

INDEPENDENT INQUIRY COMMITTEE  
— INTO —  
THE UNITED NATIONS OIL-FOR-FOOD PROGRAMME

THE MANAGEMENT OF  
THE UNITED NATIONS OIL-FOR-FOOD PROGRAMME

Volume II - Report of Investigation

Programme Background

Investigation Preface

Programme Background and Manipulation by Iraq

Negotiation and Establishment of the Oil-for-Food Programme

The Security Council - Response to Surcharges and Kickbacks

Smuggling

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# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - TABLE OF CONTENTS

---

<b>INVESTIGATION PREFACE</b> .....	<b>1</b>
<b>I. THE COMMITTEE’S INVESTIGATION</b> .....	<b>1</b>
A. MANDATE.....	1
B. INVESTIGATIVE APPROACH AND STAFF .....	2
C. INFORMATION COLLECTED .....	3
D. COOPERATION FROM THE UNITED NATIONS AND MEMBER STATES.....	4
<b>II. REPORT REFERENCES</b> .....	<b>8</b>
A. WITNESSES .....	8
B. DOCUMENTARY EVIDENCE .....	9
<b>III. ADVERSE NOTICE PROCEDURES</b> .....	<b>10</b>
<b>CHAPTER 1 – PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ</b> .....	<b>11</b>
<b>I. ESTABLISHMENT AND EVOLUTION OF THE PROGRAMME</b> .....	<b>11</b>
<b>II. THE KEY INSTITUTIONAL ACTORS</b> .....	<b>16</b>
A. THE SECURITY COUNCIL AND ITS 661 COMMITTEE.....	16
B. THE UNITED NATIONS SECRETARIAT .....	21
C. THE UN-RELATED AGENCIES .....	25
<b>III. RULES FOR THE REVIEW AND APPROVAL OF PROGRAMME CONTRACTS</b> .....	<b>27</b>
A. OIL SALES.....	27
B. GOODS PURCHASES .....	28
<b>IV. IRAQ’S MANIPULATION OF TRANSACTIONS UNDER THE PROGRAMME</b> .....	<b>29</b>
A. OIL SURCHARGES .....	32
B. HUMANITARIAN CONTRACT KICKBACKS.....	35
<b>CHAPTER 2 – NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME</b> .....	<b>39</b>
<b>I. INTRODUCTION AND SUMMARY</b> .....	<b>39</b>
<b>II. EARLY EFFORTS, FORMAL NEGOTIATIONS, AND THE IRAQ-UN MOU</b> .....	<b>42</b>
A. UNSCOM AND THE PERSISTENCE OF SANCTIONS .....	42
B. SECURITY COUNCIL RESOLUTIONS 706 AND 712 .....	43

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - TABLE OF CONTENTS

---

C. EARLY ROUNDS OF NEGOTIATIONS IN 1992 AND 1993 .....	45
D. UNSCOM AND THE SECRETARY-GENERAL .....	49
E. PROMISING DEVELOPMENTS ON THE SANCTIONS FRONT IN 1995 .....	50
F. SECURITY COUNCIL RESOLUTION 986 .....	51
G. IRAQ’S REJECTION OF RESOLUTION 986 .....	55
H. THE DEFECTION OF GENERAL HUSSEIN KAMEL .....	58
I. IRAQ RECONSIDERS NEGOTIATIONS UNDER RESOLUTION 986 .....	60
J. FORMAL NEGOTIATIONS—A FLEXIBLE APPROACH.....	65
K. REACHING A FINAL AGREEMENT .....	70
<b>III. BACKCHANNEL DISCUSSIONS .....</b>	<b>72</b>
A. THE BACKCHANNEL—SAMIR VINCENT AND TONGSUN PARK .....	72
B. IRAQ’S PLAN TO BRIBE THE SECRETARY-GENERAL.....	82
<b>IV. PAYMENTS FROM IRAQ TO TONGSUN PARK IN 1997 AND THE CONNECTION TO MAURICE STRONG.....</b>	<b>97</b>
A. MAURICE STRONG’S BACKGROUND AND HIS RELATIONSHIP TO THE UNITED NATIONS.....	98
B. MR. PARK AND MR. STRONG .....	99
C. MR. PARK’S DIRECT RELATIONSHIP WITH IRAQ AND THE CONNECTION TO MR. STRONG.....	102
D. MR. PARK’S TRAVELS TO IRAQ AND THE PAYMENTS TO MR. STRONG .....	103
<b>V. ANNEX: CORRESPONDENCE FROM BOUTROS BOUTROS- GHALI AND MAURICE STRONG .....</b>	<b>113</b>
 <b>CHAPTER 3 – THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS .....</b>	 <b>117</b>
<b>I. INTRODUCTION AND SUMMARY.....</b>	<b>117</b>
<b>II. RESPONSE TO OIL SURCHARGES.....</b>	<b>121</b>
A. THE EARLY PROBLEMS AND WARNINGS.....	121
B. THE 661 COMMITTEE’S INITIAL DISCOVERY OF AND RESPONSE TO IRAQ’S SURCHARGE POLICY .....	134
C. FAILED EFFORTS TO ADDRESS OIL SURCHARGES .....	140
D. THE ADVENT OF RETROACTIVE PRICING .....	146
E. THE END OF OIL SURCHARGES .....	150
<b>III. RESPONSE TO HUMANITARIAN CONTRACT KICKBACKS .....</b>	<b>152</b>
A. CONTRACT REVIEW PROCESSES.....	152
B. RESPONSE TO EARLY ALLEGATIONS OF KICKBACKS .....	157

