Name: SAMIYA BAHEL

Title: SENIOR VICE-PRESIDENT TITLE: OFFICER-IN-CHARGE PROCUREMENT

DIVISION

Date: 31 DECEMBER 1994 Date: 11 DECEMBER 1994

contemplated under this Contract shall be in writing and shall be delivered either by: (i) personal delivery; (ii) recognized overnight mail; (iii) postage prepaid, secure receipt requested, certified mail; (iv) registered mail; or (v) telegram, addressed to the Party for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice pursuant to this Contract.

If to the Contractor:

Cotecma Inspection S.A.
1211 Geneva
1211 Geneva 6
Switzerland
Attn: Chairman
Fax No.: 41-22-849-69-89

If to the UN (communications/notices of a contractual nature):

Procurement Division
United Nations
304 East 47th Street
New York, NY 10017
U.S.A.
Attn: Chief
Fax No.: 212-963-6315

If to the UN (communications/notices of an operational nature):

Office of the High Programme
United Nations
New York, NY 10017
Attn: Procurement
Telephone: 212-963-6883

Noted by overnight mail or recognized overnight delivery service shall be effective on the date it is officially recorded as received by the addressee. All notices and other communications required or contemplated by this Contract delivered in person, by facsimile, or by telegram shall be deemed to have been delivered to and received by the addressee and shall be effective on the date of actual receipt.

IN WITNESS WHEREOF, the Parties have executed this Contract.

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ANNEXES

- Annex I - UN General Council Resolutions
- Annex II - Security Council Resolutions
- Annex III - Memorandum of Understanding
- Annex IV - Procurement Code of Ethics
- Annex V - Procurement Code of Ethics
- Annex VI - Medical Release Form
- Annex VII - Form of Performance Bond/Guarantee

ANNEX I

[UN GENERAL CONDITIONS FOR GENERAL CONTRACTS]

ANNEX I

UNITED NATIONS GENERAL CONDITIONS
OF CONTRACT

1.0 **LEGAL STATUS:** The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis the United Nations. The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of the United Nations.

2.0 **SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to the United Nations in connection with the performance of its services under this Contract. The Contractor shall refrain from any action which may adversely affect the United Nations and shall fulfill its commitments with the fullest regard to the interests of the United Nations.

3.0 **CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES:** The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform efficiently the implementation of this Contract in respect to the customs, and conforming to a high standard of moral and ethical conduct.

4.0 **ASSIGNMENT:** The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of the United Nations.

5.0 **SUB-CONTRACTING:** In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and

clearance of the United Nations for all sub-contractors. The approval of the United Nations shall not release the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform with the provisions of this Contract.

6.0 OFFICIALS NOT TO BENEFIT: The Contractor warrants that no official of the United Nations has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.

7.0 INDEMNIFICATION: The Contractor shall indemnify, hold and save harmless and defend, at the Contractor's expense, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, *inter alia*, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

8.0 INSURANCE AND LIABILITIES TO THIRD PARTIES

8.1 The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.

8.2 The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.

8.3 The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury,

or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.

8.4 Except for the workmen's compensation insurance, the insurance policies under this Article shall:

- (i) Name the United Nations as additional insured;
- (ii) Include a waiver of subrogation of the Contractor's rights to the United Nations;
- (iii) Provide that the United Nations shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

8.5 The Contractor shall, upon request, provide the United Nations with satisfactory evidence of the insurance required under this Article.

9.0 ENCUMBRANCES/LIENS: The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on files or to remain on file in any public office or on file with the United Nations or to be filed in any public office or on file with the United Nations furnished under this Contract or by reason of any other claim or demand against the Contractor.

10.0 TITLE TO EQUIPMENT: Title to any equipment and supplies that may be furnished by the United Nations shall rest with the United Nations and any such equipment shall be returned to the United Nations at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment, when returned to the United Nations, shall be in the same condition as when received by the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate the United Nations for equipment determined to be damaged or degraded beyond normal wear and tear.

11.0 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS: The United Nations shall be entitled to all intellectual property and other

proprietary rights including but not limited to patents, copyrights, and trademarks, with regard to products, or documents and other materials which bear a direct relation to or are produced or prepared or collected in the course of or in the course of the execution of this Contract. At the request of the Contractor, the Contractor shall take all necessary steps to execute all necessary steps to protect and preserve the Contractor's proprietary rights and transferring them to the United Nations in compliance with the requirements of the applicable law.

12.0. USE OF NAME, EMBLEM OR OFFICIAL SEAL OF THE UNITED NATION:

The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with the United Nations, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of the United Nations, or any abbreviation of the name of the United Nations in connection with its business or otherwise.

13.0. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION

13.1 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of the United Nations, shall be treated as confidential and shall be delivered only to United Nations authorized officials on completion of work under this Contract.

13.2 The Contractor may not communicate at any time to any other person, Government, contractor, subcontractor, agent, or other person known to it by the Contractor, or any other person with whom the Contractor has an association with the United Nations which has not been authorized in writing by the United Nations, any information which has been received by the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

14.0. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS

14.1 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the United Nations, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the United Nations of any other changes in circumstances which may affect its performance of the Contract, to the extent that such changes may interfere with its performance of this Contract. On receipt of the notice required under this Article, the United Nations shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

14.2 If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the United Nations shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 15, of this Contract, except that the period of notice shall be seven (7) days instead of thirty (30) days.

14.3 Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.

14.4 Notwithstanding anything to the contrary in this Contract, the Contractor recognizes that the work and services will be performed under harsh or hostile conditions caused by civil unrest. Consequently, the Contractor's obligations to perform caused by events arising out of or in connection with, such civil unrest shall not, in and of itself, constitute force majeure under this Contract.

15.0. TERMINATION

15.1 Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16 "Arbitration" below shall not be deemed a termination of this Contract.

15.2 The United Nations may terminate forthwith this Contract at any time should the mandate or the funding of the Mission/Agency be curtailed or terminated, in which case the Contractor shall be reimbursed by the United Nations for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

15.3 In the event of any termination by the United Nations under this Article, no payment shall be due from the United Nations to the Contractor, except for work and services satisfactorily performed in conformity with the express terms of this Contract.

15.4 Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, the United Nations may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Contractor shall immediately inform the UN of the occurrence of any of the above events.

16.0 SETTLEMENT OF DISPUTES

16.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.

16.2 Arbitration

Any dispute, controversy or claim between the Parties arising out of this Contract or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one of the Parties of the request for arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining, shall be referred to the arbitration tribunal constituted by the Parties to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. In addition, the arbitration tribunal shall have no authority to award punitive damages. The arbitration tribunal shall have no authority to award interest in excess of six percent (6%), and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

17.0 PRIVILEGES AND IMMUNITIES: Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including the subsidiary organs.

18.0 TAX EXEMPTION

18.1 Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, inter alia, that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the United Nations exemption from such taxes, duties or charges, the Contractor shall immediately contact the United Nations to determine a mutually acceptable procedure.

18.2 Accordingly, the Contractor authorizes the United Nations to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with the United Nations before the payment thereof and the United Nations has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide the United Nations with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

ANNEX II

(SECURITY COUNCIL RESOLUTION 986 (1995))

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19.0 OBSERVANCE OF THE LAW: The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

20.0 AUTHORITY TO MODIFY: Pursuant to the Financial Regulations and Rules of the United Nations, only the Procurement Division at New York possesses the authority to agree on behalf of the United Nations to any modification or change in this Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in this Contract shall be valid and enforceable against the United Nations unless provided by an amendment to this Contract signed by the Contractor and the Chief or Deputy Chief of the Procurement Division.

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Security Council

Distr. GENERAL

5/1996/636* 12 August 1996

ORIGINAL: ENGLISH

LETTER DATED 8 AUGUST 1996 FROM THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On behalf of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, I have the honour to communicate to you the following: Pursuant to paragraph 12 of Security Council resolution 984 (1995), the Committee was requested to develop, in close coordination with the Secretary-General, specific procedures as necessary to implement the arrangements in that resolution. In this regard, I would like to inform you that after several weeks of intensive deliberations, the Committee, at its 142nd meeting held on 8 August 1996, adopted the procedures to be employed by it in the implementation of its mandate. A copy of the procedures is attached herewith for the information of the members of the Council.

(ENGLISH) TONE TYPE Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

* Released for technical reasons.

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PROCEDURES TO BE EMPLOYED BY THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT IN THE DISCHARGE OF ITS RESPONSIBILITIES AS REQUIRED BY PARAGRAPH 12 OF SECURITY COUNCIL RESOLUTION 984 (1995)

SECTION I

AIM OF PETROLEUM AND PETROLEUM PRODUCTS REGULATION IN IRAQ

- 1. The Committee will select, upon recommendation by the Secretary-General, at least four independent experts in international oil trade, to be appointed by the Secretary-General as "overseers" at the United Nations headquarters. The number of the overseers will be reviewed periodically on the basis of the number of States which are interested in the regulation of authority and responsibilities set forth in this section. 2. Notwithstanding the obligations of States under the Charter, the Security Council resolutions and petroleum products regulation in Iraq, the Committee will select, upon recommendation by the Secretary-General, a list of national oil purchasers (private companies, state-owned companies, etc.) and other interested parties to be invited to participate with the overseers. States may present changes to the list at any time. Once the Committee has taken note of the changes thereto and passed them on to the overseers, these purchasers are entitled to participate in the regulation of authority and responsibilities set forth in this list, or if a certain purchaser is not included in the list, the communication with the overseers shall be submitted through the Permanent Mission of the State of purchase. 3. A contract for the purchase of petroleum and petroleum products will only be concluded if it is approved by the Committee. The Committee shall act on behalf of the Iraqi State Oil Marketing Organisation (Iraqi State Oil Marketing Organisation - ISMO) as an endorsement. 4. ISMO's contracts with purchasers will include all the details specified in paragraph 3 (a) of resolution 984 (1995). In particular, the contract shall include the following: (i) the name of the purchaser; (ii) the quantity of petroleum products purchased; (iii) duration of contract; (iv) credit and payment terms; (v) transportation and quality; (vi) pricing details. 5. The Government of Iraq or ISMO may submit at any time pricing mechanisms for the sale of petroleum for review by the Committee. The overseers will assess these pricing mechanisms, in particular whether they reflect fair market value, and submit their findings to the Committee. The Committee will then review the pricing mechanisms according to its no-objection procedure within two business days. The pricing mechanism should include the elements listed in paragraph 4 above. In

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the contract price is fair in view of all relevant circumstances. In particular that it is consistent with a currently approved pricing mechanism, and competitive given world prices and market trends and taking into consideration the provisions of paragraph 6 of annex II of the Memorandum of Understanding.

the transaction does not exceed the limits established by resolution 660, including the requirements set out in paragraph 6 of the resolution.

10. If the contract and supporting documents referred to in paragraph 9 above are approved by the Committee, the national oil purchaser shall immediately approve the contract and inform by fax the national oil purchaser of the Permanent Mission concerned, as well as inform the bank immediately upon reception of any contract by electronic means. In circumstances other than rejection for technical reasons the purchasers will send a full report to the Committee for appropriate action.

11. Contracts for the sale of petroleum or petroleum products which do not comply with the pricing mechanism approved by the Committee under paragraph 9 above shall be referred to the Committee for its analysis and recommendations to the Committee. In addition, the features in paragraph 9 above, the overviews shall determine whether the contract's pricing mechanism reflects fair market value. Such review should be conducted in accordance with the procedures set out in paragraph 10. The Committee will consider the contracts under its auspices in accordance with the procedures within two business days.

12. Once a contract is approved pursuant to these procedures, the national oil purchaser shall transmit the contract to the bank holding the escrow account with paragraph 9 above. The bank shall immediately transmit a letter of credit in order to determine whether it complies with the information given in the application.

13. If the contract or letter of credit complies with the information given in the application, the bank shall immediately transmit the letter of credit to the national oil purchaser. The bank shall also transmit the letter of credit to the Central Bank of Iraq for the purposes of issuing same. In circumstances, the overviews and notification of supporting documents to the inspectors at Ceyhan and at the entering points at the Iraq-Turkey border, or at Al-Basrah. If the opened application of the overviews shall immediately inform the Committee.

14. The overviews will submit a substantive report to the Committee, in which they will include the cumulative quantity and approximate value of petroleum products, including the cumulative quantity and approximate value of petroleum products authorized for export, and inform the Secretary-General accordingly. In

order to facilitate this process, regular consultations between the national oil purchaser and the Committee shall be held. The national oil purchaser will in any case be reviewed in accordance with paragraph 9 above. The pricing mechanism will be reviewed in accordance with paragraph 9 above whenever a revision. Current approved price mechanisms will remain in effect until new ones are approved by the Committee.

When market conditions so require, and in particular during the first month of the implementation of resolution 660 (1990) adjustments to pricing mechanisms may be necessary. The national oil purchaser or the Permanent Mission shall submit an application for approval, together with the necessary supporting documents. If necessary, other supporting documents.

7. The Secretary of the Committee will set up a new file to be used exclusively for correspondence with regard to the petroleum and petroleum products transactions. The national oil purchaser or the Permanent Mission shall submit an application for approval, together with the necessary supporting documents. If necessary, other supporting documents. If necessary, other supporting documents. If necessary, other supporting documents.

8. A contract for the sale of petroleum or petroleum products which does not comply with the pricing mechanism approved by the Committee under paragraph 9 above shall be referred to the Committee for its analysis and recommendations to the Committee. In addition, the features in paragraph 9 above, the overviews shall determine whether the contract's pricing mechanism reflects fair market value. Such review should be conducted in accordance with the procedures set out in paragraph 10. The Committee will consider the contracts under its auspices in accordance with the procedures within two business days.

9. To ensure that all contracts comply with the provisions of resolution 660 (1990) and to determine whether any attempt at fraud or deception, the national oil purchaser shall immediately transmit the contract to the bank holding the escrow account with paragraph 9 above. The bank shall immediately transmit a letter of credit in order to determine whether it complies with the information given in the application.

10. If the contract or letter of credit complies with the information given in the application, the bank shall immediately transmit the letter of credit to the national oil purchaser. The bank shall also transmit the letter of credit to the Central Bank of Iraq for the purposes of issuing same. In circumstances, the overviews and notification of supporting documents to the inspectors at Ceyhan and at the entering points at the Iraq-Turkey border, or at Al-Basrah. If the opened application of the overviews shall immediately inform the Committee.

11. The overviews will submit a substantive report to the Committee, in which they will include the cumulative quantity and approximate value of petroleum products, including the cumulative quantity and approximate value of petroleum products authorized for export, and inform the Secretary-General accordingly. In

- 23. At a meeting, the Committee may provide additional guidance to be followed by the overseers.
 - 24. If any Committee member judges the circumstances to be serious enough, that member may call for a review by the Committee of the system for approving oil contracts established in this section. At an urgent meeting, the Committee may decide to suspend the system for approving oil contracts or to continue or revise the system. In the meeting procedures, whether the system can only be made in accordance with paragraph 11 above.
- SECTION II**
REPORT BY BUYER OF PETROLEUM AND PETROLEUM PRODUCTS ORIGINATING IN IRAQ
UNDER RESOLUTION 661 (1990) AND RESOLUTION 688 (1991)
- 25. The report by buyers of petroleum and petroleum products originating in Iraq under resolution 661 (1990) and resolution 688 (1991) shall be submitted to the Committee in accordance with the requirements of paragraphs 2 and 4 of resolution 688 (1991), and shall be verified by the Committee. The report shall be verified as reasonable by the independent inspection agency, after the agency has been approved by the Committee. The report shall be submitted to the Committee in accordance with the requirements of paragraph 705 (1991) for the coverage referred to in paragraph 2 of resolution 688 (1991). The report shall be submitted to the Committee in accordance with the relevant provisions of section I of the present procedures.
- SECTION III**
REPORT BY IRAQ OF HUMANITARIAN SUPPLIES
- 26. The Government of Iraq will prepare a categorized list of humanitarian supplies, including medical supplies, foodstuffs and accessories, and will submit it to the Committee and report pursuant to resolution 688 (1991). The list shall be submitted to the Committee together with the distribution arrangements to be implemented in paragraph 8 (a) (ii) of the resolution.
 - 27. After approving the distribution plan, the secretary-general will forward the list, which constitutes a part of the plan, to the Committee, and will make it available to all States.
 - 28. The Government of Iraq or the United Nations Inter-Agency Humanitarian Programme will contract directly with suppliers to arrange the purchase of humanitarian supplies, and will conclude the appropriate contractual arrangements with the suppliers.
 - 29. The Government of Iraq will ensure that the humanitarian supplies and accessories and supplies for essential civilian needs (humanitarian supplies) are not sold or transferred from the Iraq account shall be undertaken in accordance with the following provisions.
 - 30. Applications for each export of humanitarian supplies, to be financed from the Iraq account consistent with paragraph 23 of the Memorandum of Understanding between the Government of Iraq and the Committee, shall be submitted to the Committee at the request of the Government of Iraq by the exporting State with all relevant documentation,

- the light of this report, any document submitted as part of an application for approval of an oil contract shall be available for consultation by Committee members in the Secretariat.
- 13. The report of petroleum and petroleum products will be submitted by United Nations inspection agency (UNIA) to the Committee. The UNIA shall be stationed at the loading facilities at Ceyhan and Min-al-Bahr and at the unloading station at the Iraq-Turkey border, such as on-site direct observation, as well as quality and quantity verification. The UNIA shall also have the authority to stop the loading of petroleum if there is any evidence of irregularity. They will immediately report any irregularity to the Committee and the secretary-general.
 - 14. In accordance with paragraph 3 of resolution 661 (1990) and the provisions of paragraph 2 of resolution 688 (1991), the UNIA shall submit to the Committee a report on the loading of petroleum and petroleum products from Iraq vessels. In order to facilitate the efficient maritime export of oil under resolution 688 (1991) all purchasers will communicate to the UNIA the name, address and telephone number of the shipping agent, and will submit to the UNIA a copy of the shipping approved oil reports.
 - 17. The Committee will be informed of the appointments of the independent inspection agency by the secretary-general under paragraph 6 of resolution 688 (1991).
 - 18. The independent inspection agency shall report weekly to the Committee, through the overseers, on their assessment of the export operations. When the loading of oil under a contract is completed, they shall inform the overseers on the status for completion with the original approved contract.
 - 19. Payment of the Iraq account of each purchase of petroleum and petroleum products shall be made in accordance with paragraph 8 of resolution 688 (1991).
 - 20. Once the secretary-general forwards to the Committee and to the Government of Iraq statements of the Iraq account, including outlines of the distribution arrangements, the Government of Iraq shall ensure payments to and from that account.
 - 21. The terms for the sale of petroleum products will be broadly similar to those set out in paragraph 8 of resolution 688 (1991), and shall be consistent with paragraph 8 of resolution 688 (1991), and shall be elaborated at a later stage, and when the need arises.
 - 22. The overseers will receive monthly reports from SOWO on the actual volume of petroleum and petroleum products exported under the relevant sales contracts.