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - TABLE OF CONTENTS

---

C. EFFORTS BY THE UNITED STATES AND THE UNITED KINGDOM TO ADDRESS KICKBACKS.....	164
D. HIGH-PRICED CONTRACTS REPORTED BY OIP TO THE 661 COMMITTEE.....	168
E. EXPLANATIONS FOR THE 661 COMMITTEE’S INACTION.....	175
F. RECALIBRATION OF CONTRACTS AT THE PROGRAMME’S END.....	183
<b>CHAPTER 4 – SMUGGLING.....</b>	<b>185</b>
<b>I. INTRODUCTION AND SUMMARY.....</b>	<b>185</b>
<b>II. JORDAN.....</b>	<b>190</b>
A. INITIAL REQUEST FOR RELIEF FROM SANCTIONS .....	190
B. THE 661 COMMITTEE “TAKES NOTE” OF JORDAN’S OIL IMPORTS .....	194
C. CONTINUED TRADE WITH IRAQ FROM 1991 TO 1994 .....	196
D. REPORTS TO THE 661 COMMITTEE FROM 1991 TO 1994.....	198
E. ILLICIT TRADE WITH IRAQ DURING THE PROGRAMME .....	202
F. IMPORTS THROUGH AQABA .....	204
G. JORDAN’S LAPSE IN REPORTING AND THE ABSENCE OF RESPONSE BY THE 661 COMMITTEE .....	207
H. THE UNCERTAIN LEGAL STATUS OF IRAQ-JORDAN TRADE.....	211
I. SMUGGLING FROM KHOR AL-AMAYA IN EARLY 2003 .....	213
J. RESPONSE OF JORDAN AND THE UNITED STATES .....	226
<b>III. TURKEY .....</b>	<b>227</b>
A. REQUEST FOR ARTICLE 50 RELIEF .....	229
B. CONTINUED TRADE IN 1997 AND 1998 .....	231
C. RENEWED REQUEST FOR ARTICLE 50 RELIEF .....	232
D. THE FAILED EFFORT TO BRING TRADE BETWEEN IRAQ AND TURKEY UNDER THE PROGRAMME .....	233
E. THE ADVENT OF A FORMAL IRAQ-TURKEY BORDER TRADE PROTOCOL.....	235
F. STATEMENTS BY TURKEY TO THE COMMITTEE .....	236
<b>IV. SYRIA .....</b>	<b>237</b>
A. THE BORDER TRADE PROTOCOL.....	239
B. INITIAL RESPONSE OF UNITED NATIONS TO REPORTS OF SMUGGLING   BETWEEN IRAQ AND SYRIA DURING THE PROGRAMME .....	242
C. THE 661 COMMITTEE AND THE SYRIAN PIPELINE .....	245
D. STATEMENTS BY SYRIA TO THE COMMITTEE .....	253
<b>V. SMUGGLING BY SEA.....</b>	<b>255</b>
A. SMUGGLING ROUTES AND QUANTITIES.....	255
B. THE MULTINATIONAL INTERCEPTION FORCE.....	256
C. IRAN AND THE UNITED ARAB EMIRATES .....	258

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - INVESTIGATION PREFACE

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### I. THE COMMITTEE'S INVESTIGATION

This Report on the Management of the Oil-for-Food Programme constitutes the Committee's definitive assessment of the United Nations' administration of the Programme. It should be read in light of the Committee's three prior interim reports, each of which addressed different aspects of the Programme's administration, including certain procurement actions and evidence of corruption involving two United Nations officials (Benon Sevan and Alexander Yakovlev).<sup>1</sup> The Committee anticipates an additional report in October 2005 addressing: (1) various oil and humanitarian goods companies that participated in the Programme; (2) the adequacy of performance by the Programme's major banking and inspection contractors; and (3) certain activities involving the Programme-financed United Nations Compensation Commission.

#### A. MANDATE

The Oil-for-Food Programme ("the Programme") operated in Iraq for approximately seven years from 1996 to 2003. Following the military invasion of Iraq by coalition forces in early 2003 and the fall of the former Government of Iraq, substantial allegations arose about corruption and mismanagement in connection with the Programme. To address these questions, United Nations Secretary-General Kofi Annan created the Independent Inquiry Committee ("the Committee"). He appointed Paul A. Volcker as Committee Chairman and Richard J. Goldstone and Mark Pieth as Members. On April 21, 2004, the Security Council unanimously passed Resolution 1538, welcoming the Secretary-General's formation of the Committee.

The Secretary-General set forth the following terms of reference to guide the Committee's investigation:

The independent inquiry shall collect and examine information relating to the administration and management of the Oil-for-Food Programme, including allegations of fraud and corruption on the part of United Nations officials, personnel and agents, as well as contractors, including entities that have entered into contracts with the United Nations or with Iraq under the Programme:

- (a) to determine whether the procedures established by the Organization, including the Security Council and the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation between Iraq and Kuwait (hereinafter referred to as the "661 Committee") for the

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<sup>1</sup> In addition to these three interim reports, the Committee has issued: (1) Status Report (Aug. 2004); (2) Briefing Paper (Oct. 21, 2004), with accompanying lists of the companies to which the Government of Iraq sold oil under the Programme and the companies from which it purchased humanitarian goods and oil spare parts; and (3) Briefing Paper on the Internal Audit Reports of the Programme (Jan. 9, 2005). All of the Committee's reports and briefing papers are posted on its website. See Independent Inquiry Committee, "Independent Inquiry Committee into the United Nations Oil-for-Food Programme," <http://www.iic-offp.org>.

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - INVESTIGATION PREFACE**

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processing and approval of contracts under the Programme, and the monitoring of the sale and delivery of petroleum and petroleum products and the purchase and delivery of humanitarian goods, were violated, bearing in mind the respective roles of United Nations officials, personnel and agents, as well as entities that have entered into contracts with the United Nations or with Iraq under the Programme;

- (b) to determine whether any United Nations officials, personnel, agents or contractors engaged in any illicit or corrupt activities in the carrying out of their respective roles in relation to the Programme, including, for example, bribery in relation to oil sales, abuses in regard to surcharges on oil sales and illicit payments in regard to purchases of humanitarian goods;
- (c) to determine whether the accounts of the Programme were in order and were maintained in accordance with the relevant Financial Regulations and Rules of the United Nations.

## **B. INVESTIGATIVE APPROACH AND STAFF**

The Committee's investigation has been an international one, both in its scope and its staff. Its purpose has been to investigate and report in a manner consistent with the facts uncovered. As with any investigation involving substantial and controversial issues, it has been important for the Committee often to maintain its silence concerning matters under investigation until such time as it was prepared to report on matters. This has been necessary to maintain the integrity of the ongoing investigation, including for the protection of those individuals who have assisted it.

The investigative staff is led by Executive Director Reid Morden. The staff comprises more than seventy-five persons from twenty-eight countries, with a wide variety of professional backgrounds, including accountants, attorneys, and former law enforcement personnel. The Committee's staff is headquartered in New York, and at small offices in Paris and Baghdad. Investigative teams from the Committee have made numerous trips to Iraq to interview witnesses and collect documentary information.

The Committee's staff is organized into several investigation teams. For purposes of this Report, the staff has focused on the following areas: (1) the Programme's establishment and negotiations leading to Iraq's agreement to participate in the Programme; (2) the Programme's oversight by the Security Council and its 661 Committee; (3) the Programme's management by United Nations officials in New York and Iraq; (4) the participation in the Programme of nine UN-related Agencies; and (5) the United Nations' audit oversight of the Programme and its management of spending and accounts in connection with the Programme. In addition, an overarching focus of the investigation has been evidence of potential corruption or other illegal payments to the Government of Iraq or to other persons and entities in connection with any Programme-related contracts or activities.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - INVESTIGATION PREFACE

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### C. INFORMATION COLLECTED

#### 1. Witness Interviews

The Committee and its staff have conducted more than 1,100 interviews in dozens of countries throughout Africa, Asia, Australia, Europe, North America, and South America. In general, the Committee's interviews have been conducted in person and in the presence of at least two staff investigators (subject to exception where it has not been practicable to conduct an in-person meeting or to have a second staff member present).

The fact that the name of an interviewee appears in this Report is *not* an indication that he or she has engaged in any kind of wrongdoing. The Committee greatly appreciates the cooperation of the many persons who have been interviewed to enhance the Committee's understanding of the Programme.