SECTION IX

REMOVAL OF REASONABLE EXPENSES OTHER THAN EXPENSES PAYABLE TO IRAQ

41. Pursuant to paragraph 8 (f) of resolution 986 (1995), the Committee can approve, under its no-objection procedure, the financing from the Iraq account of reasonable expenses, other than expenses payable to Iraq, which are determined by it to be directly related to the support of the operations of the United Nations Monitoring, Verification and Inspection Regime (UNMOP) established by resolution 986 (1995) or to the export to Iraq of the parts and equipment referred to in paragraph 9 of resolution 986 (1995), and of activities directly necessary thereto.

42. Requests for meeting the expenses referred to in the previous paragraph shall be submitted to the Committee on a case-by-case basis by the bank holding the Iraq account and will be approved on a case-by-case basis by the Committee under its no-objection procedure. The Committee will seek, if necessary, the advice of the overseers or the Independent Inspection Agency in reaching a decision.

SECTION X

GENERAL CONCLUSIONS

43. The Secretariat will arrange for the establishment of the appropriate documentation and will be approved on a case-by-case basis by the Committee under its no-objection procedure. The Committee will seek, if necessary, the advice of the overseers or the Independent Inspection Agency in reaching a decision.

44. The Secretary-General's report regularly to the Committee on the details of the disbursement of proceeds pursuant to paragraph 8 of resolution 986 (1995).

45. Letters of credit issued in these procedures should conform with the Uniform Customs and Practice for Documentary Credits.

46. The Committee will amend or revise the present procedures, if necessary, in the light of future developments.

accordance with paragraph 8 (e) (1) of Security Council resolution 986 (1995), the Inspection Agency will report all irregularities to the Secretary-General and to the Committee. If the problem is related to normal commercial practices, the Committee's attention will be notified. Performance bonds may not be opened. Payments in favour of the purchaser resulting from normal commercial resolution practices should be made to the bank holding the Iraq account. The Committee will make every effort to provide guidance in the most expeditious manner.

37. The bank holding the Iraq account shall effect payment under any letter of credit only if all documents (listed in para. 35 above) comply with the conditions of the letter of credit and the supporting documents, payment can be made in full and the bank is satisfied that the documents are genuine. Documents which do not comply with the conditions of the letter of credit shall only be released by the Secretary-General.

38. The provisions of this section are without prejudice to the application of the existing procedure of the Committee for goods which are not supplied pursuant to resolution 986 (1995).

SECTION XI

EXPORT TO IRAQ OF PARTS AND EQUIPMENT AND FINANCIAL TRANSACTIONS RELATED THEREOF, SUBJECT TO PARAGRAPH 8 (f) OF RESOLUTION 986 (1995)

The export to Iraq of the parts and equipment which are essential for the safe operation of the Iraq oilfield pipeline system in Iraq will be approved by the Committee on a case-by-case basis under its no-objection procedure. Requests for such exports to Iraq will be approved by the Committee on a case-by-case basis under its no-objection procedure. The Committee will seek, if necessary, the advice of the overseers or the Independent Inspection Agency in reaching a decision. Paragraph 8 (f) of resolution 986 (1995) is used only for the purpose permitted.

40. In accordance with paragraph 10 of resolution 986 (1995), until proceeds from the sale of petroleum and petroleum products are deposited into the Iraq account, the Committee may approve, on a case-by-case basis, the export to Iraq of the parts and equipment which are essential for the safe operation of the oilfield pipeline system. The Committee will seek, if necessary, the advice of the overseers in considering such requests. In this case the provisions of paragraph 8 (f) above shall apply.

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Annex II

Information to be included in the letter of credit

1. Be provided for in paragraph 3 of Annex II of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995), signed on 20 May 1996, the following clauses will have to be inserted in each letter of credit:

1. Provided all terms and conditions of this letter of credit are fulfilled, the proceeds of this letter of credit will be irrevocably paid into the Iraq account with ... Bank.

2. All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the purchaser.

3. Other information to be included:

- nature of the petroleum or petroleum product
- forecast quantity of petroleum or petroleum product
- date of loading
- unit price
- forecast amount of the transaction

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Annex I

Standard application form to request approval of contracts for sale of Iraqi petroleum and/or petroleum products

The attached contract with the Iraqi State Oil Marketing Organization (ISMO) for the purchase of petroleum and/or petroleum products is submitted for approval in accordance with paragraph 1 (a) of Security Council resolution 986 (1995) and paragraph 3 of the Memorandum of Understanding between the Government of Iraq and the United Nations Secretariat, signed on 20 May 1996, and the decision by resolution 661 (1990) concerning the situation between Iraq and Kuwait adopted at its ... meeting held on ... (2/....).

Information about the purchaser

Name of purchasing entity:
Place of registration:
Address:
Contact person:
Telephone:

Telex:
Telefax:
Telex:

Summary of contract terms

Quantity of crude petroleum and/or petroleum products:
Quality of crude petroleum and/or petroleum products:
Pricing formula and/or price per b.p.s.d. barrel:
Date(s) of loading:
Name of vessel:
Payment details (draft irrevocable letter of credit, etc.)

Please find attached a copy of the contract, draft irrevocable letter of credit to be opened and all supporting documents.

Signature
Name of signatory
Title

...

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ANNEX VI

GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF PROVISION BY UN OF EMERGENCY MEDICAL CARE

I, the undersigned, hereby recognize that all emergency medical care provided to me at UN medical facilities, pursuant to Contract No. PD/CON/324/98 between the United Nations and Cotecna Inspection S.A., is solely for my own convenience and benefit and may take place in areas or under conditions of special risk. In consideration of receiving such medical care, I hereby:

- (a) Assume all risks and liabilities in connection with the provision of such medical care;
- (b) Recognize that neither the United Nations, nor any of its officials, employees or agents are liable for any loss, damage, injury or death that may be sustained by me during the provision of such medical care;
- (c) Agree, for myself as well as for my dependents, heirs and estate, to hold harmless the United Nations and all its officials, employees and agents from any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this Release shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

Employee _____
Date _____

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ANNEX V

GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF USE OF UN-PROVIDED TRANSPORT

I, the undersigned, hereby recognize that all my travel on the UN-provided transport, pursuant to Contract No. PD/CON/324/98 between the United Nations and Cotecna Inspection S.A., is solely for my own convenience and benefit and may take place in areas or under conditions of special risk. In consideration of being permitted to travel on such means of transport, I hereby:

- (a) Assume all risks and liabilities during such travel;
- (b) Recognize that neither the United Nations, nor any of its officials, employees or agents are liable for any loss, damage, injury or death that may be sustained by me during such travel;
- (c) Agree, for myself as well as for my dependents, heirs and estate, to hold harmless the United Nations and all its officials, employees and agents from any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this Release shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

Passenger _____
Date _____

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CO-INS

COTECNA INSPECTION S.A.

TELEFONO 0432 40000
FAX 0432 40000
TELEX 41507 COIN CH
GARBALE COTECNA SENECA
CORRESPONDENZA
P.O. BOX 918 - 10128 ROMA - S
SWITZERLAND

OUR REF.

YOUR REF.

offer in charge
Podium Division
O.C.S.S./D.M.
United Nations
New York / N.Y.
1000 New York, December 30th 1998.
IN THE USA THE DATE

Power of Attorney
I, the undersigned F. G. MASSEY, in
my capacity of Chairman of COTECNA
INSPECTION S.A. Geneva, hereby give full
and complete Power of Attorney to Mr. Andrew
PRUMPUX to sign on behalf of our Company
a contract under Panama P.D./CO/324/98,
with the United Nations, New York (U.S.A.)
relating to work & services to be made in 1999
within the Programme of "OIL FOR FOOD".
Made in one Original this 30th
day of December 1998.

[Signature]
F. G. MASSEY
Chairman of
COTECNA INSPECTION S.A.

HA008548

COPY

CONTRACT FD/CO144/01

between

THE UNITED NATIONS

and

COTECNA INSPECTION S.A.

FOR THE PROVISION OF INDEPENDENT INSPECTION SERVICES

RESERVED

This Contract is entered into by and between the UNITED NATIONS, an international inter-governmental organization, with its headquarters located at New York, New York, USA (hereinafter referred to as the "UN"), and COTECNA INSPECTION S.A., a company with its headquarters in the town of Switzerland, having its headquarters at 58, Rue de la Terrasse, Geneva, Switzerland (hereinafter referred to as the "Contractor"). The UN and the Contractor are collectively hereinafter referred to as the "Parties".

WITNESSETH

WHEREAS the UN, in furtherance of the mandate of United Nations Security Council Resolution, wishes to engage the services of the Contractor to provide independent inspection services and equipment services in Iraq, in accordance with the terms and conditions established by the Committee, all on the terms and conditions set forth in this Contract;

WHEREAS the Contractor represents that it is qualified, willing and able to provide these services on the terms and conditions set forth in this Contract;

NOW, THEREFORE, subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

A. GENERAL

Article I. Contract Documents

1.1 This document and the following annexed documents, together with the following annexed documents, which are incorporated by reference, constitute the entire contract (hereinafter referred to as the "Contract" or "Agreement") between the UN and the Contractor:

- (a) Request for Proposal issued by the UN and dated 30 March 2001 under the terms of the Provision of Services by Independent Inspection Agents for Humamara Strip/LM, as modified or supplemented by the UN on 24 April 2001, (hereinafter referred to as the "RFP") and;
- (b) The Contractor's Proposal dated 24 April 2001, as modified or supplemented by the Contractor on 24 April 2001, confirming its acceptance of the negotiated rates (hereinafter referred to as the "Proposal").

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agreements, verbal or otherwise, exist between the Parties except as herein expressly set forth.

Article 2. Terms of Contract

This Contract shall be in force for an initial term of one (1) year, from July 2001 through 31 July 2002, unless earlier termination in accordance with the terms of this Contract. The Contract shall be subject to automatic renewal for the same term unless the Parties agree in writing to terminate the Contract for any other reason. The Contract shall be subject to automatic renewal for an additional period of one (1) year or of such shorter period as the UN may in its sole discretion determine, by giving the Contractor written notification to do so not less than fifteen (15) days prior to the expiration of the initial term of the Contract.

Article 3. Obligations of Contractor

The Resolutions direct the Security Council Committee established by UN Security Resolution 661 (1990) (hereinafter referred to as the "Committee") to monitor the import into Iraq of certain humanitarian supplies and equipment for the petroleum industry (such as spare parts and equipment) under the supervision of a "Supplier". Under this Contract, the Contractor shall provide, maintain and repair the equipment referred to in the Contract, and shall ensure that the equipment is in good working order at all times. The Contractor shall also ensure that the equipment is in good working order at all times and shall ensure that the equipment is in good working order at all times. The Contractor shall also ensure that the equipment is in good working order at all times and shall ensure that the equipment is in good working order at all times.

Article 4. Responsibilities of THE CONTRACTOR

4.1 The Contractor shall provide, maintain and repair the equipment referred to in the Contract, and shall ensure that the equipment is in good working order at all times. The Contractor shall also ensure that the equipment is in good working order at all times and shall ensure that the equipment is in good working order at all times. The Contractor shall also ensure that the equipment is in good working order at all times and shall ensure that the equipment is in good working order at all times.

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1.2 The following Annexes shall form an integral part of this Contract:

- Annex I: UN General Conditions for General Contracts;
- Annex II: Security Council Resolution 386 (1995), 1111 (1997), 1143 (1997), 1153 (1998) and 1175 (1998) (as such Resolutions may be modified or supplemented after the date hereof, hereinafter referred to as the "Resolutions");
- Annex III: Memorandum of Understanding between the Security Council Committee established by UN Security Council Resolution 661 (1990) (hereinafter referred to as the "MOU");
- Annex IV: The Procedures to be Employed by the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation between Iraq and Kuwait, and the Discharge of its Responsibilities thereunder, as set forth in the MOU, as such Procedures may be modified or supplemented after the date hereof, hereinafter referred to as the "Procedures";
- Annex V: Transportation Request Form;
- Annex VI: Monthly Report Form;
- Annex VII: Performance Bond/Guarantee.

1.3 In the event of any discrepancy among the documents constituting this Contract, the following order of priority shall apply:
(a) this document and Annexes I - VII hereto,
(b) the RFP, and
(c) the Proposal.

It is expressly agreed that this Contract embodies the entire agreement of the Parties with regard to the subject matter hereof, and that no promises, understandings, obligations or

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This seal may only be removed by the United Nations at the time of the visit to the end-user facility. Subsequent to the inspection and authentication of this consignment, the Agents shall inform the United Nations and, with regard to oil spare parts and equipment, the oil inspection agents, of the arrival at the border of the item(s) in question and also transmit details of the warehouse or storage site location and, where available, details regarding end-use or the end-user facility.

4.5 Should the Government of Iraq consider certain commodities to be defective upon receipt and not in accordance with contractual specifications, it may make arrangements for the export of an item(s) from Iraq back to the supplier (or other approved destination) on occasions, the supplies will also be subject to special inspection procedures by the Government of Iraq, the Agent shall also undertake special inspection procedures as indicated in Article 4.4 above but in reverse order. This will involve the Government of Iraq, the Agent shall also undertake special inspection procedures as indicated in Article 4.4 above but in reverse order. Upon being informed by the Government of Iraq, the Agent shall verify the propriety of the arrangements and report the results of the special inspection to the UN. The Agent shall also verify the propriety of the arrangements and report the results of the special inspection to the UN.

4.6 The Agents will immediately report all irregularities to the UN Secretary-General and the Committee in case of shipment other than those covered by the UN Secretary-General and the Committee. In case of shipment other than those covered by the UN Secretary-General and the Committee, the Agent shall immediately report all irregularities to the UN Secretary-General and the Committee. In case of shipment other than those covered by the UN Secretary-General and the Committee, the Agent shall immediately report all irregularities to the UN Secretary-General and the Committee. In case of shipment other than those covered by the UN Secretary-General and the Committee, the Agent shall immediately report all irregularities to the UN Secretary-General and the Committee.

4.7 The Contractor shall be responsible for operating the convey control system at the Zakao/Rah, including the submission, preparing convey lists, collecting passports, and submitting the documents to the relevant authorities.

4.8 The Contractor shall be responsible for making the necessary arrangements to ensure the fulfilment of its obligations under this Contract. The Contractor shall perform its obligations under this Contract in accordance with the highest professional standards.

4.9 The Contractor shall be responsible for ensuring that the Contractor and its personnel performing their obligations under this Contract, the Contractor and its personnel shall comply with all the relevant laws, regulations, customs and procedures, including without limitation, the Restrictions, the MOU, the Procedure, any other procedures

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the UN, one (1) field manager, one (1) senior liaison officer, and one (1) chemist all of whom shall be posted as specified in the Proposal. The Agents assigned to perform the Services shall be selected by the UN from among the individuals identified by the Contractor as experienced and qualified to perform their duties. There shall be no substitution of the Contractor's personnel without the UN's prior written consent in each instance. The UN reserves the right, in its sole discretion, to increase or reduce the number of Agents at any time, in which event the contract price set forth in Article 7.1 hereof shall be proportionately adjusted based on the number of Agents actually employed. Notwithstanding anything to the contrary herein, the number of Agents shall be based on the actual number of days worked by each Agent.

4.3 The Agents shall confirm imports of supplies into Iraq in accordance with Article 4.9 hereof, the RFP, and the Proposal, including without limitation the submission of a declaration and opening procedures set forth in the Proposal. In particular, the Agent shall submit a declaration and opening procedures set forth in the Proposal. In particular, the Agent shall submit a declaration and opening procedures set forth in the Proposal. In particular, the Agent shall submit a declaration and opening procedures set forth in the Proposal.

4.4 The Agents shall undertake special inspection and authentication procedures. The UN shall notify the Contractor of a monthly update, of the relevant items that require special inspection and authentication procedures. Separate lists shall be prepared for oil spare parts and equipment. This monthly update shall also be provided to the UN. The Contractor shall be responsible for ensuring that the Contractor and its personnel performing their obligations under this Contract, the Contractor and its personnel shall comply with all the relevant laws, regulations, customs and procedures, including without limitation, the Restrictions, the MOU, the Procedure, any other procedures

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up capable of sustaining operations for a minimum of twelve (12) hours. Each duty station utilizing local power shall also be equipped with a back-up generator with adequate power capacity to power the entire station.

(c) Subject to the Parties' mutual agreement to an appropriate adjustment to the contract price and an amendment of this Contract to effect such price adjustment, each duty station shall be equipped with either a V-SAT terminal or a VSAT terminal. The V-SAT terminal shall be a minimum of 100 Watts and the VSAT terminal shall be a minimum of 100 Watts. The V-SAT terminal shall be a minimum of 100 Watts and the VSAT terminal shall be a minimum of 100 Watts. The V-SAT terminal shall be a minimum of 100 Watts and the VSAT terminal shall be a minimum of 100 Watts.

MEMORANDUM

4.13 The Contractor shall safeguard the security of all documents, equipment, materials and facilities used in connection with the performance of this Contract, including without limitation through the measures set forth in the Proposal.

Article 5: Contractor's Personnel

5.1 No person shall be assigned by the Contractor to perform the Services under this Contract unless the United Nations has approved in writing the assignment of such person in writing. Without limiting the United Nations' or the Contractor's obligations under Article 4.2 and 5.2 hereof, in addition to the sixty-two (62) Agents approved by the United Nations under Article 4.2 hereof, the United Nations shall designate and approve additional personnel from among the personnel used by the Contractor to perform the Services to serve as replacement Agents under this Contract.

5.2 The United Nations may, at any time, the withdrawal or replacement of any personnel of the Contractor assigned to perform the Services under this Contract. The Contractor shall, at its expense, withdraw or replace such personnel forthwith. The assignment of any replacement personnel shall be subject to the UN's prior written approval. The United Nations may, at any time, the withdrawal or replacement of the Contractor's personnel that shall not be deemed a termination of the Contract.

5.3 The Contractor shall be fully responsible for all work and services performed by its employees, servants and sub-contractors. The Contractor shall take all reasonable measures to ensure that they conform to the highest standards of moral and ethical conduct and local customs which are not otherwise inconsistent with the provisions of this Contract, including without limitation the Resolutions, the MOU and the Procedures.

5.4 The Contractor shall ensure that all personnel used to perform services under this

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and decisions approved by the Committee, and instructions and applicable reports of the UN Secretary-General.

4.10 The Contractor acknowledges that (i) the UN shall have no obligation to provide any assistance to the Contractor in performing the Services other than as expressly set forth herein and (ii) the UN makes no representations as to the availability of any facilities or equipment in Iraq or the conduct of Iraqi authorities. The Contractor represents and warrants that all information in the Proposal is true and correct.

4.11 The UN reserves the right at any time, including during the term of this Contract, to terminate the Contractor's performance of the Services. The UN shall have no obligation to pay for any additional agents that may be required as a result thereof.

4.12 The Contractor shall supply all equipment, materials and software necessary to perform the Services, including but not limited to: (i) all vehicles for transmitting and receiving communications and other reports required under the Services and all other equipment, materials, and facilities set forth in the Proposal; (ii) all communications and electronic data processing equipment and software supplied to the Contractor in performing its obligations under this Contract shall be of the highest quality and be fully compatible with the equipment and software utilized by the UN in communication with this Contract. The Contractor shall supply all the necessary equipment, materials and software to perform the Services. In particular, the Contractor shall provide all personnel to support the following equipment and software to perform the Services:

- (a) Each duty station shall be equipped with at least three (3) desktop PC's (with minimum 100 MHz Processor, 32 MB RAM, 1 GB Hard Drive, 128 MB SCSI DDS's and Routers to support 28K communications. Each server used PC will run Lotus Notes 4.6 or higher and 28K communications and transmit them directly to the UN Notes server in New York. The Contractor shall be responsible for ensuring that the integrity of all authentication data is maintained.
- (b) Each duty station shall be equipped with UPS (uninterrupted power supply) back

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Handwritten notes:
I have 4.12
SWI should over on same network
@ 7:35 AM
Contract approved in accordance

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Article 7. Contract Price and Payment Terms

7.1 In full payment for the complete and satisfactory performance by the Contractor of all its obligations under this Contract, the UN will pay the Contractor a price not to exceed (N.T.E.) a total of U.S. DOLLARS ELEVEN MILLION SEVEN HUNDRED SIXTY-SEVEN THOUSAND SIX HUNDRED (US\$11,767,600.00), at the all inclusive main/day rate of US\$20.00, subject to any adjustment in such price pursuant to Articles 4.2 and 12.1 hereof. This price includes all costs relating to the Services to be provided under this Contract, including without limitation, salaries, benefits, insurance, board, lodging, transportation and communication, electronic data processing and other equipment, and any other costs which may be incurred by the Contractor in the performance of the Services. Such amount shall be paid to the Contractor monthly in arrears.

7.2 Payments under this Contract shall be made only against receipt of the Contractor's written invoices and certification by the UN that the services represented by the invoice have been satisfactorily completed. The Contractor shall submit its invoices to the Office of the Chief Financial Officer, United Nations, 600 East 53rd Street, New York, New York 10017, Attention: Chief of Procurement, United Nations, at least 15 days prior to the date of payment to the Office of the Chief Financial Officer, United Nations, 600 East 53rd Street, New York, New York 10017, Attention: Chief of Procurement, United Nations. All invoices shall make reference to the number of this Contract (FD/CO) and shall be submitted not later than thirty (30) days from the date of the UN's receipt of the invoice and all supporting documentation; provided that the UN shall be entitled to a two (2) week period of delay on any invoice amount paid within fifteen (15) days of its receipt of such invoice and supporting documentation.

7.3 The UN may offset any amounts which are due to it from the Contractor against any payments due from the UN to the Contractor.

C. RESPONSIBILITIES OF THE UN

Article 8. Identification Cards

8.1 The Contractor shall provide the Contractor's personnel with appropriate identification cards. Access to Transport and Medical Facilities

Without limiting the Contractor's obligations under this Contract to provide all transportation, the United Nations agree to allow the Contractor's personnel, on as

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Contractor are (i) medically fit to perform the Services and (ii) adequately covered by insurance for any services related thereto. The Contractor shall submit proof of such medical fitness and such insurance satisfactory to the UN before commencing any work under this Contract.

5.5 The UN shall not be liable for any action, omission, negligence or misconduct of the Contractor's employees, agents, servants or sub-contractors, nor for any insurance coverage which may be deemed necessary or desirable for the purpose of this Contract, nor for any claims, expenses or claims associated with any illness, injury, death or disability of the Contractor's employees, agents, servants or sub-contractors performing Services under this Contract.

5.6 The Contractor shall ensure that the Agents are at their stations to commence work under this Contract, in accordance with the RFP and the Program of Work for 2001. The duty stations shall be staffed as specified in the RFP and the Program of Work. The Contractor shall carry out their work in accordance with a shift structure established by the UN. The Contractor shall employ the management structure set forth in the RFP. The UN reserves the right, at any time, to change the number of Agents assigned to any station, as so additional Agents as may be required. The Agents assigned to each duty station shall include at least one (1) information technologist capable of undertaking the support tasks on hardware and software, one (1) food technologist, and one (1) medical officer.

5.7 It is understood and agreed that the Agents performing the Services, whose names will be communicated to the Government of the United States of America, shall be deemed "experts" within the meaning of Article VI of the Convention on the Privileges and Immunities of the United Nations and shall enjoy all of the privileges and immunities accorded to "experts" therein.

Article 6. Reporting

6.1 The Contractor shall submit to the Committee, the UN Secretary-General, and the United Nations Office of the Humanitarian Coordinator for Iraq, the following reports: Such reports shall be submitted to the United Nations Office of the Humanitarian Coordinator for Iraq, and shall be submitted by electronic mail. These reports shall be in Arabic and provide such information, as the UN shall specify.

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exceptional basis and to the extent practicable, to travel on UN-provided transport to, in, and from that area for the following purposes:

- (a) evacuation due to security developments, on the understanding that such evacuation shall be to the nearest safe area; and
- (b) medical evacuation due to serious medical conditions, provided that emergency medical evaluation of the Contractor's personnel will be from a country sites to an in-country medical facility or transportation out of that country to a medical facility in an appropriate neighboring country.

9.2. In consideration of the Contractor's personnel being permitted to travel on UN-provided transport, each of such personnel shall sign a release from liability in the form attached hereto as Annex V, prior to their transport on any UN-provided transport. The Contractor undertakes to obtain the signed release from each such person and deliver the signed original to the UN prior to such person's initial use of any UN-provided transport.

9.3. Without limiting the Contractor's obligations under this Article to provide all medical services, in the event that the Contractor's personnel require emergency medical treatment, the UN agrees, on an exceptional basis and to the extent practicable, to allow such personnel access to available UN medical facilities. In consideration of the Contractor's personnel being permitted to utilize such UN medical facilities, each of such personnel shall complete the release from liability in the form attached hereto as Annex VI. The Contractor undertakes to obtain the signed release from each such person and to deliver the signed original to the UN prior to such person's initial use of any UN medical facility.

9.4. The Contractor hereby agrees that the UN and its officials, employees and agents from any and all liability of any person in connection with the provision of any services to the Contractor's personnel. The Contractor, in connection with Article 9 and waives any claims the Contractor may have against the UN, its officials, employees or agents arising in connection with the provision of such services. The Contractor agrees to reimburse the UN for any costs incurred by it in connection with the provision of such services, including but not limited to its officials, employees and agents for any claim or liability of any nature arising in connection with this Article.

MISCELLANEOUS MATTERS.

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Article 10. Contractor's Obligations Upon Expatriation or Termination

Upon expiration or termination of this Contract, the Contractor shall take immediate steps to terminate its operations in a prompt and orderly manner and shall provide such information and take such actions as may be reasonably requested by the UN for the preservation and protection of (i) the work and services already performed by the Contractor and the results thereof and (ii) all property of the UN provided to the Contractor.

Article 11. Liaison and Inspection

11.1. The UN reserves the right to inspect and test all Services performed by the Contractor under this Contract, to the extent practicable, at all reasonable places and times during the term of this Contract. The UN shall perform inspections and tests in a manner that does not unduly hinder the performance of the services by the Contractor. The Contractor shall cooperate with all inspections and tests.

11.2. If any work or services performed by the Contractor do not conform with the requirements of this Contract, the UN shall have the right to take the following actions:

- (a) If the UN determines that the Contractor's performance can be remedied by way of re-performance or other corrective measures, the Contractor shall take, at its expense, the measures necessary to correct the Contractor's performance. The UN may request the Contractor in writing to take such corrective measures within fourteen (14) days of receipt of the UN's written request. If the Contractor fails to take such corrective measures within the specified time period, the UN may have the work re-performed by another agency conditions so require, as determined by the UN.

- (b) If the UN determines that the Contractor is unable to timely remedy the improper performance, the UN may suspend the Contractor's work until the Contractor has taken such corrective measures as the UN may determine to be necessary to ensure the proper performance of the work.

- (c) If the UN reasonably determines that the improper performance cannot be remedied by re-performance or other corrective measures by the Contractor, the UN may terminate the Contract in accordance with Article 15 of the UN General Conditions of Contract without prejudice to any of its other rights and remedies under the Contract.

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Article 14. Performance Bond

Within fifteen (15) days of signature of this Contract by the Parties, the Contractor shall provide the UN with a Performance Bond in the form set forth in Annex VII hereof, or a similar guarantee acceptable to the UN, in the amount of U.S. Dollars One Million One Hundred Seventy Six Thousand Seven Hundred and Sixty (US\$ 1,176,760.00) (i.e., ten percent (10%) of the maximum amount payable specified in Article 7.1 hereof), in full cash or by a bank acceptable to the UN. The UN shall be entitled to obtain the performance bond/guarantee upon first demand of the UN, without having to prove the liability of the Contractor and in accordance with the terms and conditions set forth in Annex VII.

Article 15. Notices

Except as otherwise specified in this Contract or in any addendum thereto, all notices and other communications required or contemplated under this Contract shall be in writing and shall be delivered either by: (i) personal delivery; (ii) registered mail with receipt delivery service; (iii) postage prepaid, return receipt requested, certified mail with return receipt requested; (iv) telex transmission; or (v) telegram, addressed to the Party to whom the communication is intended at the address shown below or such other address as the intended Party may designate in writing. The Party to whom the communication is intended shall have designated by written notice previously given pursuant to this Contract.

IF TO THE CONTRACTOR

COTECNA INSPECTOR
35, Rue de la Terrasse
1211 Geneva 6
Switzerland
Tel: No. 022-733 89 89
Fax: No. 022-733 89 89

IF TO THE UN (communications/notice of a contractual nature)

Procurement Division
United Nations
14 East 51st Street, Room 3F-202
New York, NY 10017
Attn: Chief
Procurement Division/GCSS

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Article 12. Termination at Will

12.1. In addition to the termination rights provided in Article 15 of the UN General Conditions of Contract (Annex I), the UN may terminate this Contract without cause, in whole or in part, at any time. In the event of termination pursuant to this clause, the UN shall only be responsible for payment to the Contractor for Services satisfactorily performed in accordance with this Contract prior to the effective day of termination and any reimbursement to which the Contractor shall be entitled pursuant to Article 12.2 hereof. In the event of partial termination, the contract price shall be proportionately reduced as set forth in Article 4.2 hereof.

12.2. Notwithstanding the provisions of Article 14 of the UN General Conditions of Contract (Annex I), in the event of any circumstance constituting or necessarily leading to the termination of this Contract, the Contractor shall not withdraw any of its personnel from the Contract, with the prior written approval of the UN, which approval shall not be unreasonably withheld. The Parties agree that it shall not be unreasonable for the UN to require the Contractor to ensure that UN personnel remain similarly situated in Iraq.

12.3. Without limiting any of the UN's other rights, the UN shall have the right to terminate this Contract, in the event that the Contractor fails to perform the Services satisfactorily in accordance with the Contract, or if the Contractor fails to comply with any contingency plans designated by the UN to ensure continued performance of the Services.

Article 13. Customs Clearance

The Contractor shall be responsible for customs clearance and obtaining all licenses, permits, and authorizations from governmental or other authorities necessary for the performance of this Contract. The UN shall provide reasonable assistance to the Contractor, by liaising as appropriate with relevant government authorities, in obtaining visas for the Contractor's personnel and in obtaining through customs any equipment, material and supplies in respect of which a clearance shall be required. The UN's sole obligation with respect to a clearance shall be to provide the necessary documentation and information in writing, as concerned and stating that such items are for the sole contract use of the Contractor. If any further documentation is required in the future by Government authorities in Iraq or elsewhere, the Contractor will advise the UN and the UN will provide reasonable assistance to the Contractor in obtaining such documents.

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Fax no. (212) 963-6315

IF TO THE UN (communications/voices of an operational nature)

Office of the Ins. Programs
United Nations
New York, New York 10017
Attn: Senior Customs Officer
Fax No.: (212) 963-8883

Notice by overnight mail or recognized overnight delivery service shall be effective on the date it is initially received and is not subject to (or refused by) the intended recipient's receipt of the document. All notices and other communications required or contemplated by this Contract shall be delivered to and received by the addressee and shall be effective on the date of the actual receipt of the communication by the addressee.

IN WITNESS THEREOF, the Parties have hereunto signed and affixed their seals and signatures at the place and date indicated in this Contract.

For and on behalf of:

COTECNA INSPECTIONS S.A.

OF THE UNITED NATIONS

SIGNATURE _____ SIGNATURE _____
NAME: _____ NAME: _____
TITLE: _____ TITLE: Officer-In-Charge, Procurement
Division _____
DATE: _____ DATE: _____

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ATTACHMENTS

- Annex I - UN General Conditions for General Contracts
- Annex II - Security Council Resolutions
- Annex III - Memorandum of Understanding
- Annex IV - Terms and Conditions of Sale
- Annex V - Procurement and Release Form
- Annex VI - Medical Release Form
- Annex VII - Form of Performance Bond

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ANNEX A

UNITED NATIONS GENERAL CONDITIONS OF CONTRACT

1.0 LEGAL STATUS: The Contractor shall be considered as having the legal status of an independent contractor under the laws of the United Nations. The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of the United Nations.

2.0 SOURCE OF INSTRUCTIONS: The Contractor shall adhere to all written instructions from any authorized personnel of the United Nations in connection with the performance of its services under the Contract. The Contractor shall verify from any source which may adversely affect the United Nations or its interests that such instructions are in accordance with the intent of the United Nations.

3.0 CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES: The Contractor shall be responsible for the professional and technical competence of its employees and sub-contractors. The Contractor shall ensure that all individuals who will perform effectively in the implementation of the Contract are of high caliber and contribute to a high standard of moral and ethical conduct.

4.0 ASSIGNMENT: The Contractor shall not assign, transfer, subcontract or otherwise dispose of all or part of the Contract, or any part thereof, or any of the Contractor's obligations under the Contract without the prior written consent of the United Nations.

5.0 SUB-CONTRACTING: In the event the Contractor desires to subcontract any portion of the Contract, it shall obtain the prior written approval of the United Nations for all sub-contractors. The Contractor shall not subcontract any of its obligations under the Contract. The Contractor shall be subject to and conform with the provisions of the Contract.

6.0 OFFICIALS AND AGENTS: The Contractor warrants that no official of the United Nations has reviewed or approved the Contract. The Contractor agrees that breach of the provisions of the Contract shall constitute a breach of the Contract.

7.0 INDEMNIFICATION: The Contractor shall indemnify, hold harmless and defend, at its own expense, the United Nations, its officials, agents, servants and employees from and against all suits, claims, damages, losses, and liability of any nature or kind, including reasonable costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, agents or sub-contractors, in the performance of the Contract. The provision shall not apply to claims or liability in the nature of workers' compensation, products liability, and liability arising out of the use of patented inventions or designs, copyright materials or other intellectual property by the Contractor, its employees, officers, agents,

ANNEX I

[ON GENERAL CONDITIONS FOR GENERAL CONTRACTS]

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workbooks, with respect to problems, or documents and other materials which bear a direct relation to or are prepared or prepared to be prepared in the course of the performance of the contract or the contract documents and generally assist in reaching such proprietary rights and transferring them to the United Nations in compliance with the requirements of the applicable law.

12.0 USE OF NAME, EMBLEM OR OFFICIAL SEAL OF THE UNITED NATIONS. The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with the United Nations, nor shall the Contractor or any subcontractor use the name, emblem or official seal of the United Nations, or any abbreviation of the name of the United Nations in connection with its business or activities.

13.0 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION

13.1 The Contractor shall maintain in confidence all information, data, reports, drawings, plans, specifications, and other data compiled or received by the Contractor under this Contract that is classified as "Confidential" or "Secret" by the United Nations, and shall not disclose such information, data, reports, drawings, plans, specifications, or other data to any person or organization without the prior written consent of the United Nations. The Contractor shall be deemed to have agreed to this obligation upon execution of this Contract.

13.2 The Contractor may not communicate any data to any other person or organization without the prior written consent of the United Nations, and shall not be deemed to have agreed to this obligation upon execution of this Contract. The Contractor shall not be deemed to have agreed to this obligation upon execution of this Contract if the data has been made public except with the authorization of the United Nations. The Contractor shall not be deemed to have agreed to this obligation upon execution of this Contract if the data has been made public except with the authorization of the United Nations.

14.0 FORCE MAJEURE, OTHER CHANGES AND DELAYS

14.1 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give written notice to the United Nations, of such occurrence or force majeure, and shall take such steps as may be necessary, within its power, to perform its obligations and meet its responsibilities under the Contract. The Contractor shall also notify the United Nations of any other cause of delay or non-performance of its obligations under the Contract. The Contractor shall be deemed to have agreed to this obligation upon execution of this Contract. The Contractor shall be deemed to have agreed to this obligation upon execution of this Contract if the data has been made public except with the authorization of the United Nations.

14.2 The Contractor shall be deemed to have agreed to this obligation upon execution of this Contract if the data has been made public except with the authorization of the United Nations. The Contractor shall be deemed to have agreed to this obligation upon execution of this Contract if the data has been made public except with the authorization of the United Nations.

15.0 TERMINATION

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services or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

1.0 INSURANCE AND LIABILITIES TO THIRD PARTIES

1.1 The Contractor shall provide and thereafter maintain insurance against all risks in respect of the property and any equipment used for the execution of this Contract.

1.2 The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance in accordance with the laws of the United States and any other applicable laws, and shall be deemed to have agreed to this obligation upon execution of this Contract.

1.3 The Contractor shall also provide and thereafter maintain liability insurance in an amount not less than the amount of the contract price, and shall be deemed to have agreed to this obligation upon execution of this Contract. The Contractor shall be deemed to have agreed to this obligation upon execution of this Contract if the data has been made public except with the authorization of the United Nations.

1.4 Except for the workmen's compensation insurance, the insurance provided for in this article shall:

- (a) include a waiver of subrogation of the amount of the insurance to the insurance carrier against the United Nations;
(b) Provide that the United Nations shall not be liable for any claim or demand against the Contractor prior to any completion or non-completion of the work under this Contract.

1.5 The Contractor shall, upon request of the United Nations with satisfactory evidence of its insurance coverage, provide to the United Nations with satisfactory evidence of its insurance coverage.

1.6 The Contractor shall not cause or permit any fire, explosion or other damage to the property or equipment of the United Nations, and shall be deemed to have agreed to this obligation upon execution of this Contract. The Contractor shall be deemed to have agreed to this obligation upon execution of this Contract if the data has been made public except with the authorization of the United Nations.

2.0 TITLE

2.1 This to any equipment and supplies that may be furnished by the United Nations to the Contractor shall be deemed to be the property of the United Nations at all times. The Contractor shall be deemed to have agreed to this obligation upon execution of this Contract. The Contractor shall be deemed to have agreed to this obligation upon execution of this Contract if the data has been made public except with the authorization of the United Nations.

2.2 The Contractor shall be deemed to have agreed to this obligation upon execution of this Contract if the data has been made public except with the authorization of the United Nations.