#### 2. Documentary and Electronic Evidence

To date, the Committee has collected more than twelve million pages of documents. These are mostly in scanned electronic form, allowing their text to be subject to electronic search by the Committee's investigative staff. Although the vast majority of the Committee's documents are from the United Nations archives and from electronically stored data of the United Nations, the Committee has amassed more than half a million pages of documents in a number of languages from various governments and private third parties relating to the Programme. With few exceptions, the use of the records obtained through the assistance of governments, and in some cases third parties, are governed by special agreements and arrangements that restrict the use and dissemination of these records and information.

As a part of the process of capturing all relevant information, the Committee's forensic team has imaged the computers of scores of United Nations staff members and collected all available e-mail boxes of many more. This has provided the Committee's staff with access to considerable amounts of stored electronic information, including e-mails. In certain circumstances involving electronic and other data of the United Nations, where Programme-related material has been intermixed with non-Programme-related material, the Committee has negotiated protocols to provide for the Committee's access to such information, while also protecting the confidentiality of sensitive information that is not within the Committee's mandate. This includes certain computer records within the Executive Office of the Secretary-General and records involving informal consultations of the Security Council. In each instance, the United Nations has cooperated fully in furnishing the Committee access to information necessary for its investigation.

The Committee also has obtained extensive records from the Government of Iraq. This includes records from the Ministry of Oil, the State Oil Marketing Organization ("SOMO"), and numerous other Iraqi ministries that were involved in the Programme's activities.

In addition, the Committee has received or conducted on-site review of large numbers of documents from other sources worldwide. With the assistance of numerous member states and

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - INVESTIGATION PREFACE**

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other sources, the Committee has acquired government, corporate, and telephone records, as well as financial records from approximately thirty financial institutions in seven countries. It continues to obtain additional records in its ongoing investigations. With serious allegations of fraud and corruption, and claims of substantial illicit funds being channeled to the former Iraq regime, the Committee has pursued aggressively the identification and tracing of illicit funds generated in connection with the Programme.

## **D. COOPERATION FROM THE UNITED NATIONS AND MEMBER STATES**

A vital aspect of the Committee's investigation has been the cooperation that it has received from the United Nations and many of its member states. Subject to certain exceptions discussed below, the cooperation received by the Committee has been outstanding and likely unprecedented in its international scale.

### **1. Cooperation from the United Nations and its Related Agencies**

The Secretary-General has required all staff members of the United Nations to cooperate fully in the Committee's inquiry.<sup>2</sup> With the significant exception of Benon Sevan and Alexander Yakovlev, the Committee has received cooperation from almost all other United Nations staff members. This has included staff members' consenting to extended interviews (often on multiple occasions) and making available for the Committee's review vast numbers of documents.<sup>3</sup>

Secretary-General Annan has made himself available for seven interviews by the Committee. He has answered every question posed by the Committee, assisted in the Committee's efforts to interview certain of his family members, and permitted the Committee's investigators to conduct a review of his personal financial records. In addition, the Secretary-General has made staff from the Executive Office available to liaise with the Committee and process the many requests for information that were made of the Executive Office. Former Secretary-General Boutros-Ghali has also cooperated with the Committee, has consented voluntarily to several interviews, and has arranged access to relevant records and information.

Similarly, the nine UN-related Agencies that were responsible for delivering the humanitarian aid in the three northern governorates of Iraq met with Committee staff, assisted in locating former staff for interview, and also made their records available to the Committee.<sup>4</sup>

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<sup>2</sup> "Independent inquiry into the oil-for-food programme," ST/SGB/2004/9 (June 1, 2004).

<sup>3</sup> Former United Nations humanitarian coordinator Denis Halliday declined to speak with the Committee unless the Committee agreed to publish a statement that he had written outlining his views about the Programme. Former Chief Administrative Officer for UNOHCI John Chien declined to speak with the Committee at all. Very few other former employees have refused to talk to the Committee.

<sup>4</sup> Nine UN-related Agencies were tasked with implementing the Programme in the three northern governorates of Dohuk, Erbil, and Suleimaniyah: the Food and Agriculture Organization of the United



## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - INVESTIGATION PREFACE

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This Report contains criticisms of the actions of certain United Nations officials. However, the Committee recognizes that a great many United Nations staff members and staff of the Agencies performed their responsibilities with devotion and diligence amid considerable challenges posed by the size of the Programme and at times defiance from the former Government of Iraq. Indeed, a number of United Nations employees who have been working under difficult and sometimes dangerous conditions have provided the Committee with valuable assistance.

## 2. Cooperation from Member States and Law Enforcement

The Committee has received varying degrees of cooperation from United Nations member states. The most significant cooperation—in scope and value—has come from the present Government of Iraq. Under extremely dangerous and disruptive conditions, the Government of Iraq—and especially the Ministry of Foreign Affairs and the State Oil Marketing Organization (“SOMO”)—has furnished exceptional assistance to the Committee’s investigative efforts. It has made available to the Committee an immense number of witnesses and documents that have proved essential to the Committee’s ongoing investigation, and the Committee expresses its gratitude to the Government of Iraq.<sup>5</sup>

Apart from requests made to the Government of Iraq, the Committee has made the largest number of requests for cooperation from the permanent five members (the “P-5”) of the Security Council. France and the United Kingdom of Great Britain and Northern Ireland (“United Kingdom”) have furnished substantial cooperation, granting the Committee’s multiple requests for assistance of various kinds and doing so without reservation and in a timely manner that has advanced significantly the Committee’s investigation.

The Russian Federation (“Russia”) and the People’s Republic of China (“China”) have assisted the Committee in some respects but declined many of the Committee’s other requests. Both countries have received visits by the Committee’s investigators and made available to the Committee many—but not all—government or former government officials that have been requested by the Committee for interview. However, neither country has complied with the Committee’s requests for production of documents. Both countries have multiple state-owned companies that participated as contractors under the Programme and that are subject to governmental control because of their state-owned status. But both countries have declined to facilitate or require personnel from these state-owned companies to make themselves available

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Nations (“FAO”); International Telecommunications Union (“ITU”); United Nations Development Programme (“UNDP”); United Nations Educational, Scientific and Cultural Organization (“UNESCO”); United Nations Centre for Human Settlements (“UN-Habitat”); United Nations Children’s Fund (“UNICEF”); United Nations Office for Project Services (“UNOPS”); World Food Programme (“WFP”); and World Health Organization (“WHO”).

<sup>5</sup> The Report frequently refers to the “Iraqi regime” and the “Government of Iraq” that was in existence at the time of the Programme and that devised various schemes to undermine the integrity of the Programme. It should be clear that the *current* Government of Iraq differs from the regime in place during the Programme and that the *current* Government of Iraq has greatly assisted the Committee’s inquiry.

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - INVESTIGATION PREFACE**

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for interview by the Committee concerning serious allegations and evidence of unlawful financial transactions with Iraq in connection with the Programme.