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18.1 Every party hereto the Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The inclusion of arbitral proceedings in accordance with Article 15 "Arbitration" hereinafter shall not be deemed a violation of this Contract.

18.2 The United Nations may terminate this Contract at any time should the contractor, or the handling of the Mission/Agency be carried out in a manner which, in the opinion of the Contractor, shall be deemed to be a violation of the United Nations for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

18.3 In the event of any termination by the United Nations under this Article, no payment shall be due to the Contractor until the United Nations in the Contract except for work and services satisfactorily performed to the date of termination.

18.4 Should the Contractor be assigned, transferred, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of his creditors, or should a Receiver be appointed for the assets of the Contractor, the Contractor shall immediately inform the United Nations in writing of the same. The Contractor shall immediately inform the United Nations of any of the occurrences of any of the above paragraphs.

19.0 SETTLEMENT OF DISPUTES

19.1 The parties shall use their best efforts to settle any dispute, controversy or claim arising out of this Contract or the breach, termination or invalidity thereof, through negotiation or friendly settlement. If the parties fail to reach an amicable settlement through negotiation, the contractor shall refer the dispute to the UNCTRAL Arbitration Rules then obtaining, or to any other arbitration procedure as they may be agreed between the parties.

19.2 Arbitration Any dispute, controversy or claim arising out of this Contract or the breach, termination or invalidity thereof, shall be referred to arbitration in accordance with the UNCITRAL Arbitration Rules (2010 Edition) as amended from time to time, unless the parties agree in writing to refer the dispute to arbitration in accordance with other arbitration rules. The arbitration shall be held in New York, New York, USA. The arbitration shall be conducted in English. The arbitration shall be confidential and shall be subject to the provisions of the UNCITRAL Model Law on International Commercial Arbitration, 1996, as amended from time to time. The arbitration shall be final and binding on the parties. The parties shall be bound by any award rendered as a result of such arbitration as the final adjudication of any such controversy.

19.3 EXCEPT AS OTHERWISE PROVIDED IN THIS CONTRACT, THE CONTRACTOR SHALL BE DEEMED TO WAIVE ANY RIGHTS TO JURY TRIAL AND TO TRIAL BY JURY IN ANY COURT OF LAW IN THE UNITED STATES OF AMERICA OR IN ANY OTHER COUNTRY OR JURISDICTION IN CONNECTION WITH THE CONTRACT.

19.4 AUTHORITY TO MODIFY: Payment to the Principal/Signatory of the United Nations, only the Government Division of New York possesses the authority to modify the Contract. Any modification or change to the Contract shall be made in writing and signed by the Contractor and the Government Division. The Contract shall be void and unenforceable unless it is signed by the Contractor and the Government Division.

19.5 OBTAINMENT OF THE LAW: The Contractor shall comply with all laws, regulations, decrees, orders, and administrative actions of the United States of America and of any other country or jurisdiction in which the Contractor is performing the obligations under the terms of this Contract.

19.6 COMPLIANCE WITH THE LAW: The Contractor shall comply with all laws, regulations, decrees, orders, and administrative actions of the United States of America and of any other country or jurisdiction in which the Contractor is performing the obligations under the terms of this Contract.

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7. Request the secretary-general to establish an escrow account for the purpose of this resolution, to appoint independent and verified public accountants to audit it, and to keep the government of Iraq fully informed;

8. Requiring that the funds in the escrow account shall be used to meet the humanitarian needs of the Iraqi population in the most effective manner, and to ensure that the secretary-general to use the funds deposited in the escrow account;

(a) To finance the export to Iraq, in accordance with the procedure of the Committee established by resolution 661 (1990), of medicine, health supplies, foodstuffs, and materials and equipment essential to the maintenance of the Iraqi population in the most effective manner, and to ensure that the secretary-general to use the funds deposited in the escrow account;

(b) To finance the export to Iraq, in accordance with the procedure of the Committee established by resolution 661 (1990), of medicine, health supplies, foodstuffs, and materials and equipment essential to the maintenance of the Iraqi population in the most effective manner, and to ensure that the secretary-general to use the funds deposited in the escrow account;

(11) Iraq effectively guarantees their equitable distribution of goods to all segments of the Iraqi population, including a description of the goods to be provided;

(12) The secretary-general receives authorization to:

(a) To complete, in view of the emergency, the work of the Committee established by resolution 661 (1990) in order to ensure an equitable distribution of humanitarian relief to all segments of the Iraqi population, and to ensure that the secretary-general to use the funds deposited in the escrow account;

(b) To transfer the amount of the same percentage of the funds deposited in the escrow account as is authorized by the Council in paragraph 2 of resolution 705 (1991) to the United Nations Trust Fund for Iraq;

(c) To ensure that the United Nations Trust Fund for Iraq is implemented in accordance with the provisions of the resolution;

(d) To ensure that the current operating costs of the special committee, pending the implementation of the resolution, are met in full of the costs of carrying out the tasks authorized by the resolution 661 (1990);

(e) To meet any reasonable expenses, other than expenses payable in Iraq, which are incurred by the United Nations Trust Fund for Iraq, and to be directly related to the report by Iraq of petroleum and petroleum products permitted under paragraph 1 above or to the report to Iraq, and activities

State concerned, endorsed by the government of Iraq, for each request purchase of Iraqi petroleum and petroleum products, including details of the purchase price at fair market value, the export route, the opening of a letter of credit in favour of the purchaser, and the date of the purchase, and to ensure that the purpose of the resolution, and of any other directly related financial or other essential transaction;

(b) Payment of the full amount of each purchase of Iraqi petroleum and petroleum products directly by the purchaser in the state concerned into the escrow account to be established by the secretary-general for the purposes of this resolution;

2. Authorize the buyer, notwithstanding the provisions of paragraph 1 above, to permit the import of petroleum and petroleum products originating in Iraq, and to ensure that the secretary-general to use the funds deposited in the escrow account;

(a) To ensure that the secretary-general to use the funds deposited in the escrow account;

(b) To ensure that the secretary-general to use the funds deposited in the escrow account;

3. Provide that paragraphs 1 and 2 of this resolution shall remain in force at 00:01 Eastern Standard Time on the day after the date on which the Council has informed the members of the Council of the date on which it received the report of the secretary-general on the implementation of the resolution, and shall remain in force for an initial period of 180 days thereafter, and shall be renewed automatically with regard to the provisions of paragraph 1 of this resolution;

4. Request the secretary-general to conduct a comprehensive review of all aspects of the implementation of this resolution, and to report to the Council on the progress of the implementation of the resolution, and to ensure that the secretary-general to use the funds deposited in the escrow account;

(a) To ensure that the secretary-general to use the funds deposited in the escrow account;

(b) To ensure that the secretary-general to use the funds deposited in the escrow account;

5. Request the secretary-general to ensure that the remaining paragraphs of this resolution shall come into force;

6. Request the secretary-general to ensure that the remaining paragraphs of this resolution shall come into force;

14. Decides that petroleum and petroleum products subject to this resolution shall while under Iraqi title be immune from legal proceedings and claims in any court of law, and that the United States shall take all appropriate steps to ensure that all States shall take any steps that may be necessary under their respective domestic legal systems to ensure this protection, and to ensure that the proceeds of the sale are not diverted from the purposes laid down in this resolution;

15. Affirms that the narrow account established for the purposes of this resolution enjoys the privileges and immunities of the United Nations;

16. Affirms that all persons appointed by the Secretary-General for purposes of this resolution shall be appointed in accordance with the Convention on the Privileges and Immunities of the United Nations, and shall enjoy the privileges and immunities of the United Nations, and shall be exempt from the discharge of their duties in the implementation of this resolution;

17. Affirms that while in this resolution affirms the responsibility to ensure to all of its obligations concerning the equipment of its foreign debt, in accordance with the applicable international law;

18. Also affirms that nothing in this resolution shall be construed as infringing the sovereignty or territorial integrity of any State;

19. Decides to remain seized of the matter.

directly necessary thereto, of the parts and equipment permitted under paragraph 9 below;

(9) To make available up to 10 million United States dollars every 30 days from the funds deposited in the narrow account for the purchase envisaged under paragraph 6 of resolution 798 (1995) of 3 October 1995;

9. Authorizes States to permit, notwithstanding the provisions of paragraph 3 (d) of resolution 661 (1990),

(a) The export to Iraq of the parts and equipment which are essential to the safe operation of the Kirkuk-Yamalkh pipeline system in Iraq, subject to the conditions established by the Committee established by resolution 661 (1990) on export controls;

(b) Activities directly necessary for the export, subject to the conditions set out in subparagraph (a) above, including financial transactions relating to the

10. Decides that, since the date of the report submitted under paragraph 9 above are excluded by paragraph 4 of resolution 661 (1990) and by paragraph 11 of resolution 778 (1993) from being made known in any form, the funds deposited in the narrow account shall be used for the purchase of the parts and equipment which are essential to the safe operation of the Kirkuk-Yamalkh pipeline system in Iraq, and for the purchase of credit, direct against funds which are deposited in the narrow account;

11. Requests the Secretary-General to report to the Council 90 days after the date of entry into force of paragraph 9 above, and again prior to the end of the period of the report, on the progress of the implementation of paragraph 9 above in Iraq, and on the basis of the information with the Secretary-General, on whether Iraq has undertaken any steps to ensure the safe operation of the Kirkuk-Yamalkh pipeline system in Iraq, and on the basis of the information with the Secretary-General, on whether Iraq has undertaken any steps to ensure the safe operation of the Kirkuk-Yamalkh pipeline system in Iraq, and on the basis of the information with the Secretary-General, on whether Iraq has undertaken any steps to ensure the safe operation of the Kirkuk-Yamalkh pipeline system in Iraq;

12. Requests the Committee established by resolution 661 (1990), in close coordination with the Secretary-General, to develop expedited procedures as provided for in paragraph 4 of resolution 661 (1990) and paragraph 10 of this resolution, to report to the Council 90 days after the date of the implementation of paragraph 9 above and again prior to the end of the initial period of the implementation of those arrangements;

13. Requests the Secretary-General to take the actions necessary to ensure the implementation of the conditions set out in paragraph 9 above, and to report to the Council when he has done so;



Security Council

DIR. GENERAL
S/1946/156*
20 May 1956
ORIGINAL: ENGLISH

LETTER DATED 20 MAY 1956 FROM THE SECRETARY-GENERAL,
ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL.

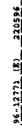
I have the honour to submit to you, and through you to the Security Council, the text of a memorandum of understanding on the implementation of Security Council resolution 1137 (XIV) of 17 April 1956. I am also submitting to you a letter handed over by the Head of the Iraqi delegation upon signing the memorandum.

The memorandum represents an important step in the arrangements that are being made to ensure that the necessary actions have been taken. I will have the pleasure to report to the Security Council as provided for in paragraph 1 of the resolution. The present memorandum is being submitted to you for the Council's information and for the progress achieved so far in the implementation of the resolution.

(Signed) Boucefa BOUCREFFA

* Retained for technical reasons.

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plan adequately ensures equitable distribution of humanitarian supplies to the Iraqi population throughout the country, he will so inform the Government of Iraq.

9. It is understood by the Parties to this Memorandum that the Secretary-General will not be in a position to report as required in paragraph 13 of the present Memorandum until the plan has been approved by the Government of Iraq and the Security Council.
10. Once the Secretary-General approves the plan, he will forward a copy of the plan, to the Security Council Committee established by resolution 661 (1979) concerning the situation between Iraq and Kuwait (hereinafter the "Committee") for its information.
11. After the plan becomes operational, each Party to the present Memorandum will submit to the Secretary-General a report on the progress of the plan. It is believed that such adjustment would improve the equitable distribution of humanitarian supplies and their adequacy.

SECTION III

ESTABLISHMENT OF THE ESCROW ACCOUNT AND THE ACCOUNT

12. The Secretary-General, after consultation with the Government of Iraq, will select a major international bank and will open with it the escrow account described in paragraph 7 of the Resolution. The Government of Iraq will deposit in the account the amount of the proceeds of the oil exports from Iraq as the United Nations Security Council may determine. The Government of Iraq will keep the account separate from the terms of this account. The Government of Iraq will keep the account separate from the terms of this account. The Government of Iraq will keep the account separate from the terms of this account. The Government of Iraq will keep the account separate from the terms of this account.
13. The Iraqi authorities will designate a senior banking official to liaise with the Secretary-General and the United Nations on all banking matters relating to the Iraq account.
14. In accordance with the United Nations financial regulations, the Iraq account will be audited by the United Nations. The Board of Auditors will issue public audits reports on the audit of the financial statements relating to the Iraq account. The Government of Iraq will provide the Board of Auditors with the necessary information and documents. The Government of Iraq will provide the Board of Auditors with the necessary information and documents. The Government of Iraq will provide the Board of Auditors with the necessary information and documents.
15. The Government of Iraq shall be responsible for the creation of a liability on the part of the United Nations for any purchase made by the Government of Iraq or any agents acting on its behalf pursuant to the provisions of the Resolution.

MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARIES-GENERAL OF THE UNITED NATIONS AND THE GOVERNMENT OF IRAQ ON THE ESTABLISHMENT OF A DISTRIBUTION PLAN FOR HUMANITARIAN SUPPLIES (S/1982/136)

SECTION I

GENERAL PROVISIONS

1. The purpose of this Memorandum of Understanding is to ensure the effective implementation of Security Council resolution 661 (1979) (hereinafter "the Resolution").
2. The Distribution Plan referred to in paragraph 8 (a) (ii) of the Resolution shall be approved by the Secretary-General and the Security Council. The Distribution Plan shall be approved by the Secretary-General and the Security Council. The Distribution Plan shall be approved by the Secretary-General and the Security Council. The Distribution Plan shall be approved by the Secretary-General and the Security Council.
3. Nothing in the present Memorandum should be construed as prejudging upon the sovereignty or territorial integrity of Iraq.
4. The provisions of the present Memorandum shall be applied exclusively to the implementation of the Resolution and shall not create a precedent. It is also understood that the arrangements provided for in the present Memorandum are exceptional and temporary in nature.
5. The Government of Iraq will effectively guarantee equitable distribution to the Iraqi population throughout the country of medicines, health supplies and other humanitarian supplies. The Government of Iraq will effectively guarantee equitable distribution to the Iraqi population throughout the country of medicines, health supplies and other humanitarian supplies. The Government of Iraq will effectively guarantee equitable distribution to the Iraqi population throughout the country of medicines, health supplies and other humanitarian supplies.
6. To this end, the Government of Iraq shall prepare a Distribution Plan describing in detail the procedures to be followed by the competent Iraqi authorities to ensure the equitable distribution of humanitarian supplies. The Government of Iraq shall prepare a Distribution Plan describing in detail the procedures to be followed by the competent Iraqi authorities to ensure the equitable distribution of humanitarian supplies.
7. The Distribution Plan shall be approved by the Secretary-General and the Security Council. The Distribution Plan shall be approved by the Secretary-General and the Security Council. The Distribution Plan shall be approved by the Secretary-General and the Security Council. The Distribution Plan shall be approved by the Secretary-General and the Security Council.
8. The Distribution Plan shall be submitted to the Secretary-General of the United Nations for approval. If the Secretary-General is satisfied that the

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- 15. The objectives of the United Nations observation process shall be:
 - (a) to confirm whether the equitable distribution of humanitarian supplies to the Iraqi population throughout the country has been ensured;
 - (b) to assess the effectiveness of the operation and determine the adequacy of the available resources to meet Iraq's humanitarian needs.

OBSERVATION PROCEDURES

16. In observing the equitable distribution and its adequacy, United Nations personnel will use, **inter alia**, the following procedures:

Foodstuffs

17. The observation of the equitability of food distribution will be based on the information available to the United Nations, including the activity of agencies on food imports, and on sample surveys conducted in the United Nations. Such surveys will also include the monitoring of the prices of food items imported under the Memorandum.

18. The surveys will be conducted in order to determine whether a survey conducted by United Nations personnel is sufficient to determine the equitability of distribution. The observations will serve as a baseline for the monitoring of the distribution of foodstuffs. The observations will be conducted in cooperation with the relevant United Nations agencies.

19. Observation regarding the distribution of medical supplies and equipment will focus on the existing system of medical and storage systems and will involve visits to hospitals, clinics and pharmaceutical and medical facilities where such supplies and equipment are stored. The observations will be conducted in cooperation with the relevant United Nations agencies.

Water/Sanitation Supplies and Equipment

20. The distribution of water/sanitation supplies and equipment will focus on the existing system of water/sanitation and will involve visits to hospitals, clinics and pharmaceutical and medical facilities where such supplies and equipment are stored. The observations will be conducted in cooperation with the relevant United Nations agencies.

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English
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29. As regards the export to Iraq of parts and equipment which are essential for the safe operation of the Kirkuk-Ummal-Qasbi pipeline system in Iraq, the requests will be submitted to the Committee in accordance with its procedures.

30. If the 6th Committee has approved a request in accordance with paragraph 29, the provisions of paragraph 24 shall apply. However, since the supplier can expect payment against future oil sales, as stated in paragraph 24, the United Nations will issue an irrevocable letter of credit anticipating that payment can only be effected when at least one of the following conditions is met: (a) the supplier has received a letter of credit from the United Nations Secretariat approving the payment;

(b) the supplier has submitted confirmation of receipt of the parts and equipment in this section; (c) all apply alike to the parts and equipment mentioned in paragraph 29.

Section VI

Distribution of humanitarian supplies and equipment under the Memorandum

31. The distribution of humanitarian supplies and equipment shall be undertaken by the Government of Iraq in accordance with the distribution plan referred to in Section II of the present Memorandum. However, the Government of Iraq will keep the United Nations informed of the progress of the distribution of the supplies and the activities that are undertaken.

32. The distribution of humanitarian supplies in the three northern Governorates of Arbil, Sulaymaniyah and Erbil shall be undertaken by the United Nations Inter-Agency Humanitarian Assistance Programme on behalf of the Government of Iraq. The distribution of humanitarian supplies in the southern Governorates shall be undertaken in accordance with Annex I.

Section VII

Observation of the equitable distribution of humanitarian supplies and equipment under the Memorandum

GENERAL PROVISIONS

33. The United Nations observation process will be conducted by United Nations personnel in cooperation with the United Nations Secretariat for Iraq. The observation process will be conducted in accordance with the provisions described below. Such observation shall apply to the distribution of humanitarian supplies financed in accordance with the procedures set out in the Memorandum.

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of Iraq in order to effectively reach the population. Recipients under this program will be selected on the basis of their special needs as in the rest of the country. The Program shall ensure that the special needs of internally displaced persons, refugees, hospital in-patients and out-patients, and the needs of supplementary food are appropriately met. and will keep the Government of Iraq informed.

6. The Program will also be subject to humanitarian obligations set forth in their contracts. The Government of Iraq will be responsible for collecting relevant data. The Program will report to the Department of Humanitarian Affairs at United Nations Headquarters in New York and the Government of Iraq any violations detected by the Program.

MORSELI

1. The State concerned or, if the 641 Committee so decides, the national petroleum purchaser authorized by the 641 Committee, shall submit to the Committee for handling and approval the application, including the relevant contract, for the proposed purchase of Iraqi petroleum and petroleum products by the Government of Iraq or the Iraqi State Oil Marketing Organization, by sending a copy of the contract to the 641 Committee. The application shall include details of the purchase price at fair market value, the export quantity, information required by the Committee. The sale of petroleum and petroleum products shall be covered by contractual documents. A copy of the documents shall be submitted to the Committee. The contract shall be subject to the application for forwarding to the Independent Inspection Commission in paragraph 4 of this Annex. The contractual documents shall include the product, duration of contract, credit and payment terms, pricing mechanism. The pricing mechanism for petroleum should include loading points, water content, quality and pricing dates.

2. The contract shall be subject to the review by the oil purchaser's bank with the consent of the 641 Committee. The letter of credit will be paid directly to the beneficiary's bank account. For this purpose, the following clauses will have to be inserted in each letter of credit:

- * Provided all terms and conditions of the letter of credit are complied with, proceeds of this account will be irrevocably paid into the beneficiary's bank account for the beneficiary's account, whereas all charges required by the bank will be borne by the purchaser.
- * All such payments will have to be directed by the purchaser's bank to the Central Bank of Iraq for the purpose of the purchase of Iraqi petroleum and petroleum products.

3. The sale of petroleum and petroleum products originating in Iraq will be carried out by independent oil experts appointed by the secretary of the 641 Committee. The sale of petroleum and petroleum products will be carried out by independent inspection agents at the loading points of the oil tanker. The agents will be appointed by the secretary of the 641 Committee and will be subject to the supervision and quantity verification. They would authorize the loading, after they receive the information from the United Nations oil experts that the relevant contract has been approved, and report to the United Nations.

SPECIAL MEMORANDUM

MEMORANDUM TO THE SECRETARY-GENERAL

in reference to the memorandum of understanding signed today and as I advised you in my letter of 11 July 1986, the position of Iraq as to the cost of production and transportation of oil inside Iraq, I state below Iraq's position, which I request that you include in the official record of our discussion:

The Iraqi delegation explained during the discussion that the cost of production and transportation of petroleum products in Iraq is currently estimated at 100 per cent of the sale price. The cost of production and transportation is currently estimated at 100 per cent of the sale price or recovered through the production and export of petroleum products. In either case the cost of production and transportation is not a factor in the pricing of petroleum products. The impact of spare parts and other items necessary for the maintenance of production and transportation operations as well as the cost of spare parts and other items necessary for the maintenance of production and transportation operations would be hindered and eventually come to a halt.

Nevertheless, and in order to facilitate the reaching of an understanding, the Iraqi delegation agreed not to insist on its position by the United Nations Secretariat during this stage and to discuss the matter with the Secretariat in the future. The delegation of the United Nations Secretariat for the discussion in any future discussion.

Although the matter is not discussable, the delegation wishes to state that a third outlet for Iraqi petroleum products will be via the Syrian Arab Republic.

.....
(Name) Ambassador A. Saïd AMALI
Head of the delegation of Iraq

3. The United Nations will receive monthly reports from ECOM on the actual volume and type of petroleum products exported under the relevant sales contracts.

4. The United Nations Secretariat and ECOM shall maintain continuing contact with the particular United Nations oil experts shall meet routinely with ECOM representatives to justify market conditions and oil sales.

ANNEX IV

[PROCEDURE OF THE 661 COMMITTEE]

Security Council



Dist.
GENERAL
5/1996/634*
12 August 1996
ORIGINAL: ENGLISH

LETTER DATED 8 AUGUST 1996 FROM THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT TO THE PRESIDENT OF THE SECURITY COUNCIL

On behalf of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, I have the honour to communicate to you the following:

Pursuant to paragraph 12 of Security Council resolution 661 (1990), the Committee was requested to develop a list of persons and entities who are engaged in activities in support of Iraq's military efforts. The arrangements in paragraphs 1, 2, 4, 9 and 10 of that resolution are intended to inform you that after several weeks of intensive work, the Committee has concluded that it is in the interests of the Security Council to employ by its resolution 984 (1995), a copy of which is attached herewith for the information of the members of the Council.

(Signed) TONO KITZEL
Chairman
Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

* Released for technical reasons.

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order to facilitate this process, rapid consultations between the Secretariat of the United Nations and the Government of Iraq on the implementation of resolution 986 (1995) dated 20 May 1996 (hereinafter referred to as "the resolution").

When market conditions so require, and in particular facing the fact that the Committee may be authorized by the Government of Iraq or some of the States of the United Nations to submit a review, current procedures for the submission of proposals will remain in effect until new ones are approved by the Committee.

The Secretariat of the Committee will set up a new system used exclusively for correspondence with regard to the submission of proposals for purchase of petroleum products, which shall be approved by the Government of Iraq or some of the States of the United Nations. The application for approval, together with a copy of the contract and, if available, a copy of the invoice, shall be submitted to the Secretariat of the Committee. Other correspondence with regard to the present procedures shall go through the already existing channels.

A contract for the sale of petroleum products shall always be a pricing mechanism approved by the Committee in accordance with the provisions of paragraph 2 of the resolution. The contract shall be completed within 24 hours of the date of the award of the contract. The over-seer or which the contract is awarded shall submit the contract to the Committee within 24 hours of the date of the award of the contract.

The contract shall comply with the provisions of resolution 986 (1995) and do not contain any attempt at fraud or deception, the determination of which shall be the responsibility of the Committee. The contract and the documents comply with the requirements provided in paragraph 2 of the resolution and in the present document, including the information concerning the contract, shall be submitted to the Committee with the invoice. The invoice shall be paid directly to the account established by the Government of Iraq or some of the States of the United Nations (hereinafter Iraq account). The letter of credit should contain the information as set out in Annex II to this document.

The conditions of payment envisaged in the letter of credit are in conformity with the existing market practices.

PROCEDURES TO BE EMPLOYED BY THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE ARAB BOYCOTT OF ISRAEL AND THE ARAB BOYCOTT OF THE STATE OF ISRAEL IN CONNECTION WITH THE ARAB BOYCOTT OF ISRAEL AND THE ARAB BOYCOTT OF THE STATE OF ISRAEL IN CONNECTION WITH THE ARAB BOYCOTT OF ISRAEL

1. The Committee will select, upon recommendation by the Secretariat of the United Nations, four independent experts in liaison with the United Nations Headquarters. The number of the over-seers will be revised in accordance with the volume of transactions to be processed. The over-seers shall have the authority and responsibilities set forth in this document.

2. Notwithstanding the obligations of States under the arms embargo, the Committee will request the Government of Iraq to submit a list of national oil purchasers (private and Government-owned companies, State agencies, ministries, etc.) to be included in the list of national oil purchasers. The Committee will also request the Government of Iraq to submit a list of national oil purchasers (private and Government-owned companies, State agencies, ministries, etc.) to be included in the list of national oil purchasers. The Committee will also request the Government of Iraq to submit a list of national oil purchasers (private and Government-owned companies, State agencies, ministries, etc.) to be included in the list of national oil purchasers.

3. A contract for the purchase of petroleum products will only be considered for approval if it has been endorsed by the Government of Iraq or some of the States of the United Nations. The contract shall be submitted to the Committee on behalf of the Government of Iraq or some of the States of the United Nations as an endorsement.

4. The contract shall include all the details specified in paragraph 2 of resolution 986 (1995). In particular, the contract shall include the name of the purchaser, the quantity of petroleum products to be purchased, the pricing mechanism, the duration of the contract, credit and payment terms, and the pricing mechanism for petroleum products. The contract shall also include the name of the over-seer, the name of the transporter, and the name of the recipient.

5. The over-seers will assess the pricing mechanism for petroleum products for review by the Committee. The over-seers will assess these pricing mechanisms, in particular whether they reflect fair market value. The Committee will also request the Government of Iraq to submit a list of national oil purchasers (private and Government-owned companies, State agencies, ministries, etc.) to be included in the list of national oil purchasers.

In the light of this report, any document submitted as part of an application to the Committee will be available for consultation by Committee members in the Secretariat.

15. The export of petroleum and petroleum products will be monitored by United Nations Independent Inspection Agents, appointed by the Secretary-General, who will be stationed at the Iraq-Turkey border. Such on-site monitoring will make use of the documents received from the over-seas, direct observation, as well as other means. The Committee will receive the information from the over-seas that the relevant agents have approved, and inform the over-seas immediately to stop the export of petroleum if there is any evidence of irregularity. The over-seas must immediately report any irregularity to the Committee and the Secretary-General.
16. In accordance with paragraph 3 of resolution 661 (1990) and the provisions of resolution 645 (1990) shipments of Iraqi oil and petroleum products in violation of resolution 661 (1990) will be prohibited. The Committee will receive the information from the over-seas that the relevant agents have approved, and inform the over-seas immediately to stop the export of petroleum if there is any evidence of irregularity. The over-seas must immediately report any irregularity to the Committee and the Secretary-General.
17. The Committee will be informed of the results of the independent inspection agents made by the Secretary-General under paragraph 6 of resolution 661 (1990).
18. The independent inspection agents will report monthly to the Committee. When the loading of oil tankers is completed, they shall inform the over-seas on the same day. The over-seas shall comply with the original approved contract.
19. Payment of the price of each purchase of petroleum and petroleum products shall be made to the account as provided for in paragraph 6 of resolution 661 (1990).
20. One of the Secretary-General's advisors to the Committee add to the monthly reports to the Committee, including outlines of the over-seas payments to and from that account.
21. The Committee will be broadly similar to the one described above, and the precise arrangements, consistent with paragraph 6 of resolution 661 (1990), shall be elaborated at a later stage, and shall be subject to the same arrangements.
22. The over-seas will receive monthly reports from UNMOGIP on the actual volume and type of petroleum and petroleum products exported under the relevant sales contracts.

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The contract price in this is, in view of all relevant circumstances, in particular that it is consistent with a currently approved pricing mechanism, and competitive given world prices and market trends and taking into consideration the provisions of paragraph 6 of annex II of the Memorandum of Understanding.

10. If the contract and supporting documents reviewed under paragraph 9 above do not exceed the limits established by resolution 661 (1990), including the requirements set out in paragraph 6 of resolution 661 (1990), the Committee will immediately approve the contract and inform by fax the relevant bank holding the Iraq account. The Committee and the Secretary-General will be informed immediately upon rejection of any contract by fax. In circumstances other than rejection for technical reasons, the Committee will send a call report to the Committee for appropriate action.
11. Contracts for the sale of petroleum or petroleum products which do not comply with the requirements of paragraph 9 above will be reviewed by the Committee. In addition, the factors in paragraph 9 above will be reviewed by the over-seas and their analysis and recommendations to the Committee. The Committee will be informed immediately upon rejection of any contract by fax. In circumstances other than rejection for technical reasons, the Committee will send a call report to the Committee for appropriate action.
12. Once a contract is approved in accordance with paragraph 9 above, the purchaser shall check the rate of credit consistent with paragraph 9 above to be consistent with the bank holding the Iraq account. The over-seas will immediately review the rate of credit in order to determine whether it complies with the information given in the application.
13. If the rate of credit complies with the information given in the application, the over-seas will inform the bank holding the Iraq account which will then issue a letter of credit to the central bank of Iraq for the purchase of petroleum products. The over-seas will also inform the bank holding the Iraq account. The over-seas will immediately review the rate of credit in order to determine whether it complies with the information given in the application.
14. The over-seas will submit a substantive report to the Committee, in a form similar to that described above, and inform the Secretary-General of the same, including the cumulative quantity and approximate value of petroleum authorized for export, and inform the Secretary-General accordingly. In

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23. At a meeting the Committee may provide additional guidance to be followed by the contractor.

24. If any Committee member judges the circumstances to be serious enough, that oil contracts established in this section. At an urgent meeting, the Committee will decide, according to its normal procedures, whether to suspend the contract. The Committee will also decide on all contracts which can only be made in accordance with paragraph 11 above.

SECTION II

REPORT BY TURKEY OF PETROLEUM AND PETROLEUM PRODUCTS ORIGINATING IN IRAQ SUBJECT TO RESOLUTION 38 (1982)

25. The report by Turkey of petroleum and petroleum products originating in Iraq will be undertaken in accordance with the requirements of paragraph 2 of the resolution. The report will be verified as reasonable by the Independent Inspector. The verification of the percentage referred to in paragraph 2 of the resolution shall be undertaken in accordance with the relevant provisions of section I of the present resolution.

SECTION III

REPORT BY IRAQ OF HUMANITARIAN SUPPLIES

26. The Government of Iraq will prepare a supervised list of humanitarian supplies which it intends to export to Iraq pursuant to resolution 38 (1982). The list will be verified as reasonable by the Independent Inspector in accordance with the distribution plan set out in paragraph 8 (a) (ii) of the resolution.

27. After approving the distribution plan, the Secretary-General will forward the list, which will be a part of the plan, to the Committee, and will make it known to the Government of Iraq.

28. The Government of Iraq or the United Nations Iraq-Agency Humanitarian Programme will enter into a contract directly with suppliers to accept the purchase of humanitarian supplies, and will conduct the appropriate contract.

29. The Government of Iraq will ensure that humanitarian supplies (including medicines, health supplies, foodstuffs, and materials and equipment for essential civilian needs (hereinafter humanitarian supplies)) are financed from the Iraq account in accordance with the relevant provisions.

30. Applications for each export of humanitarian supplies, to be financed from the Iraq account in accordance with paragraph 22 of the memorandum of the Committee, shall be submitted to the Committee by the Government of Iraq with all relevant documentation, including the invoice and bill of lading, and a copy of the contract.

including the concluded contractual arrangements. Payment from the Iraq account for the supplies included in the categorised list, shall be made by the Committee exceptionally otherwise on a case-by-case basis.

31. The Committee will take action on such applications in accordance with paragraph 20 of resolution 47 (1981), its existing procedures and the provisions of this section. The Committee will also decide on all contracts which can only be made in accordance with paragraph 11 above. If appropriate, the Independent Inspection experts at the intended point(s) of entry into Iraq will be notified of the actions taken on the applications submitted.

32. Such applications shall be submitted as follows:

- (a) Medicines and Health Supplies
- (b) Foodstuffs
- (c) Other Materials and Supplies for Essential Civilian Needs

The exporting State informs the Committee that the supplies are intended for humanitarian purposes and that the supplies are included in the categorised list. The application must indicate that the supplies are included in the categorised list and that the supplies are intended for humanitarian purposes. The application must also indicate that the supplies are intended for humanitarian purposes and that the supplies are included in the categorised list.

(a) Medicines and Health Supplies

The exporting State informs the Committee that the supplies are intended for humanitarian purposes and that the supplies are included in the categorised list. The application must indicate that the supplies are included in the categorised list and that the supplies are intended for humanitarian purposes. The application must also indicate that the supplies are intended for humanitarian purposes and that the supplies are included in the categorised list.

(b) Foodstuffs

The exporting State informs the Committee that the supplies are intended for humanitarian purposes and that the supplies are included in the categorised list. The application must indicate that the supplies are included in the categorised list and that the supplies are intended for humanitarian purposes. The application must also indicate that the supplies are intended for humanitarian purposes and that the supplies are included in the categorised list.

(c) Other Materials and Supplies for Essential Civilian Needs

The exporting State informs the Committee that the supplies are intended for humanitarian purposes and that the supplies are included in the categorised list. The application must indicate that the supplies are included in the categorised list and that the supplies are intended for humanitarian purposes. The application must also indicate that the supplies are intended for humanitarian purposes and that the supplies are included in the categorised list.

33. The Committee will examine each contract, in particular the details of entry into Iraq, and whether the items to be supported are in the category referred to above. They will also take into consideration the availability of funds in the Iraq account for the contract. The Committee will also take into consideration the findings of the Independent Inspection experts at the intended point(s) of entry into Iraq.

34. The Committee will, upon the findings of the experts as set forth below, make a decision on the contract. The Committee will, upon the findings of the experts as set forth below, make a decision on the contract. The Committee will, upon the findings of the experts as set forth below, make a decision on the contract.

ANNEX I
STANDARD APPLICATION FORM TO REQUEST APPROVAL OF CONTRACTS
FOR SALE OF IRQIL PETROLEUM AND/OR PETROLEUM PRODUCTS

The attached contract with the Iraqi State Oil Marketing Organisation (SOMO) must be approved in accordance with paragraph 1 (d) of Security Council resolution 395 (1985) and the procedures of the Security Council Committee established pursuant to paragraph 4 of the same resolution. The application must be accompanied by the following information:

Information about the purchaser

- Name of purchasing entity;
- Place of registration;
- Address;
- Contact person;
- Telephone;
- Telex;
- Teletex;

Quantity of crude petroleum and/or petroleum products;

Pricing formula and/or unit price;

Date(s) of loading;

Name of vessel;

Destination (if available);

Payment terms; and

Irrevocable letter of credit, etc.)

The applicant must attach a copy of the contract, draft irrevocable letter of credit, and all supporting documents.

Signature
Name of signatory
Title

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SECTION V

Approval of irrevocable contracts, other than those referred to in paragraph 41.

Pursuant to paragraph 8 (f) of resolution 395 (1985), the Committee can approve, under its objection procedure, the financing from the Iraq Government of the purchase of crude petroleum and/or petroleum products and petroleum products permitted under paragraph 1 of resolution 395 (1985) if the financing is approved by the Committee. In accordance with paragraph 9 of resolution 395 (1985), and if activities are necessary therefore:

41. Requests for meeting the expenses referred to in the present paragraph will be submitted by the government of Iraq together with the necessary documentation, and will be approved on a case-by-case basis. If necessary, the advice of the members of the Committee shall be sought in reaching a decision.

SECTION VI

GENERAL PROVISIONS

42. The Secretary-General will arrange for the implementation of the appropriate communication links to permit direct communication among the necessary members of the Committee and the coordinator of the multinational inspection teams operating in the area under resolution 661 (1990), as well as with the Central Bank of Iraq and SOG.

43. The Secretary-General will report regularly to the Committee on the details of the implementation of the present paragraph to paragraph 9 of resolution 395 (1985).

44. Letters of credit issued in these procedures should conform with the Uniform Customs and Practice for Documentary Credit.