The level of cooperation by the United States of America (“United States”) has been substantial on the whole but quite varied with respect to particular departments of the national and state governments. On the one hand, the United States Department of State has greatly assisted the Committee with respect to facilitating interviews of present and former United States government employees and with respect to the disclosure of large numbers of documents, albeit not consistently on a timely basis. The State Department has declined to cooperate with the Committee with respect to its investigation of smuggling activity that occurred during the Programme.

Certain other departments of the United States government—the United States Department of Justice (including the United States Attorney’s Office for the Southern District of New York) and the United States Department of Homeland Security—have not cooperated with the Committee. The obstruction of the United States Department of Justice stands in contrast to the exemplary assistance received worldwide from many other law enforcement and prosecuting agencies. In particular, the New York County District Attorney’s Office (an entity of the New York State government that is separate from the United States Department of Justice) has furnished tremendously valuable cooperation and assistance to the Committee throughout its investigation.

The Committee otherwise has received prompt and effective cooperation from many other member states beyond the P-5 countries. This includes each one of the countries with ambassadors who served as chairmen of the 661 Committee at times most relevant to the Committee’s inquiry: New Zealand, Germany, Portugal, the Netherlands, and Norway.

Equally significant, a broad array of Western European law enforcement and regulatory agencies have contributed vastly to the success of the Committee’s investigative efforts. Without attempting to identify each entity by name, the following are among the agencies and entities that have rendered exceptional ongoing assistance: Staatssekretariat für Wirtschaft (“SECO”) and the Swiss Banking Commission, “Eidgenössische Bankenkommission,” Switzerland; Procura della Repubblica, presso il Tribunale ordinario di Milano, Italy; and Pole économique et financier, Tribunal de grande instance de Paris, France.

Other countries that cooperated substantially in response to the Committee’s requests for financial and other transactional records include: Jordan, Lebanon, Liechtenstein, and Monaco. Many other countries have responded to specific requests for assistance, and the Committee has expressed its gratitude directly.

During the course of the inquiry, investigators met with a number of representatives of the Kurdish Regional Government in the three northern governorates of Erbil, Dohuk, and Suleimaniyah. The persons interviewed made a number of allegations concerning the quality of the work of the UN-related Agencies in the three northern governorates. They complained of poor implementation, lack of transparency, unqualified staff, and corruption, and they claimed that the UN-related Agencies exhibited an inappropriate allegiance to the Government of Iraq and its intelligence service. The interviewees provided a small amount of documentation about these allegations, and they promised to assemble and send to the Committee additional documentation

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - INVESTIGATION PREFACE**

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to substantiate their allegations. Despite several follow-up requests by the Committee, no additional documentation has been provided.

As noted, the Committee's investigation has included in part an examination of illicit trade between Iraq and several of its border states, including Iran, Jordan, Syria, and Turkey. Iran has responded to the Committee's request for information. Jordan, Turkey, and Syria—who were Iraq's major border trade partners during the Programme—have furnished very limited information concerning transactions with Iraq that occurred outside the Programme.

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - INVESTIGATION PREFACE**

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## **II. REPORT REFERENCES**

This Report contains extensive footnote citations to support its assertions of fact. Footnote citations generally appear at the end of each paragraph rather than at the end of each sentence within a paragraph. References within a particular footnote ordinarily appear in the order in which information is set forth in the text paragraph to which the footnote corresponds.

Factual assertions are subject to pre-publication verification by the Committee's staff investigators. This process involves a review of each factual statement by a staff member who is not involved in obtaining the information at issue or the drafting of the relevant portion of the report. The factual assertion is checked for accuracy against the cited footnote source, including written reports of each interview and primary source documents.

### **A. WITNESSES**

Except where otherwise noted, the citations in this Report attribute by name information received from interviewees and also note the date or dates of interview. The Committee has balanced the need for disclosure of witnesses' names against the concerns it expects that many individuals interviewed by the Committee will have when seeing their names in print. However, the interests of transparency require that the Committee identify witnesses by name whenever it is possible to do so.

There are three circumstances in which the Report does not identify interviewees by name. First and foremost, it does not identify Iraqi witnesses whose safety may be jeopardized if their assistance to the Committee in the form of consenting to an interview were publicly disclosed. In the case of some former senior members of the Iraqi regime who are presently detained, the Committee has attributed their interview statements to them by name. Otherwise, the hostile conditions that prevail in Iraq have counseled in favor of the Committee's non-disclosure of names or dates of interviews for Iraqi witnesses.

Second, for diplomats and other government officials from countries outside Iraq, the Report does not generally attribute by name statements made in their interviews. Some member states have requested and negotiated with the Committee written memoranda of understanding governing the terms of their cooperation; other member states have cooperated with the Committee without requesting written agreements. As a condition of making present and former officials available for interview by the Committee, most member states have required the Committee not to identify by name the statements of officials who have been interviewed. For consistency purposes, the Committee has accorded the same protection to official personnel of all countries that have made their officials available for interview—except in certain instances where a witness has been requested and consented to the use of his or her name. As a result, interviews of present and former government officials are cited in this Report by the name of their country and not by their personal name.

Third, in some cases the Committee has received information from witnesses who would not share information with the Committee in the absence of a promise of confidentiality. This does

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - INVESTIGATION PREFACE**

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not include current United Nations employees, because they are required by the Secretary-General's directive to cooperate with the Committee's inquiry. For non-employees of the United Nations, where the information offered by a witness was of considerable significance, the witness had well-founded reasons for insisting on confidentiality, and it was clear that the witness was in a position to have knowledge of the information that he or she had reported, the Committee has accepted information on a confidential basis. In such instances, the Report refers in citations to such a witness as a "Confidential witness."

From time to time, the Report refers to the "Committee" having interviewed a particular person. By and large, these references signify that the person was interviewed by staff of the Committee. It does not indicate that the person was interviewed by all three Committee members of the Independent Inquiry Committee. However, each of the three members of the Committee has participated in certain witness interviews.

## **B. DOCUMENTARY EVIDENCE**

For the most part, this Report cites documents by title and date. In some cases, confidentiality restrictions prevent the Committee from identifying the nature and source of certain documents with specificity.

This Report frequently cites and quotes from "summary record" formal meeting minutes of the 661 Committee and other notes of informal meetings of the 661 Committee. The formal meeting minutes were circulated by the Secretariat to each of the 661 Committee members in order to allow an opportunity to correct any inaccuracy; this was not the case for informal meetings of the 661 Committee. The Committee believes that these records are generally reliable, but advises that quotes of statements from these records may not replicate verbatim the statements of diplomats at these meetings.

This Report also contains multiple references to meeting notes compiled by staff of the Department of Political Affairs of informal meetings (consultations) of the Security Council. As a condition of disclosing these notes to the Committee, the United Nations has required the Committee to state the following disclaimer:

Neither the Secretary-General nor the Security Council is in a position to vouch for the accuracy of the notes of the Council's closed consultations of the whole. These summaries of the informal and confidential consultations, also known as 'Activities Reports,' are intended for the exclusive information of the Secretary-General and his aides and should not necessarily be considered to reflect the views of the Security Council. They aim at being indicative, not comprehensive or adequate as the sole source of information. They have no official status within the Secretariat.