45. The Committee will amend or revise the present procedures, if necessary, in the light of future developments.

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Annex II

Information to be included in the letter of credit

1. As provided for in paragraph 2 of Annex II of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq, the letter of credit shall be issued on 20 May 1994. The following clauses will have to be included in each credit:

- Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be approvedly paid into the 'Iraq account' with '... Bank'.
 - All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the issuing bank.
2. Other information to be included:
- name of the petroleum or petroleum product
 - forecast quantity of petroleum or petroleum product
 - date of loading
 - unit price
 - forecast amount of the payment

Annex V

GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF USE OF UN-PROVIDED TRANSPORT

I, the undersigned, hereby recognize that all my travel on the UN-provided transport, pursuant to Contract No. PD/CON/324/93 between the United Nations and Cincena Inspection S.A., is solely for the purpose of carrying out my duties as an official of the United Nations under conditions of special risk. In consideration of my being permitted to travel on such means of transport, I hereby:

(a) Assume all risks and liabilities during such travel; (b) Recognize that neither the United Nations nor any of its officials, employees or agents are liable for any loss, damage, injury or death that may be sustained during such travel;

(c) Agree, for myself as well as my dependents, heirs and estate, to hold harmless the United Nations and all its officials, employees and agents from any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this release shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

Passenger

Date

FORM OF PERFORMANCE BOND

Know all men by these presents, that we, a company incorporated in and under the laws of the State of New York, the principal shareholders of which are and its as Principal Beneficiary called "the Surety" and its a corporation organized under the laws of and duly organized to transact business in as Surety hereinafter called "the Surety" are held and firmly bound unto the United Nations, an International Intergovernmental Organization with its headquarters at New York, New York, U.S.A., as Obligee hereinafter called "the Employer" in the amount of (USD), for the payment whereof which sum, well and truly to be made, the Employer and the Surety have themselves, their successors and assigns, jointly and severally, firmly by these presents.

Whereas the Employer has entered into a written contract with the Employer, the day of 19.... for the said Contract and reference made here to and hereinafter referred to as "the Contract".

The Surety, for valuable consideration, its successors and assigns, hereby acknowledged by the Surety, the Surety hereby irrevocably undertakes that the Employer shall be held harmless by the Surety in the event of the Employer's failure to perform its obligations, obligations or to make good any loss or damage caused by the Employer to the Employer to remedy the default and complete the Contract in accordance with the terms and conditions, any amount up to a total not exceeding the amount of the Bond, to remedy the default and complete the Contract in accordance with its terms and conditions.

ANNEX VI
GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF
PROVISION BY UN OF EMERGENCY MEDICAL CARE

I, the undersigned, hereby recognize that all emergency medical care rendered to me by the United Nations Medical Unit, Contract No. PD/COM/23/98 between the United Nations and Contracting State, is solely for my own convenience and benefit and may take place in areas or under conditions of special risk. In consideration of receiving such medical care, I hereby:

- (a) Assume all risks and liabilities in connection with the provision of such medical care;
- (b) Recognize that neither the United Nations nor any of its officials, employees or agents shall be liable to me for any loss, damage, injury or death that may be suffered by me during the provision of such medical care;
- (c) Agree, for myself as well as my dependents, heirs and estate, to hold harmless the United Nations and all its officials, employees and agents from any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this release shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

Employee

Date

Nothing herein or raised hereon shall be deemed a waiver or an agreement to waive any of the privileges or immunities of the United Nations.

Signed on

Signed on
on behalf of
on behalf of
by

by
in the capacity of
in the presence of

in the capacity of
in the presence of

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Mr. SHAYS. Let me start with the counsel to ask some questions, and then I will have some questions.

Mr. HALLORAN. Mr. Smith, in describing the factors that you said led the United Nations to select BNP as the provider of banking services, you said an established commercial trade operation in Europe. Did that include facilities for processing letters of credit of the kind that the program generated?

Mr. SMITH. The program in itself was unique. I don't think that any bank had facilities established to process the type of business that was created by the program itself. However, BNP had an existing trade finance operation which dealt with the issue of letters of credit in New York City.

Mr. SHAYS. Could you just explain what made it unique?

Mr. SMITH. Potentially the size of the program, which was obviously a little bit unclear at the start of the actual program, but especially the additional controls that were included. The confirmations of arrival are unique. As far as I am aware, they are not used anywhere else as far as letters of credit are concerned.

Normally a supplier of goods under a letter of credit would be paid as soon as they presented all of the required documents under the letter of credit, which is usually at the point they ship the goods. Under this program, no payment is possible until the goods have actually arrived in Iraq and been inspected and confirmed to be in accordance with the contract.

Mr. HALLORAN. So that complicated the process both in terms of paper and time?

Mr. SMITH. It complicated the process. It gave us an additional amount of paper that we needed to check against the shipping documents and the letter of credit.

Mr. HALLORAN. In that line of business with your client, the United Nations, when does the Bank get paid, based on what triggering event?

Mr. SMITH. The Bank basically gets paid for the issuance of the letter of credit. There are some associated fees relating to pure payments, to SWIFT messages, etc. But the actual fees charged under the program really related to the issuance of the letters of credit.

Mr. HALLORAN. The Oil-for-Food Program was run in phases designated by the Office of the Iraqi Program?

Mr. SMITH. It was run in 6-month phases, yes.

Mr. HALLORAN. Were there negotiations with the Iraqi Government and other entities from phase to phase as the program matured, and how did that change the Bank's operating?

Mr. SMITH. As far as the Bank was concerned, the banking service agreement was basically extended by the United Nations at each stage during the process. To the best of my knowledge, during the course of a series of extensions over what eventually were 13 phases of the program, there were some changes made to the way the business was conducted.

Mr. HALLORAN. As the processing or the flow of business changed, what kind of capacity did the Bank have to discern trends or novelties in the business? For example, it has been suggested about phase 8, when Saddam got a little more sophisticated about oil vouchers as opposed to directly selling to end users, that the roster of those being paid would have changed both in quality and

quantity, new people and a new number of people. Would that have been discernible by the Bank and would it have put a red light on the border anywhere for any reason?

Mr. SMITH. There was certainly an increase in the volume and the complexity of the business that the Bank was handling around about phase 8. As far as red flags are concerned, I would come back to my statement in that the United Nations was the Bank's customer. The United Nations was approving all of the counterparties on both the oil and the humanitarian contracts. In addition to that, I would remind you that all of this business was screened for OFAC purposes and reviewed against the various OFAC listings.

Mr. HALLORAN. With those safeguards in place, the Bank felt confident that its business was being done according to the rules. But what can go wrong with a letter of credit? What would have sent a bell or red light off in a letter-of-credit transaction?

Mr. SMITH. Most of the immediate thoughts that come to mind regarding that question are purely from an operational point of view in how we check documents, etc., which would not really be caused under the program.

Mr. HALLORAN. If the recipient of the shipment said this is not the quality or quantity of oil I ordered, and there is a rejection, the letter of credit is not claimed upon.

Mr. SMITH. The letter of credit is a written undertaking that a payment will be made on the presentation of documents that are specified within that letter of credit. So a letter of credit is constructed so that the buyer of the goods ensures that they have the necessary documents to give them the comfort that the goods are of the quality they want, of the quantity they want, and will be delivered in a timely manner.

So, for instance, on the oil that was being lifted from Iraq, one of the documents that would need to be presented for payment would be a chemical analysis of the goods or the oil to prove it was of a specific quality. In addition, bills of lading confirming the shipment and the quantity of the shipment would also be presented, so the protection is in the documents which the Bank is dealing with.

Mr. HALLORAN. In the course of these transactions, did BNP have occasion to be in contact with the Central Bank of Iraq?

Mr. SMITH. The Bank received the initial requests to issue letters of credit under the humanitarian program from the Central Bank of Iraq. Once those requests were received, they were referred to the United Nations, and the United Nations would give the approval to issue those letters of credit or not.

As far as the inspection of the documents before payment is concerned, there would be no contact with the Central Bank of Iraq. The Bank would review those documents, check those documents in the same way that it would under any other commercial transaction, albeit with the additional documents and controls that are included in this program, and make a determination whether a payment should be made. If the Bank was comfortable that the documents were in order and a payment should be made, then we would approach the U.N. telling them that we had good documents and we were proposing to make a payment. They would confirm that payment.

Mr. HALLORAN. The Central Bank of Iraq had no say as to who or how much got paid?

Mr. SMITH. That's correct. Once the letter of credit is issued, it governs the conditions of payment. As long as the correct documents are presented, payment should follow.

Mr. HALLORAN. Thank you.

Mr. Pruniaux, describe a little more, if you could, the distinction that is being made in your testimony between authentication and inspection. Our perception from both your testimony, and other documents, is that it was a process that compared paper to paper, sometimes it did not matter what was in the truck behind you, and if the documents said the truck should contain 50 barrels of something, your obligation was fulfilled and you never got to look in the truck; is that correct?

Mr. PRUNIAUX. Authentication is really matching documents. You know that we were present at four sites. The fifth one was opened in 2002, but it never really operated. It was at the border between Iraq and Saudi Arabia. The documents were ordered by U.N. OIP—New York in such a way it provided very detailed information on the goods which had been approved and for which the letters of approval had been issued. So the suppliers would send the goods, the shipments, to Iraq, and we would know beforehand that the goods were going to arrive through the secure transmission of documents coming from the U.N. OIP addressed to each individual site. No one—let me phrase it differently.

The information provided to a certain site was not available to the other sites to keep confidentiality. For instance, at Trebil where we had most of the traffic, the trucks would arrive with containers, and they had to stop. The supplier's and the transporter's duty was to come to us and tell us, this is the shipment so-and-so, these are the references, these are all of the documents; and we would look at all these documents and see that they matched the information we had received from U.N. OIP.

Mr. HALLORAN. When they did not match?

Mr. PRUNIAUX. There were three major reasons. Maybe the letter of approval had expired because it took more time for the goods to arrive in Iraq to be presented at the border. Sometimes—and very often the sites are changed, especially between Turkey—goods landed in Turkey or Jordan. Very often there was substitution in sites. Sometimes the documents were incomplete. That was mostly the case in Umm Qasr. So we would block in the sense that we would not authenticate, but we had no authority and no power to prevent the truck from crossing the border and entering into Iraq. The only thing, nobody would be paid because we had not authenticated. In such a case we would refer these problems to the U.N. OIP and it was up to U.N. OIP to discuss with the supplier and find the reason or maybe extend the validity of the approval.

Mr. SHAYS. Did you know what the outcome was when you would disclose these transactions had taken place? Do you know how they were resolved? Or once they were passed on to the U.N. authorities, it kind of left your hands?

Mr. PRUNIAUX. No, I would not know. We would get information from U.N. OIP, yes, the approval has been extended, it was acceptable that the site be changed and the supplier was requested to

provide the missing documents. On that basis, on that very specific information, requests from U.N. OIP Cotecna would authenticate by electronic mail—that was in 2002, but before that it was faxed and signed by the team leader on each site and it was sent to U.N. OIP so the payment of the supplier could be processed.

Mr. HALLORAN. In your testimony you say the Iraqi ministries complained continuously that the authentication process favored the supplier, often claiming they had received substandard goods or delivery shortfalls. Iraq frequently exerted firm pressure on Cotecna to withhold or retract authentication. OIP directed Cotecna to refer all such matters to the U.N. What does that mean?

Mr. PRUNIAUX. To the U.N. Security Council.

Mr. HALLORAN. Where did that get you?

Mr. PRUNIAUX. Maybe I misunderstood.

Mr. SHAYS. His question is what happened then? What was achieved by doing that?

Mr. PRUNIAUX. The Iraqi authorities in Umm Qasr, that is the place they put us under pressure. The Iraqi authorities would complain that we were authenticating goods which were sub-quality. We would not get involved in those discussions, as long as food-stuffs were fit for human consumption. Now, the fact that the Iraqis considered goods were substandard or were not exactly what they had ordered was a matter of commercial dispute between the supplier and the receiver. In fact, being in the business, in the profession, we always told everyone that it is normal practice in this kind of business, in commercial transactions, to appoint an independent inspection company to verify that the goods which are being purchased matched the contract, the detailed contract specifications, and that was told by the U.N. OIP to the Iraqi authorities to implement these kinds of procedures.

Mr. HALLORAN. But they chose not to?

Mr. PRUNIAUX. They did that occasionally. I would like to mention, for instance, that one of the things that Cotecna was forbidden, we were forbidden from acting as a commercial inspection company providing our services to, of course, the Iraqi receivers and, of course, the suppliers. So there would be no conflict of interest between the independent inspection authentication that we were providing to the U.N. OIP and the commercial disputes between a receiver and the supplier.

Mr. HALLORAN. That was a provision in your contract with the U.N.?

Mr. PRUNIAUX. Yes.

Mr. HALLORAN. Your testimony also says that one of the challenges you faced in executing this contract was that you had to navigate Cotecna's delicate web of contacts with U.N.'s Office of Humanitarian Coordinator for Iraq. Could you amplify on that? There are other references in testimony that particular office was a problem in terms of executing this program.

Mr. PRUNIAUX. I would not say it was a problem. It was a delicate, diplomatic way of having to coordinate on a daily basis in Iraq because we had from 54 to 67 inspectors living and traveling and eating and sleeping in Iraq. You have to realize also, to get into Iraq you need a visa to enter the territory, and the visas were pro-

vided only at the Embassy of Iraq in Amman, in Jordan, and if for some reason the visa was not granted, the inspectors would be stranded and cannot reach their sites. The only way to get some support to clear visas or get transportation authorization to travel in Iraq, you needed a very specific authorization, and that was provided by the Iraqi authorities. The Iraqi authorities for all of these problems of logistics and transportation was handled by the Office of the Humanitarian Coordinator in UNOHCI in Baghdad.

Also and more importantly, a lot of complaints came from the Iraqis, unjustified and justified, on the behavior of certain of our inspectors on things which could have happened on some of the sites which have been reported to the Iraqi officials, and also complaints on the performance of Cotecna, especially in Umm Qasr where we were put under extreme pressure to shorten some of the delays that they were experiencing.

In such case I have to be frank. UNOHCI was adopting a rather friendly attitude toward the requests from the Iraqi authorities; and this is what I mean, "problem" is maybe not the right word, but rather a "delicate."

Mr. HALLORAN. Right. Sounds like a problem to me.

You also say that you had to deal with direct pressure from the Iraqis. What kind of pressure? There is some e-mail traffic describing pressure to move things through and not be so careful about things. Where did that pressure come from?

Mr. PRUNIAUX. From Iraqi officials. We have an example which I presented in the documents you have received where it was in 1999 there was a minister of I think of Kuwait, who came with armored guards to our site in Umm Qasr and told us that we would not be authorized to authenticate unless the goods had already been accepted in terms of quality by the Baghdad laboratories. As we brought in various correspondence which appear in the documents, the inspectors were very shaken on the ground. So we issued a formal complaint that came to my attention in Geneva, and I told the U.N. OIP-New York. But there was pressure of these kinds of things.

Mr. HALLORAN. What would have been the problem of Baghdad checking off on the acceptance of goods?

Mr. PRUNIAUX. They would have blocked all authentication.

Mr. HALLORAN. Until they got paid first?

Mr. PRUNIAUX. Yes, and create a bottleneck so someone would have to pay to get the goods cleared by financial gains to the Iraqi officials.

Mr. HALLORAN. After the Minister of Trade shows up with 20 or more armed guards and intimidates your crew, how was that demand resolved?

Mr. PRUNIAUX. Diplomatically or politically I cannot respond. I can say technically that problem was solved because that did not occur again. However, as I said before, there was constant pressure, especially in Umm Qasr, on Cotecna to authenticate, in a speedy or in a slow way, so the Iraqi officials could exercise some pressure on the suppliers.

Mr. HALLORAN. Thank you.

Mr. Boks, there was an allegation in the Wall Street Journal 2 days ago that in the course of one oil transaction a Saybolt em-

ployee had been bribed to allow a topping-off of the ship. The company's response was that it had been investigated before. Do you have anything more to say about that?

Mr. BOKS. We have investigated that incident at the time we learned of the incident which was in October 2001. At that time we conducted a thorough investigation. We went through the whole process. We looked at off-loadings. We interviewed the team leader. We virtually took all of the events and circumstances and we submitted that report of the investigation to the United Nations with a briefing also to the 661 committee.

What we have now learned from the article in the Wall Street Journal actually is for us a new allegation. We had no knowledge of that before it was published. You can rest assured that we will investigate this further. We will get to the bottom of it. Actually, as a matter of fact, our board has already instructed our general counsel to get a team of lawyers to investigate this to the bottom.

Mr. HALLORAN. If you can supply the subcommittee with whatever product your investigation produces, that would be helpful.

Mr. BOKS. Sure. We will share this with the investigating commission.

Mr. HALLORAN. The incident of the Essex, which was detained and found to have oil loaded in excess of the Oil-for-Food Program contract, what changes were made in the Saybolt inspection process and the U.N. inspection process as a result of that? What confidence do you have that it was effective in preventing the practice of topping off?

Mr. BOKS. That evening I heard we took immediate actions for temporary reasons to have an inspector sitting 24 hours, 7 days a week, on board a vessel if it was alongside the terminal. Given the staff levels, that was not something that we could continue, so we implemented new instructions in terms of sealing the ship's manifold after the loading had been completed and the loading arms were disconnected. These seals would have unique numbers and would be also inserted on the notification letter. The notification letter was a letter which we put on board with the U.N.-authorized quantity loaded on board that specific vessel, actually a procedure that only was implemented earlier in 2001.

In addition to that, we would check the seals prior to departure of a vessel because a vessel would not always depart immediately after it completed its loadings. So before departing, we would check the integrity of the seals. If not, we would then remeasure the vessel.

Other instruction was we would look at the draft of the vessel after its completed loading. Draft is, I would say the surface of the water and the keel of the vessel. Maximum draft is, say, 21 meters, so if a vessel would load with less than that, we would take reference of that and also check it prior to departure.

Basically we would also look at potential vessels that would still have space after it had loaded its U.N.-authorized volume. So if that were the case, special attention would be required. Those new instructions have been adopted by the 661 committee at some stage.

Mr. HALLORAN. The calibration of the measuring methods you describe in your testimony, of the 2,600 loadings, of those, how

many were validated by you based on less than the type of methods you would have preferred?

Mr. BOKS. You mean did we ever?

Mr. HALLORAN. In your testimony you said you would prefer to have the calibration and use other indirect methods to determine the amount of oil.

Mr. BOKS. The consideration is as follows. When we first came to Iraq and we did our fact-finding mission, we came to the conclusion there were no properly calibrated metering facilities in place. Actually the border station in Zakho did not have a metering station so the Iraqis had to cannibalize on the Syrian pipeline and build it there within a couple of weeks.

Generally speaking, the metering equipment has never, during the whole of the Oil-for-Food Program, become on a level which would be able to be used for fiscalisation purposes. So all 2,600 loadings have been done by utilizing the methods that I have described in my statement.

Mr. HALLORAN. In your experience, what is the potential margin of error?

Mr. BOKS. That is a very good question. Actually what we did was we made a total comparison of all of the volumes we lifted from Turkey. In Turkey we had a cross-check possibility of measuring prior to loading and after loading, and then the volume could be calculated, derived from those two measurements. And we did also the ship, applying the vessel experience factor, and of the 1.3 billion barrels which were loaded from that port, actually we found a surplus even; a small surplus of 0.04 percent, which would lead us to believe that method was applied very accurately, and, I would say, very professionally.

Mina Al-Bakr was a different story because we could not cross-check. We did not have any ability. We only could rely on the ship's figures by applying the vessel experience factor. I could not give any estimate as to the accuracy of those figures. Although I would have to say that the percentages would be probably around maximum 2 percent.

Mr. HALLORAN. Two percent, OK.