In view that these notes are composed for the purpose of the Secretary-General's review to keep advised of the nature of Security Council discussions, the Committee is of the view that these documents are sufficiently trustworthy for the Committee to include as a source of information in this Report.

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - INVESTIGATION PREFACE**

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### **III. ADVERSE NOTICE PROCEDURES**

Throughout the investigation process, issues of fairness have guided the Committee's approach. All individuals and institutions approached and interviewed by Committee staff have been invited to produce any information and documents relevant to the Committee's consideration of these serious matters. Consistent with its Investigation Guidelines, prior to making an adverse finding against an individual or corporation that has submitted to an interview, the Committee has advised the individual or corporation of the proposed finding and provided the individual or corporation with an opportunity to produce any additional information prior to the release of the Committee's findings. An individual or corporation receiving notice from the Committee had the opportunity to make a written submission or to meet with the Committee. In those instances in which an individual or corporation elected to provide the Committee with additional information, it has been considered by the Committee. Where requested by the individual or corporation, its submission has been appended to the Committee's report.

If during the investigation process an individual or entity is contacted by the Committee, but declines to consent to an interview or to produce all relevant records and materials, the individual or corporation may receive advance notice of adverse findings, but will not be provided with an opportunity to review any of the documents or other information supporting the finding. Furthermore, the Committee may note in a future report the decision of the individual or entity not to cooperate with the Committee's inquiry.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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This Report principally assesses the United Nations' administration of the Oil-for-Food Programme ("the Programme") in light of efforts by the former regime of Saddam Hussein to break the Programme's rules and impede its purposes. By way of background for the analysis presented in later chapters of this Report, Part I below describes the establishment and evolution of the Programme. Part II describes the key institutional actors and personnel that played a part in implementing the Programme. Part III describes the rules governing contracts for the sale of oil and for the purchase of goods under the Programme. And Part IV describes the manner in which the former Government of Iraq manipulated the Programme to favor certain countries and persons and to derive illicit payments outside of the United Nations' control by means of "surcharges" imposed on buyers of Iraqi oil and "kickbacks" obtained from suppliers of goods entering Iraq.

## I. ESTABLISHMENT AND EVOLUTION OF THE PROGRAMME

In the early morning hours of August 2, 1990, Saddam Hussein sent thousands of Iraqi soldiers across the desert to invade and occupy Kuwait. Four days later in New York City, the United Nations Security Council responded with a landmark measure—Resolution 661—to prohibit most forms of trade and financial transactions with Iraq. After a multilateral coalition of forces liberated Kuwait in February 1991, the Security Council passed Resolution 687 to continue the sanctions subject to Saddam Hussein's compliance with conditions for disarmament and his cooperation with international weapons inspections.<sup>6</sup>

Saddam Hussein did not comply, and the broad sanctions regime remained through the first half of the 1990s. Two initial resolutions by the Security Council in 1991 to authorize Iraq to sell oil in return for food and medicine for its people were not accepted by Iraq.<sup>7</sup> Several years later, in April 1995, the Security Council passed Resolution 986 to create a framework once again to allow Iraq—under the United Nations' supervision—to sell oil in return for the purchase of medicine, health supplies, foodstuffs, and essential civilian needs. Although Iraq initially balked again at this opportunity, by early 1996 it decided to enter into negotiations with the United Nations, and this led to conclusion of a Memorandum of Understanding in May 1996 to implement the Programme (the "Iraq-UN MOU").<sup>8</sup> "Henceforth," observed one United Nations

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<sup>6</sup> Michael R. Gordon, "Iraq Army Invades Capital of Kuwait in Fierce Fighting," *New York Times*, Aug. 2, 1990, p. A1; S/RES/661 (Aug. 6, 1990); S/RES/687 (Apr. 3, 1991).

<sup>7</sup> S/RES/706 (Aug. 15, 1991); S/RES/712 (Sept. 19, 1991). For a discussion of Iraq's rejection of these resolutions, see Chapter 2 of this Volume.

<sup>8</sup> S/RES/986 (Apr. 14, 1995); "Memorandum of understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995)," S/1996/356 (May 20, 1996).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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ambassador, “the most comprehensive coercive economic measures ever devised by the UN were tempered by the largest humanitarian relief operation in the UN’s history.”<sup>9</sup>

Resolution 986 did not authorize Saddam Hussein to receive money directly from oil sales. Instead, it directed the Secretary-General to establish an escrow account to receive the oil sales proceeds. In accordance with a distribution plan to be proposed by Iraq and approved by the Secretary-General, approximately two-thirds of the money in the escrow account—fifty-three percent for the population in central and southern Iraq and thirteen percent for the Kurds in northern Iraq—was intended to be used to purchase medicine, health supplies, foodstuffs, and essential civilian needs for the Iraqi people. The remainder was devoted to funds created for the compensation of victims of the Gulf War, for the costs of weapons inspections, and for other administrative and assistance costs, including 2.2 percent for the United Nations’ administration of the Programme.<sup>10</sup>

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<sup>9</sup> Peter van Walsum, “The Iraq Sanctions Committee,” in *The UN Security Council: From the Cold War to the 21<sup>st</sup> Century* (David Malone ed., Lynne Rienner Publishers, 2002), p. 182. Mr. Van Walsum was an ambassador to the United Nations from the Netherlands and chaired the Security Council’s Iraq sanctions committee from 1999 to 2000. *Ibid.*, p. 181.

<sup>10</sup> S/RES/986, paras. 7-8 (Apr. 14, 1995); “Interim Report of the Secretary-General on the implementation of Security Council Resolution 986 (1995),” S/1996/978, para. 34 (Nov. 25, 1996). In 2000, the allocations were changed to allow fifty-nine percent of oil sale revenues to be used to purchase goods for distribution in central and southern Iraq and to reduce the percentage devoted to compensate victims of the Gulf War. S/RES/1330, para. 12 (Dec. 5, 2000). Compensation was accomplished through the United Nations Compensation Commission (“UNCC”). S/RES/687, sec. E (Apr. 3, 1991); S/RES/692 (May 20, 1991); United Nations Compensation Commission, “Introduction,” <http://www2.unog.ch/uncc/introduc.htm>.