Finally, for all three of you, what kind of oversight did you get on this contract with the U.N. from the U.N.? Were you subject to an audit or an inquiry by the Office of Internal Oversight at the United Nations, and if so, how often and what was the outcome?

Mr. SMITH. The Bank provided daily statements of the U.N. Iraq account to the United Nations. They also had copies of all of the letters of credit that we were issuing and the amendments that were made to those letters of credit and details of the payments.

From that, I understand that there were internal audits within the U.N. based on that information. As far as I am aware, there was never a physical audit of the Bank or the Bank's premises in our conducting of the business.

Mr. HALLORAN. But certainly the Bank, through perhaps other regulatory channels, had lines of business audited that crossed Oil-for-Food transactions?

Mr. SMITH. The Bank in itself had internal audits and external audits which included the trade finance area that provided the sup-

port to the United Nations. Sorry, my answer was the United Nations.

Mr. HALLORAN. Thank you.

Mr. BOKS.

Mr. BOKS. In terms of audits, from what I know, the U.N. has audited us three times in total. At least I have seen three times the report; or let me say in two instances we only got a requirement to answer a few questions which basically were for us very easy to answer.

In one instance there was done a full audit report of which, let us say, there were quite a few comments and we had to go through them and answer them point by point, which we obviously did.

Mr. HALLORAN. Thank you.

Mr. PRUNIAUX. Because of the nature of our activities, we had almost 24-hour coordination with the U.N. OIP-New York, and U.N. OIP would call directly the sites to discuss technical or management matters on the sites. However, we were audited several times, maybe every 3 to 6 months. One of the senior customs officers from the U.N. OIP would go and visit the sites, with or without the Cotecna contract manager. We had an organization where we had a contract manager based in Amman and one working in Geneva working with me. We would go with them or without them. As a consequence, we would have meetings, regular meetings in New York every 3 months, and meetings also with the team leaders in Baghdad or Amman. That was an ongoing exercise that we conducted several times.

Mr. HALLORAN. Thank you.

Mr. SHAYS. I have a number of questions that I would like to go through. I don't think that they will take us long to answer. Some of them simply may not be relevant in the end, but since they are on my mind I want to ask and get them out of my brain if they were not relevant.

Why were transactions carried out in euros instead of dollars?

Mr. SMITH. A decision was made part way through the program to change the pricing and the settlement of the oil sales from U.S. dollars to euros. That decision was made by the Security Council of the United Nations.

Mr. SHAYS. So it was the Security Council and not Saddam Hussein?

Mr. SMITH. The decision was made by the Security Council, sir.

Mr. SHAYS. What sort of challenges, if any, did this present?

Mr. SMITH. In banking terms, the additional challenges were minimal. Whatever currency we are dealing with, whether it is U.S. dollars or Euro's the process is basically the same. The physical payment process is slightly different. But again, it is a well-established process.

Mr. SHAYS. And the charge that your Bank would make would be the standard charge made on every transaction?

Mr. SMITH. Yes. Pricing was agreed based on the transactions that were being undertaken on behalf of the United Nations.

Mr. SHAYS. I am told the bank did not begin an internal investigation for the Oil-for-Food Program and allegations of the corruption began to emerge in 2001. One, is that true; and two, why not?

Mr. SMITH. The Bank undertakes regular reviews of the program. If your question relates to the rumors and the stories relating to overpricing—

Mr. SHAYS. They were rumors that turned out to be true.

Mr. SMITH. Right. From what the Bank could see from the details they had from the information that it had, from the letters of credit and the documents that were presented, there was no evidence that we could see that substantiated anything that was happening. We were dealing with documents presented under a letter of credit which determined what the amount of the payment was, and the payment was basically made to the beneficiary or their bankers. Anything that happened outside of the letter of credit arrangement, obviously, we had no knowledge of at all.

Mr. SHAYS. So your company was not really in the field, this was more papers crossed your desk?

Mr. SMITH. We were dealing solely with paperwork, and we were dealing with it in Manhattan, in New York City.

Mr. SHAYS. The bottom line is when there were rumors that ultimately turned out to be true, your bank pretty much decided that there was not sufficient knowledge to have you conduct your own internal investigation?

Mr. SMITH. We would certainly from an operational point of view look at whatever rumors were going around. Indeed, quite often we would discuss them at what were reasonably frequent operational communication meetings with the U.N. treasury, so I am aware that the U.N. was also aware of those rumors. At the end of the day, it was the Security Council that were sanctioning the various transactions.

Mr. SHAYS. Did you have a sense, or lack thereof, of Saybolt and Cotecna's ability to verify transactions?

Mr. SMITH. We were obviously not on the ground in Iraq, so we did not see their operations at all. We were being provided with certificates that were required under the letters of credit. As far as the Cotecna certificates were concerned, they came to us directly from the United Nations, they did not come through any direct route. Again, the Saybolt inspections, all of the documentation for the payment of an LC relating to an oil shipment were presented to us by the United Nations.

Mr. SHAYS. Mr. Boks, do you have any reaction, or did you have any reaction to the description in the Amman newspaper that said there was a Netherland company of SyBolt, S-Y, and then capital B-O-L-T, as receiving \$3 million in oil? Did that get your attention?

Mr. BOKS. Sure. We looked at that. We were puzzled that our name appeared on that list because we had not received any allocation. That also would have been very unusual. I can say Saybolt did not buy or sell oil or vouchers.

Mr. SHAYS. Being one in that list of 269, it would make us have to question some of the others on that list. In the Essex incident which was the illegal topping-off of oil, how were the Iraqis punished or censured for this obvious illegality?

Mr. BOKS. I'm sorry, I can't answer that question because that is beyond our mandate.

Mr. SHAYS. So you don't know?

Mr. BOKS. I don't know.

Mr. SHAYS. Your mandate, you basically reported the incident?

Mr. BOKS. Well, what happened is a letter was sent by the captain of that vessel with corresponding documents to the United Nations clearly stipulating what happened during the event, and actually said this all happened after the U.N. inspectors left the vessel, after they had completed.

Mr. SHAYS. How did you respond?

Mr. BOKS. When we received that letter, we took immediate action. We changed immediately the working procedures and introduced the seals.

Mr. SHAYS. Could you describe the Clovely incident?

Mr. BOKS. The Clovely incident was of a different magnitude. This vessel was nominated to load in February 2002, and when it arrived alongside the terminal, it was very close to the expiration of the letter of credit.

Mr. SHAYS. I have no sense how long a letter of credit lasts.

Mr. BOKS. It was just a matter of days.

Mr. SHAYS. Letters of credit give you a window of how much?

Mr. SMITH. It depends on the individual letter of credit. Normally the oil letters of credit—and they varied—but normally it would be a period of 4 to 6 weeks.

Mr. SHAYS. Thank you.

Mr. BOKS.

Mr. BOKS. When the vessel arrived, we noticed, because we kept track and record of the expiration date of each individual letter of credit so we would make sure that the completion of the vessel would fall into that window; otherwise there would be problems by, I would say, drawing on the letter of credit to get payment for the oil lifting.

So what we did was basically we instructed our team leader to notify SOMO of this event, and that loading would not be started until we had received from the U.N. oil overseers a revised date or window for the letter of credit.

That took obviously some time, and irrespective of that, the loading master or the Iraqi people on the platform decided still irrespective of that problem to start loading the vessel. And luckily we were able to get the letter of credit arranged prior to the departure of the vessel. But on itself it was clearly, I would say, an abuse.

Mr. SHAYS. This is for both Saybolt and Cotecna. How did the various U.N. offices that you work with coordinate their assistance and responses to your needs?

Mr. PRUNIAUX. I'm sorry?

Mr. SHAYS. Both of you have complained about confusion within the United Nations, sometimes a lack of cooperation from the U.N. Both of you have said that. I want to know how the various U.N. offices that you worked with coordinated their interaction with you. Let me ask you this way: How many different parts of the U.N. did you need to interact with?

Mr. PRUNIAUX. On a daily basis and for technical matters, operational matters, it was only the U.N. OIP. However, when you negotiate a contract, or if you want to modify the content of the contracts—

Mr. SHAYS. You're talking about your own contract?

Mr. PRUNIAUX. Yes. You have to deal with a completely different department or entities at the U.N. One of them is the Procurement Department, and, in fact, since I negotiated and I signed two contracts and several amendments, all the technical work was done with U.N. OIP. But all the rest, the negotiations on the financial conditions, that was done with the Procurement Department, and sometimes there was a lack of coordination between the two departments, which made it difficult for a company like Cotecna to fully and properly negotiate. And on top of that there was the Office of Legal Affairs.

Mr. SHAYS. What affairs?

Mr. PRUNIAUX. Office of Legal Affairs.

Mr. SHAYS. Legal Affairs.

Mr. PRUNIAUX. Yes, which was a very powerful department which included several very tough conditions, administrative contractual conditions, in our contracts. So, in fact, to operate under a contract, we had to work with U.N. OIP, but to implement the contract, we had to deal with three separate entities. That was in New York.

Mr. SHAYS. Yes. Would that describe the same challenge for you, Mr. Boks?

Mr. BOKS. To a certain extent I underlined that we had similar problems with procurement. If our contract was up for renewal, you have—basically when they would not continue it, obviously you would need to have that information prior to the expiration of the contract. But sometimes the amendment was coming after the expiration date, which gave sometimes some problems with insurers, because obviously in Iraq, if you want to ensure yourself, then you need to make sure that there were reasons to be there in a certain country.

With OIP I must say I haven't had any major difficulties other than that we have issues where we asked advice after irregularities were noted, and it took sometimes quite some time. The other contact points we had was with the U.N. overseers, with whom we basically on a daily basis had contact concerning the oil export, and here and there obviously delays were observed, but not to the extent that it was an unworkable situation.

Mr. SHAYS. Both of you lacked power, and you lacked personnel. In other words, there are just certain things you couldn't tell the Iraqis to do. Did you try to get power, and did you have your contracts revised so that you could hire more people to do the job you needed to do? Mr. Boks.

Mr. BOKS. Shall I start? The staffing levels, the staffing levels in the oil program have to a certain extent always been sufficient. Where we faced major difficulties was in monitoring the spare parts and equipment, which were also purchased under the Oil-for-Food Program. When we started, we started with one inspector, very modest, because spare parts were ordered but came.

Mr. SHAYS. You're talking about parts for the oil industry itself.

Mr. BOKS. Yes. Perhaps I should elaborate a bit on that.

In 1998, the Secretary General had been to Iraq, and a proposal was made to change the cap of dollars that could be generated through a phase would be going up to five—

Mr. SHAYS. Greater production.

Mr. BOKS. Exactly. So at the same time, the oil prices were very low, and production was very low, so Iraq was not able to come up to those proceeds and to come up to that cap. And then the Secretary General appointed a group of experts to go to Iraq and, in consultation with the Government of Iraq, try to find ways of increasing production. We were that group of experts. And one of the conclusions as the industry was in an amendable state is that spare parts were needed and equipment was needed to bring the production up to the levels required. And for that purpose, the Security Council decided that they would allow Iraq to purchase spare parts and equipment, as long as there was a monitoring system that would keep track that those spare parts would also be used for their intended purpose.

Mr. SHAYS. And so that's the area where you could have used more people.

Mr. BOKS. Absolutely.

Mr. SHAYS. And did you request more people?

Mr. BOKS. Yes. That was on an ongoing basis because we were facing also difficulties in terms of the fact that the Government of Iraq insisted that our staff would be deployed only in Baghdad, and that we had to travel throughout the country to check all those sites, and we only had, let's say, at the top level, six, seven people.

Mr. SHAYS. So the bottom line is you couldn't do the job properly with the staff you had.

Mr. BOKS. Well, we had to prioritize.

Mr. SHAYS. OK. Did this mean that you then had to take people from one part of your program to put it in the other part, spare parts? Did you have to kind of cannibalize your program?

Mr. BOKS. Given the constraints in traveling, we have used mainly in the beginning some staff from Zakho to do in the northern part of Iraq also some checks on spare parts and equipment for a very short period of time, because his traveling was difficult as we were staying in a Kurdish area, so it was difficult to travel around.

Mr. SHAYS. Let me ask you, Mr. Pruniaux, the whole issue of the lack of power, which you have described, and the lack of personnel, were both of these a serious problem at various times or not?

Mr. PRUNIAUX. Mr. Chairman, respectfully, it was not really a question of having more power. The specifications of our mandate were clear enough for the authentication. There was no need to get further—in my opinion, further power, physical power, to implement and to do the work that we are doing on the sites.

Mr. SHAYS. Yes, sir.

Mr. PRUNIAUX. However, sometimes because of the fluctuations in the volume of goods entering Iraq, or the fact that it was that the transporters were moving from one site to the other, made the work at certain sites more difficult, because all of a sudden we would have almost thousands of trucks arriving at Trebil, which was the border between Jordan and Iraq, or—and especially Umm Qasr, we would have an accumulation of ships and loading and containers being stored in the port. In such a case we would immediately try to ask the U.N. OIP permission to move staff between sites.

In that sense we did not have the power to move at our own will an inspector from one site to the other. The contract specified that we were requested to put a certain number of permanent inspectors on a daily basis per site, let's say 12 in Trebil. So if you want to move that and do that, you are in contradiction with the obligations of the contract. So we had to ask permission. And to move an inspector from one place to the other in Iraq could take a couple of days, so we would rush people to Umm Qasr because there was an accumulation of volume in Umm Qasr.

I must say that in order to have between 54 and 67 permanent inspectors in Iraq, Cotecna had to hire up to 95 permanent inspectors because of the rotation and those that are sick or going on vacation and so on. And this would be illustrated by the statistics that are available at U.N. We had more, always more mandates of inspectors especially in places like Umm Qasr. For instance, we were requested to have between 17 and 22 permanent inspectors in Umm Qasr, but we would have always 25, 26 all paid by Cotecna.

Mr. SHAYS. So sometimes you simply didn't have enough people.

Mr. PRUNIAUX. Yes.

Mr. SHAYS. But was the solution to get more, and did you request more, and did the U.N. say no or yes?

Mr. PRUNIAUX. It was a question of the decisions and convincing the U.N. OIP that it was not to increase our invoice, but we were generally asking for more inspectors on the sites.

Mr. SHAYS. The bottom line is you don't have to worry about the U.N. making money off of this. I mean, their 3 percent, I'm assuming, helped pay your costs; is that right? Does anyone know? In other words, who paid you?

Mr. PRUNIAUX. The U.N.

Mr. SHAYS. And they took a fee for—

Mr. PRUNIAUX. From the 2.2 percent.

Mr. SHAYS. Right. There is nothing that we have seen so far that makes us think that they didn't cover their cost plus; in other words, they made money off of this.

Would you say the U.N. sided more with your side when there was a dispute with the Iraqis or the Iraqis? Did they tend to dismiss—and I am asking both of you this. This isn't a trick question. At the end of the day, did you often feel that you lost more arguments with the United Nations, they just more or less sided with the Iraqis, or did they more or less side with you? I am asking both of you. Do you understand the question?

Mr. BOKS. Would you ask it—

Mr. SHAYS. In other words, when you had a dispute with some transaction, and you contacted the U.N. officials with some disappointment, did they tend more to dismiss it and just say, you know, don't worry about it, or did they take your complaint very seriously and try to deal with it?

Mr. PRUNIAUX. As far as Cotecna is concerned, they took it very seriously, very seriously, because they had the permanent missions to the U.N. from all the countries exporting to Iraq and back, plus they had the suppliers coming there and so on. And there was until 2002 until there was—

Mr. SHAYS. Well, taking it seriously means they paid attention to. It doesn't mean they took your position though. I mean, in other words, they realized they had something they had to deal with, so they dealt with it seriously. I don't want to put words in your mouth. Did they basically say you all were right, and they were wrong, and what was your feeling?

Mr. PRUNIAUX. Ultimately somebody had to make a decision, and they told us to do the job with the number of people that you have, and that's it. So we tried to work under these conditions.

Mr. SHAYS. Mr. Boks.

Mr. BOKS. And in terms of disputes, the U.N. would take it serious if—we have hardly had any disputes, but we have had loadings where the off-takers were dissatisfied for one or another reason. And I must say that OIP did try to come to a solution; not always, I would say, in a quick way, but at the end of the day, they always tried to solve and to assist.

Mr. SHAYS. The number that is thrown out in these two sides of the equation, the Oil-for-Food Program suspected that Saddam basically took out \$4.4 billion, and the smuggling, which we looked at the numbers being more like \$5.7 billion. Did your inspectors ever identify or observe any smuggling?

Mr. BOKS. Although we had not the authority to look for smuggling, and we also have to realize that our inspectors were at very remote locations, we have—

Mr. SHAYS. In other words, there were a lot of sites were you not at?

Mr. BOKS. Absolutely. More than that we were. But we have—

Mr. SHAYS. There were more sites that you weren't at than you were at.

Mr. BOKS. Absolutely.

Mr. SHAYS. OK. Is that true for you, Mr. Pruniaux, as well?

Mr. PRUNIAUX. Well, we operated on the four or five sites. As I explained before, we were told that the goods were presented to us. But there was a permanent flow of goods entering into Iraq which had nothing do with the Oil-for-Food Program. And I visited Iraq several times, Mr. Chairman, and it could be—it was easy to see that, you know, visiting Baghdad there was plenty of goods which shouldn't have been on the open market.

Mr. SHAYS. OK. So in observing smuggling, if you saw it, did you report it, or did you figure that wasn't your responsibility?

Mr. BOKS. Well, basically I can say that we have had instances that I felt that we had to report it, and I realized that was outside our mandate, but still felt that it had to be brought to the attention.

Mr. SHAYS. Right. Mr. Pruniaux, tell me the response to that question.

Mr. PRUNIAUX. When you see goods entering Iraq outside of the Oil-for-Food Program, you do not know if these are the 661 goods or if these are smuggled. These were entirely left to the authority of the Iraqi Customs to check these goods entering Iraq. No, we would not report, because we did not know what kind of goods these were.

Mr. SHAYS. What I see the difference is that in the Oil-for-Food Program, the oil part of the transaction, it seems to me, is a little

easier to have policed. But if a ship came up and loaded up, that was something that you would simply step in. I mean, you weren't going to allow that kind of smuggling, correct?

Mr. BOKS. Well, it wasn't always ships, but at some states we also—

Mr. SHAYS. It could be a truck.

Mr. BOKS. We learned obviously there was traffic to Jordan, although that was more or less of an acceptable phenomena, and we have reported in our fact-finding missions that volumes were estimated at 80,000 barrels a day. But we also have seen the fact that had been used in early 2003, and we reported that to both the Multilateral Interception Force as well as the United Nations.

Mr. SHAYS. So there would be some ships, though, that you would not have inspected, correct?

Mr. BOKS. Sure. But if they were loaded at a different terminal, we would not have staff available to do that.

Mr. SHAYS. I mean, you know, that's kind of significant, how many terminals were you at versus how many terminals exist.