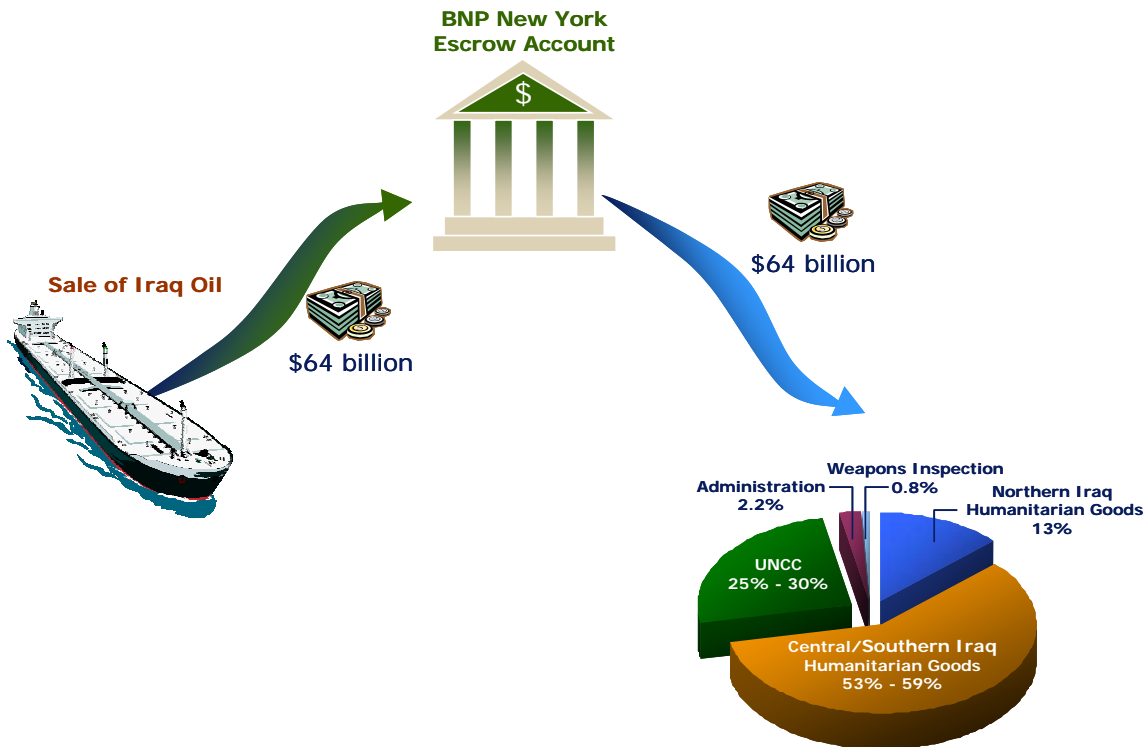
# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

---

Chart A – Planned Distribution of Oil Proceeds<sup>11</sup>



Although described in Resolution 986 as “a temporary measure” for the Iraqi people, the Programme endured for seven years, through the fall of Saddam Hussein’s regime in 2003. Subsequent resolutions of the Security Council successively re-authorized the Programme in approximate half-year “phases,” resulting in a total of thirteen phases by the Programme’s end.<sup>12</sup>

Oil was first lifted (i.e., loaded onto seagoing oil tankers) under the Programme in December 1996, and the first shipment of humanitarian goods arrived in Iraq in March 1997. Initially, Iraq could export \$2 billion of oil per 180-day phase. Beginning in February 1998, the Security Council more than doubled the amount to \$5.256 billion of oil per phase. Then, with the passage

<sup>11</sup> This chart depicts planned distribution of proceeds only. Not all proceeds ultimately were expended from each of the funds to which they were devoted. The Committee addressed related expenditure issues in its first Briefing Paper. See Independent Inquiry Committee, “Briefing Paper” (Oct. 21, 2004) (hereinafter “Initial Briefing Paper”), pp. 4-8. Nor does the above chart reflect income on proceeds held in the escrow account from interest and currency exchange gains. Numbers may not add to one hundred percent because of rounding.

<sup>12</sup> S/RES/986, preamble (Apr. 14, 1995); OIP, “Implementation of Oil-for-Food: A Chronology,” <http://www.un.org/Depts/oip/background/chron.html>.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

---

of Resolution 1284 in December 1999, the Security Council removed all limitations on the amount of oil that Iraq could sell under the Programme.<sup>13</sup>

Similarly, the range of humanitarian goods Iraq could purchase under the Programme was expanded. In early 1998, the Secretary-General's review of the Programme noted that "the deterioration of basic infrastructure in other sectors [was] undermining the value of humanitarian inputs." Consequently, in May 1998, the Secretary-General authorized the "Enhanced Distribution Plan," extending the Programme to include funding for civilian infrastructural support and more than doubling the value of the goods authorized to enter Iraq. Throughout the Programme, the Secretary-General continued to add sectors, such as resettlement, settlement rehabilitation, de-mining, and housing. In 2002, the Secretary-General approved the addition of ten new sectors, including construction, the Board of Youth and Sports, culture, religious affairs, and justice. By 2003, after seven years of the Programme, the United Nations had enhanced the Programme's scope to twenty-four sectors, far beyond the basics of food and medicine ordinarily associated with a humanitarian relief operation.<sup>14</sup>

At the outset of the Programme, the United Nations declined Iraq's request to use escrow account funds for the purchase of parts and equipment to maintain its oil industry infrastructure. But, in June 1998, the Security Council decided to authorize a limited "oil spare parts" program to allow Iraq to import up to \$300 million of parts and equipment for the maintenance and improvement of its oil production and transport facilities. In March 2000, the Security Council doubled the oil spare parts exemption to \$600 million.<sup>15</sup>

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<sup>13</sup> S/RES/986, para. 1 (Apr. 14, 1995) (\$1 billion of oil every ninety days); S/RES/1153, para. 2 (Feb. 20, 1998) (\$5.256 billion of oil per phase); S/RES/1284, para. 15 (Dec. 17, 1999) (removing the quantity of oil limitation). Although the final phase of the Programme terminated in June 2003, the Programme continued to exist until November 2003 for the processing of previously authorized contracts. S/RES/1447 (Dec. 4, 2002); OIP, "About the Programme," <http://www.un.org/Depts/oip/background/phases.html>.

<sup>14</sup> "Report of the Secretary-General Pursuant to Paragraph 7 of Resolution 1143 (1997)," S/1998/90, para. 22 (Feb. 1, 1998); Kofi Annan letter to the President of the Security Council, S/1998/446 (May 29, 1998); OIP, "Implementation of Oil-for-Food: A Chronology," <http://www.un.org/Depts/oip/background/chron.html>; Kofi Annan letter to the President of the Security Council, S/2000/565 (June 12, 2000) (noting the Secretary-General's approval of the Government of Iraq's request regarding the addition of a housing sector); "Report of the Secretary-General Pursuant to Paragraph 3 of Resolution 1111 (1997)," S/1997/685, paras. 34-35 (Sept. 8, 1997) (including the resettlement and de-mining sectors); "Enhanced distribution plan submitted by the Government of Iraq to the Secretary-General of the United Nations in accordance with the Memorandum of Understanding of 20 May 1996," S/1998/446, para. 10, table 1 (May 29, 1998) (attached to Kofi Annan letter to the President of the Security Council) (including provisions for settlement rehabilitation); "Report of the Secretary-General pursuant to paragraphs 7 and 8 of Security Council resolution 1409 (2002)," S/2002/1239, para. 2 (Nov. 12, 2002) (noting the approval of ten new sectors); OIP, "About the Programme," <http://www.un.org/Depts/oip/background/index.html>.