Mr. BOKS. Well, you had not only terminals. We have to make a distinction here. You have the pipeline to Syria. You have trucks to Turkey, trucks to Jordan. You had vessels in the Arabian Gulf, which were loaded at the Shatt al-Arab, which basically—and then we had also a terminal 10 kilometers north of Mina Al-Bakr called Khor al-Amaya. Those were, I would say, the points that activity has been observed, not by us, but by others.

Mr. SHAYS. Why didn't Cotecna operate inspectionsites in neighboring countries as Saybolt did? Let me say it again. Saybolt had inspectionsites in neighboring countries; is that correct, Mr. Boks?

Mr. BOKS. We had one inspectionsite in Turkey.

Mr. SHAYS. Right. And why were you in Turkey?

Mr. BOKS. Well, as a matter of fact, Iraq had from the beginning onwards two export points. One in the south we talked about. But the crude oil which was produced in the north was transshipped through the Iraq-Turkey pipeline to Ceyhan. And in Ceyhan there was a terminal, there is a terminal where that crude oil is stored and loaded subsequently in vessels which then proceed through the Mediterranean.

Mr. SHAYS. Now, why wouldn't you have been in Syria then? If you were in Turkey, why wouldn't you have been in Syria?

Mr. BOKS. Well, that's an interesting question. I can't answer that. That is not up to me. It's beyond—

Mr. SHAYS. No. I understand it's not up to you, but the same logic that would apply that you should be in Turkey would apply, correct, that you should be in Syria as well, correct?

Mr. BOKS. Correct. We discussed that also at some states with OIP, that whether there could be coming a mandate to inspect also the Syrian part. But it was obviously up to the Security Council.

Mr. SHAYS. And their response was?

Mr. BOKS. Well, again, that there was no mandate. Obviously Iraq has subsequently said that they were testing the pipeline.

Mr. SHAYS. Well, I mean, that's absurd. I mean, what we are basically saying is that there was a very viable pipeline through Syria, very viable pipeline through Turkey. We were inspecting the pipeline through Turkey, and we were not inspecting the pipeline

through Syria. And I just would like to have a sense of why. They had to give you some answer.

Mr. BOKS. It is an interesting subject. But having said that, if we would not have the authority, we couldn't do it, and the authority had to come from the Council.

Mr. SHAYS. Let me just say this to you. You're cleared of all responsibility, so you can relax. But what you're doing is you're educating the subcommittee. I want to know what they would have said. I mean, it is a rather porous system that would—I mean, I have wondered how the smuggling could happen, and I didn't realize that we made it so easy. You must have had just general conversations with U.N. officials. Did they give you a logical reason as to why we wouldn't want you also to be in Syria?

Mr. BOKS. What I heard is that it has been discussed also merely during meetings of the 661 committee, and there was no agreement reached as to how to proceed on that.

Mr. SHAYS. An agreement required a unanimous consent. It's kind of like the Senate in Washington, which doesn't give me any comfort.

We're almost done here, gentlemen. And thank you very much.

How often, Mr. Pruniaux, did goods avoid or ignore the authentication or inspection process? How often did you actually inspect goods? I get the feeling, given your mandate, given your personnel, that when ships lined up, when trucks lined up, you were more inspecting the paperwork than actually opening up the containers.

Mr. PRUNIAUX. Yes. It mattered to match the documents and to authenticate. There are two things in your question.

Mr. SHAYS. No, that is your mandate. The mandate was to match the papers, not verify that was what was in the container verified the papers.

Mr. PRUNIAUX. It was left to our appreciation as a professional inspection company to inspect, which means to open, for instance, the containers, or to open the trucks, talking of the land border sites. Now, in such a case, normal practice is about 2 percent, sometimes 5, 6 percent, 5, 6 percent. What we did was on an average basis was about 10 percent of the number of trucks or containers being presented to us were opened, and I have provided some pictures to illustrate this.

Mr. SHAYS. But candidly, when there was the queuing up and a backlog, there was more pressure on you.

Mr. PRUNIAUX. Then the trucks would wait. No.

Mr. SHAYS. The trucks would wait.

Mr. PRUNIAUX. No. The trucks would wait. The drivers are educated. I mean, patience is a virtue in the Middle East, and they would just wait at the border.

Mr. SHAYS. Patience is a virtue. So can I infer from that when there was pressure to—a backlog, that did not impact your—quality of the work.

Mr. PRUNIAUX. No.

Mr. SHAYS. Well, here's the general feeling I get from your testimony, and I want you to tell me whether you agree or disagree. Mr. Smith, I get the sense that BNP basically believed—and I'm not passing judgment on this, I'm just saying what I believe—that

your responsibility was to check documents. You were basically Iraq's bank selected by the United Nations, correct?

Mr. SMITH. We were the U.N.'s bank, in our opinion, maintaining an account for the United Nations, which was styled the Iraq account.

Mr. SHAYS. OK. And I'm happy you're correcting me. You were the U.N.'s bank for Iraq, for Iraqi transactions.

Mr. SMITH. That's right.

Mr. SHAYS. Dollars came in from the sale of oil, and dollars flowed out for the purchase of commodities, and that your responsibility was to make sure that—and you were giving letters of credit to make sure that this would all happen. But ultimately, your responsibility was to make sure that the paperwork matched. Is that a fair assessment of what I've heard you say?

Mr. SMITH. Our responsibility was to ensure that all of the paperwork was in accordance with the letters of credit before we made any payments.

The one additional point I would add in there, that not all of the funds that were received for the sale of the oil were retained at BNP Paribas. A minimum of 41 percent, as I explained in my opening statement, was transferred away to another bank, the U.N.'s main bank, Chase Manhattan, because BNP Paribas was only involved in the part of the humanitarian program that affected the central and southern provinces of Iraq.

Mr. SHAYS. Oh, the Kurdish area was not.

Mr. SMITH. The Kurdish area was within the funds that we moved to Chase Manhattan.

Mr. SHAYS. OK. As long as your paperwork matched, then the transactions took place.

Mr. SMITH. Yes. Basically we were making payment against the letter of credits that we had issued on the U.N.'s behalf.

Mr. SHAYS. OK. And with you, Mr. Boks, and you, Mr. Pruniaux, what I sense is a different challenge. With you, Mr. Pruniaux, you had lots of different commodities to check. You had ports, plus you four transaction points there. You were inspecting trucks, you were inspecting ships, but you were primarily processing paper. You weren't taking a good look at every—you were not able to verify whether or not the paperwork matched what was actually potentially in a ship or in a truck; is that correct?

Mr. PRUNIAUX. We were able to do that. Sometimes, as I mentioned before, there were pressures because of the volumes or for outside reasons, like the Iraqis trying to put pressure on us. But, no, we had IT technicians. The operations that we carried was a combination of physical inspections, as I said, 10 percent or systematic sampling of foodstuffs.

Mr. SHAYS. It was sampling of the cargo. It was a sample of it.

Mr. PRUNIAUX. Of the food basket only, and for which we had to do 100 percent laboratory analysis. But it was a combination, as I said, of physical inspections, matching documents, and receiving and keying data and processing these data on these documents and sending them to New York. So the sites were busy 24 hours per day.

Mr. SHAYS. But your testimony before the subcommittee was you didn't have enough people to do your job.

Mr. PRUNIAUX. On a case-by-case basis, not on a permanent basis. And that was especially, as I mentioned in my testimony—it was specially hard in 2001. And as a request there was an increase, I believe, when we were operating in Umm Qasr at—when there was this peak at the end of 2002, 2001, at the beginning of 2001, we had the total of 62—no, 57 permanent inspectors. And that was the following contract which was won again by us covered additional five inspectors for Umm Qasr.

Mr. SHAYS. In both cases, neither of you were at all the sites that you needed to be in order to see all transactions, which enabled smuggling to take place.

Mr. PRUNIAUX. That was not our duty.

Mr. SHAYS. I'm not saying it's your duty. I'm just saying that you were not at all the potential sites of transaction, either for oil or for commodities; is that correct?

Mr. PRUNIAUX. All the 986, all the Oil-for-Food transactions across the border, and we all authenticated them.

Mr. SHAYS. What's that?

Mr. PRUNIAUX. All transactions under the Oil-for-Food Program crossed the border. Those which crossed the border and we authenticated them.

Mr. SHAYS. Right.

Mr. PRUNIAUX. There was nothing else for us to do but just to look for the—

Mr. SHAYS. You only looked for the Oil-for-Food transactions.

Mr. PRUNIAUX. Yes. Absolutely.

Mr. SHAYS. All the other transactions you did not look at.

Mr. PRUNIAUX. No. We did not know.

Mr. SHAYS. And that's the case with you, Mr. Boks?

Mr. BOKS. That's correct. We were at the authorized export points, and, yes, that was about it.

Mr. SHAYS. I'm sorry to keep you a little longer, but I just need to ask you this one other area. When he undersold his oil, did you have any responsibilities to deal with that issue? In other words, were there questions raised when he would sell oil for below market price because the U.N. approved it, that was good enough? In other words, I mean, any thinking person would wonder why would he undersell for oil. Did that raise questions in your mind? He undersold his oil. He sold it for a price below market.

Mr. BOKS. Well, obviously we didn't have anything to do with the transfers of money. Pricing was not—

Mr. SHAYS. A factor. You just looked at buying. When he offered to pay for commodities, you didn't look at pricing either.

Mr. PRUNIAUX. No, not at all.

Mr. SHAYS. OK. Let me conclude by asking you, each of you, which is the weakness of the program? What was the greatest weakness of the program? Tell me, each of you, what you think the greatest weakness in the program from your perspective? I will start with you, Mr. Smith. If you were designing the program, what would you have designed differently to make sure there weren't the rip-offs that we know took place?

Mr. SMITH. As I said in my opening statement, from a banking perspective, I think the structure was right. From the program as

a whole, more control was required over the procurement process and the pricing process.

Mr. SHAYS. Mr. Boks.

Mr. BOKS. Yes. That is something I can't comment on, but I would say that the unauthorized export points, Syria came on line obviously in a much later stage than the inception of the program. But I think that is obviously a shame that it happened.

Mr. SHAYS. Thank you.

Mr. Pruniaux.

Mr. PRUNIAUX. Well, Cotecna has contracts worldwide for the control of borders and especially provide services to the Customs of various countries in the world. When I say provide, it means really sometimes we replace the Customs or we control the Customs.

Now, the Oil-for-Food Program and the authentication was something totally different, as I mentioned at the very beginning. If a comprehensive program had been designed even for the Oil-for-Food Program, it should have covered or it could have covered the various sectors of a complete control of imports, which is the price verification, the quality, quantity and so on. But that was not written. That was not requested in our mandate.

Mr. SHAYS. You all have been extraordinarily patient, and I think you have changed your schedules, and you have had to stay later than even I thought would happen. And you have been very cooperative with us. You have tried to be, I think, extraordinarily helpful, which is a credit to all three of you and to your companies, and I thank you for that.

Is there anything that you want to put on the record before we adjourn? Anything that you think needs to be on the record before we adjourn?

Gentlemen, thank you very much. This hearing is adjourned.

[Whereupon, at 4:45 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]



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THE REAL WORLD

What's 'Illegal'?

Kofi Annan helped Saddam Hussein steal food from babies.

BY CLAUDIA ROSETT

Wednesday, September 22, 2004 12:01 a.m.

When U.N. Secretary-General Kofi Annan opined last week to the BBC that the U.S.-led overthrow of Saddam Hussein had been "illegal," two words came instantly to my mind: baby food.

No, I'm not comparing Mr. Annan's thoughts to pabulum. He is a smart man, adept enough that even in his BBC moment of condemning the U.S. (perhaps mindful that the U.S. is the U.N.'s chief financial backer) he took the trouble to blur responsibility for his own words, amending his use of "I" to the royal "we." Said Mr. Annan: "From our point of view, from the charter point of view, it was illegal."

It's unclear exactly whose collective view Mr. Annan thinks he was authorized to express, or under what terms in the U.N. charter he casts himself on some occasions as the hapless servant of the Security Council, and at other times, such as this, as the outspoken chief judge of world law.

But if Mr. Annan wants to discuss right and wrong in Iraq, which seems to be the real issue, then it is time to talk about baby formula. Why? Because Mr. Annan's preferred means of dealing with Saddam was a mix of U.N. sanctions and the U.N. relief program called Oil-for-Food. And the heart and soul of Oil-for-Food was supposed to be the feeding of sick and hungry Iraqi babies--including the purchase by Saddam, under U.N. auspices, of large amounts of baby formula. When Oil-for-Food was launched in 1996, it was advertised by the U.N. as a response to such horrors as pictures of starving Iraqi children and alarming statistics about infant mortality in Iraq, released by one of the U.N.'s own agencies, Unicef.

It was in service of that U.N. mix of sanctions and humanitarian relief that Mr. Annan after visiting with Saddam in Iraq in 1998 returned to New York to report: "I think I can do business with him."

And oh what a lot of business the U.N. did. Mr. Annan's Secretariat collected more than \$1.4 billion in commissions on Saddam's oil sales, all to supervise the integrity of Saddam's \$65 billion in oil sales and \$46 billion in relief purchases. The official aim of this behemoth U.N. aid operation was solely to help the people of Iraq, while the U.N. waited for sanctions to weaken Saddam enough so he would be either overthrown from within or forced to comply with U.N. resolutions on disarmament. Instead, Saddam threw out the U.N. weapons inspectors for four years, and, by estimates of the U.S. General Accounting Office, fortified his own regime with at least \$10.1 billion grafted and smuggled out of Oil-for-Food.

But of all the abuses of Oil-for-Food committed by Saddam--and not only allowed but in effect

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approved and covered up by Mr. Annan's U.N.--the most cynical has to have been the trade in baby formula. This was one of Saddam's imports that few even among the U.N.'s critics dared question. Who could be so heartless as to object to food for hungry children? And given the secrecy with which Mr. Annan ran Oil-for-Food (as hapless servant of a Security Council packed with big-time business partners of Saddam, such as France and Russia), no one outside the U.N. except Saddam and his handpicked contractors knew much in any event about Baghdad's traffic in baby formula.

The U.N. insisted that the identities of Saddam's contractors and the terms of his deals remain confidential. Even today, though the names have leaked, many of the vital details of these contracts (such as quantity and quality of goods) remain smothered in the continuing secrecy imposed by the U.N.-authorized investigation into Oil-for-Food, led by former Fed chairman Paul Volcker. And Mr. Volcker, apparently focused mainly on bribery allegations involving officials of the U.N. itself, may never get around to such broader but also important matters as Oil-for-Baby-Food.

But since Saddam's fall, a few windows have opened through which one can glimpse Saddam's U.N.-approved trade in nursery nutrition. Chief among them is a pricing study carried out by the U.S. Defense Department's contract auditing agencies last year, shortly after Saddam's overthrow. Lest anyone suspect the Pentagon of bias, it would of course be handy to draw on other studies as well. But there are none. Mr. Annan's Secretariat, while swimming in cash from its 2.2% commission on Saddam's oil sales, never got around to systematically examining Saddam's contract prices. That was a notable omission, given that Saddam's scam on relief contracts was one of the oldest and simplest in the book: overpaying for goods, using relief funds meant for the Iraqi public; then collecting part of those overpayments in the form of kickbacks.

And when it came to overpricing, which any veteran aid worker should surely recognize as a flashing red sign of probable graft, one of the most roundly abused categories under Oil-for-Food appears to have been the original rationale for the program: food itself.

The Pentagon pricing study looked at a sample of 759 big-ticket Oil-for-Food contracts still awaiting full delivery when Saddam fell--a snapshot of the program in its final years. Among those were 178 contracts for food. Of these almost 90% were overpriced by an average of about 22%-- more than twice the 10% figure often quoted as Saddam's standard kickback. In this sample, totaling \$2.1 billion in U.N.-approved grocery shipping by Saddam, the potential rake-off totaled \$390 million.

And within that Oil-for-Food sample shopping spree, the baby formula deals were estimated to be even more egregiously overpriced than the average contract for most other staples. Compared to the hundreds of baby food and milk contracts in the overall program (many of those with France and Russia) the Pentagon sample was small. The study looked at four baby formula contracts, two originating in Egypt, one in Tunisia and one in Vietnam--totaling \$43 million (which in any normal relief program might actually rank not as a small sample, but as a lot of money). But it seems telling that every single one of those four baby-formula contracts appeared "potentially overpriced" by about 26%, for a total of \$11 million in potential overpayments. On the biggest of these sample contracts, a \$26 million deal between Saddam and a Vietnamese dairy company--approved by the U.N. in October 2002, in the thick of the U.N. debate over going to war to remove Saddam--the estimated overpricing of 26% worked out to well over \$5 million on that contract alone.

Translation: In late 2002, while Mr. Annan was lobbying against U.S.-led removal of Saddam, he was running a U.N. program in which money meant for baby formula, among other goods, was very likely flowing into the pockets of Saddam and his sons and cronies.

Somehow, that was the kind of problem that Mr. Annan's office managed to miss, although

according to a November 2002 statement to the Security Council by Oil-for-Food director Benon Sevan, U.N. staff in Iraq had by then made 1,187,487 total "observation visits" to ensure the integrity of Oil-for-Food. More than one million of those observation visits were devoted to checking on food and nutrition (and all of them were paid for out of the U.N. Secretariat's 2.2% oil sales commissions from Saddam).

In the same November 2002 statement, Mr. Sevan reported that "acute malnutrition" was still rampant among young children in Iraq. Mr. Sevan explained that although malnutrition had been halved since Oil-for-Food began (all this was based on Saddam's statistics), it was still double the rate of 1991--a situation Mr. Sevan himself described as "far from satisfactory." But the solution prescribed by Mr. Annan was not to spot and stop the kickbacks. Rather, while lamenting what he described in Nov. 2002 as the "dire funding shortfall" of Oil-for-Food, Mr. Annan's solution again and again was to urge more oil sales by Saddam. Which meant, most likely, more resources earmarked to feed babies but diverted to the Baghdad regime (and, by extension, more commissions for the U.N.).

It would be interesting for someone with full access to the contract details -- meaning, I suppose, the UN's own investigation into itself -- to total the scores of Oil-for-Food contracts for baby formula, weaning cereal, milk and so on (much of it bought from Security Council member nations Russia and France), and employ some pricing experts to fill in the rest of the numbers.

But what we know already is that Mr. Annan, whose Secretariat turned a blind eye to Saddam's food pricing scams, has never apologized for presiding over the biggest fraud in the history of relief. He has not used the word "illegal." The closest he's come has been to admit this past March, after much stonewalling, that there may have been quite a lot of "wrong-doing"--before turning over the whole mess over to a U.N. investigation that has since smothered all details with its own blanket of secrecy.

Mr. Annan is due to step down next year. If he wants to leave a legacy more auspicious than having presided over Oil-for-Fraud, he might want to devote his twilight time at the U.N. to mending a system in which a U.N. Secretary-General feels free to describe the overthrow of a murderous tyrant as "illegal," but no one at the top seems particularly bothered to have presided over that tyrant's theft of food from hungry children.
Ms. Rosett is a fellow at the Foundation for the Defense of Democracies and the Hudson Institute. Her column appears here and in The Wall Street Journal Europe on alternate Wednesdays.

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