<sup>15</sup> Abdul Amir Al-Anbari letter to Hans Corell (May 20, 1996) (letter from Iraqi ambassador leading the delegation of Iraq to United Nations legal counsel submitted in connection with signing of Iraq-UN MOU, stating Iraq's request that \$2 per barrel of oil should be assessed to oil buyers for Iraq's maintenance of its oil infrastructure); S/RES/1175, paras. 1-3 (June 19, 1998) (authorizing use of \$300 million from the

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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From 1996 to 2003, Iraq sold more than \$64.2 billion of oil under the Programme to 248 companies. Of these proceeds, approximately \$34.5 billion was spent on goods for central and southern Iraq, and approximately \$2.2 billion was spent by United Nations humanitarian agencies on goods distributed to northern Iraq. These funds purchased supplies from approximately 5,704 companies. After the fall of Saddam Hussein's regime, the Security Council terminated the economic sanctions against Iraq on May 22, 2003, and directed the phase-out of ongoing operations of the Programme by November 2003.<sup>16</sup>

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escrow account to import “parts and equipment to enable Iraq to increase the export of petroleum and petroleum products”); S/RES/1293, para. 1 (Mar. 31, 2000) (increasing the “oil spare parts” exemption to \$600 million); see also Independent Inquiry Committee, “Third Interim Report” (Aug. 8, 2005) (hereinafter “Third Interim Report”), pp. 26-28 (discussing the “oil spare parts” authorization in June 1998).

<sup>16</sup> “Initial Briefing Paper,” pp. 2-4 (calculating amounts transacted); S/RES/1483, paras. 10, 16 (May 22, 2003).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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## II. THE KEY INSTITUTIONAL ACTORS

The Programme required complex coordination efforts among three sets of institutions within the overall United Nations organizational framework:

- The Security Council and its Iraq sanctions committee (known as the “661 Committee”);
- The United Nations Secretariat (including the Secretary-General and the Office of the Iraq Programme (“OIP”)); and
- Nine UN humanitarian agencies.

The nature and general role of these institutions in the Programme is described below.

### A. THE SECURITY COUNCIL AND ITS 661 COMMITTEE

The Security Council comprises fifteen member states of the United Nations. Five of its members—China, France, Russia, the United Kingdom, and the United States—are permanent members and therefore are known collectively as “the P-5.” The remaining ten member countries are elected by the General Assembly to serve two-year terms.<sup>17</sup>

The Security Council has authority under Chapter VII of the United Nations Charter to impose economic sanctions—a “complete or partial interruption of economic relations”—where necessary to “maintain or restore international peace and security.” The member states of the United Nations are bound to “accept and carry out the decisions of the Security Council” as provided under the United Nations Charter.<sup>18</sup>

With the passage of Resolution 661 which imposed comprehensive sanctions against Iraq, the Security Council decided to create a special sanctions committee—the 661 Committee—comprised of all fifteen Council members in order to conduct ongoing oversight of the Iraq sanctions regime. This was one of the first of many sanctions committees that the Security Council has since established to monitor implementation of its sanctions resolutions.<sup>19</sup> Over time, the 661 Committee was entrusted with “monitoring the implementation of the sanctions regime in

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<sup>17</sup> UN Charter, ch. V, art. 23.

<sup>18</sup> *Ibid.*, ch. VII, arts. 39, 41, 25.

<sup>19</sup> S/RES/661, para. 6 (Aug. 6, 1990); see also UN Security Council, “Security Council Sanctions Committees: An Overview,” <http://www.un.org/Docs/sc/committees/INTRO.htm>; UN Department of Political Affairs, “A Brief Overview of Security Applied Sanctions,” [www.un.org/sc/committees/sanctions/overview.pdf](http://www.un.org/sc/committees/sanctions/overview.pdf) (discussing the history of sanctions committees).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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all its aspects,” in conjunction with “the cooperation of Member States and international organizations.”<sup>20</sup>

For the first several years of the 661 Committee’s existence—*before* the creation of the Programme—its principal role was to address various notifications and requests for exceptions from the sanctions regime. For example, persons who wished to donate foodstuffs to the people of Iraq were required to file a notice with the 661 Committee. Donors of other essential civilian goods similarly were required to file an application for approval with the 661 Committee. Further, the 661 Committee was charged with examining requests, under Article 50 of the United Nations Charter, for assistance by states affected by the sanctions regime. Travel by airplane to Iraq also was ordinarily subject to notification to the 661 Committee. In addition, the 661 Committee was charged with reporting to the Security Council every ninety days on any reports it received from member states of sanctions violations involving the illegal trafficking of arms.<sup>21</sup>

The advent of the Programme fundamentally altered the 661 Committee’s responsibilities. The Security Council assigned to the 661 Committee a central and unprecedented operational role in the review and approval of billions of dollars of transactions that eventually would be conducted under the Programme. For oil sales transactions, the 661 Committee was in charge of reviewing and approving a monthly pricing mechanism and, in some cases, with reviewing and approving individual oil contracts. The 661 Committee’s rules provided for four “oil overseer” experts to assist the Committee in performing these duties. In addition, “independent inspection agents” located in Iraq were to monitor oil exports on-site and report weekly to the 661 Committee through the oil overseers.<sup>22</sup>

For transactions of goods entering Iraq, during the first three years of the Programme (from 1997 to 1999), the 661 Committee was charged with reviewing all contracts and determining which ones to approve.<sup>23</sup> To assist in this review, the Security Council established an “export/import

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<sup>20</sup> “Report of the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait,” S/1996/700, p. 2 (Aug. 26, 1996) (hereinafter “1996 Annual Report of the 661 Committee”); see also *ibid.*, pp. 5-7 (describing the 661 Committee’s authority as conferred by Resolution 661 and later resolutions).

<sup>21</sup> S/RES/670, para. 4(b) (Sept. 25, 1990); S/RES/687, para. 20 (Apr. 3, 1991); S/RES/687, paras. 24-26; “Draft Guidelines to facilitate full international implementation of paragraphs 24, 25 and 27 of Security Council resolution 687 (1991),” S/2260, paras. 6(f), 12 (Apr. 3, 1991) (attached as Annex to “Report of the Secretary-General pursuant to paragraph 26 of Security Council Resolution 687 (1991)”; S/RES/669 (Sept. 24, 1990).

<sup>22</sup> “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 986 (1995),” S/1996/636, paras. 15, 18 (Aug. 12, 1996) (hereinafter “661 Committee Procedures”). The 661 Committee ordinarily approved the oil pricing mechanism by means of a “no objection” procedure (i.e., automatic approval of a contract in the absence of an objection within two days by a Committee member). *Ibid.*, para. 5.

<sup>23</sup> *Ibid.*, paras. 26-38. As with the oil pricing mechanism, the 661 Committee’s no objection procedure also applied to its approval of humanitarian contracts. *Ibid.*, para. 34 (providing a two-day approval window for

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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control mechanism” in Iraq, involving the United Nations Special Commission (“UNSCOM”) and the International Atomic Energy Agency (“IAEA”), which provided “ongoing monitoring and verification of Iraq’s undertaking not to reacquire proscribed weapons capabilities.”<sup>24</sup> Several years into the Programme, the Security Council modified the approval procedures for goods contracts, adopting a “green list” procedure under Resolution 1284 and then a “Goods Review List” (“GRL”) procedure under Resolution 1409. These changes progressively shifted additional approval responsibilities from the 661 Committee to OIP. Nonetheless, certain members of the 661 Committee continued to review all contracts, and the 661 Committee remained responsible for reviewing for approval all contracts containing potential “dual-use” goods (i.e., civilian goods with potential military use).<sup>25</sup>

The 661 Committee conducted two types of meetings: formal and informal. Formal meetings were recorded on audiotape and memorialized in the form of written minutes composed by the Secretariat and circulated to all members of the 661 Committee. By contrast, informal or “experts” meetings were not recorded or memorialized in any regular fashion; what is known about these meetings can be determined only from individual notes of persons present at these meetings as well as from interviews of those with knowledge of what transpired. Predictably enough, the give-and-take among 661 Committee members at informal meetings was more open than at formal meetings.<sup>26</sup>

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medicines and health supplies as well as foodstuffs and a seven-day approval period for other materials and supplies).

<sup>24</sup> S/RES/1051 (Mar. 27, 1996) (establishing the export/import mechanism); 661 Committee Chairman letter to the President of the Security Council, S/1995/1017, annex I, para. 2 (Dec. 7, 1995) (identifying the mechanism’s purpose). The Committee was notified of possible dual-use items—via the export/import mechanism—under the so-called “1051 list.” OIP, “Glossary,” <http://www.un.org/Depts/oip/cpmd/glossary.html>. Resolution 1284 later provided for the creation of the United Nations Monitoring, Verification and Inspection Commission (“UNMOVIC”) in place of UNSCOM. S/RES/1284, paras. 1-12 (Dec. 17, 1999).

<sup>25</sup> S/RES/1284, para. 17 (Dec. 17, 1999) (exempting from further review applications to import into Iraq certain types of “green list” civilian items); S/RES/1409, procedures 9-10 (May 14, 2002) (subjecting to review only items that appeared on the GRL and exempting all other items not appearing on this list). With the adoption of the “green list” procedure, the 661 Committee still retained responsibility to consider a majority, but not all, of the submitted contracts. After the GRL’s adoption, responsibility for almost all of the contracts shifted to OIP, with the 661 Committee reviewing for approval only the contracts containing goods appearing on the GRL. Darko Mocibob interview (Aug. 16, 2005); Darko Mocibob e-mail to Minh-Thu Pham (June 9, 2005) (including an approximation of the shifting workload).

<sup>26</sup> From its creation in August 1990 to its dissolution in November 2003, the 661 Committee conducted 247 formal meetings. The Independent Inquiry Committee has had access to all meeting records and, in certain instances, reviewed electronic audiotapes. For informal meetings, the Committee has located meeting notes from United Nations records and from documents made available by member states. These notes include records of approximately sixty-two informal meetings of the Committee from 1997 to 2003; however, the Committee does not have notes from all informal meetings of the 661 Committee.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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The 661 Committee did not have a regular meeting schedule; it met from time-to-time as agreed by its members. Whether formal or informal, its meetings were “private sessions” not open to the public or other member states that were not on the Security Council. The 661 Committee’s rules allowed for it to “open [its sessions] to the public as and when necessary for the enhancement of the effectiveness of the Committee,” but a review of the relevant minutes from 1990 to 2003 indicates that this was never done. Over time, however, the 661 Committee agreed to allow its chairman to present public briefings.<sup>27</sup>

As discussed more fully below, the proceedings of the 661 Committee are best understood in light of three procedural realities that suffused the manner in which it chose to resolve—or *not* to resolve—issues that came before it:

- The 661 Committee’s *consensus rule of decision-making*;
- The *absence of genuine executive authority* for the 661 Committee Chairman; and
- The *domination by the P-5 countries* of the 661 Committee’s affairs.

Very soon after its creation in August 1990, the 661 Committee decided that it would make decisions only by means of unanimous consent among all fifteen of its members. Its first set of rules adopted at its second meeting provided: “The rule of the Committee for reaching decisions will be consensus.” The rules made faint promise for action in the absence of consensus, suggesting simply that the chairman could “undertake consultations as he or she deems appropriate to resolve the issue and to ensure the continued effective functioning of the Committee.”<sup>28</sup>

The 661 Committee’s minutes do not make clear why it settled on a blanket consensus requirement. Significantly, the Security Council itself does not require consensus for its decisions.<sup>29</sup>

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<sup>27</sup> “Guidelines for the Conduct of the Work of the Committee,” para. 2 (Aug. 17, 1990) (attached as Annex I to the 1996 Annual Report of the 661 Committee); Index to 661 Committee meetings, meetings 22 through 247 (indicating that the meetings were closed to the public); 661 Committee Chairman interview (Nov. 19, 2004) (noting the ability to present public briefings). The Committee’s website reflects periodic press releases issued by the Committee. See United Nations, “Security Council Committee Established Pursuant to Resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait – Press Releases,” <http://www.un.org/Docs/sc/committees/IraqKuwait/IraqPressReleasesEng.htm>; see also “Note by the President of the Security Council,” S/1995/234 (Mar. 29, 1995) (suggesting that “the practice of issuing press releases after meetings of the [Sanctions] Committee[s] should be increased” but “[m]eetings of the Sanctions Committees should remain closed”).

<sup>28</sup> “Guidelines for the Conduct of the Work of the Committee,” paras. 3-4 (Aug. 17, 1990) (attached as Annex I to the 1996 Annual Report of the 661 Committee).

<sup>29</sup> Provisional record of the 661 Committee meeting, S/AC.25/SR.2, p. 1 (Aug. 17, 1990). The United Nations Charter provides that “[d]ecisions of the Security Council on procedural matters shall be made by

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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The 661 Committee's chairmanship position was held by the permanent representative of the country chosen to chair the 661 Committee. By contrast, the remaining representatives to the 661 Committee ordinarily were lower-level diplomats from the remaining Security Council countries. The Security Council generally selected a Western European country that did *not* have a permanent seat on the Council to chair the 661 Committee.<sup>30</sup>

Despite the "chairman" title and ambassador-level rank, chairmen of the 661 Committee wielded little real authority. One 661 Committee Chairman lamented his "most miserable" role because of the degree to which the Committee was "polarized" and "dominated" by the P-5 who were most active and who spoke all the time.<sup>31</sup> This imbalance resulted in part from the more powerful position of P-5 members within the Security Council, coupled with the fact that the P-5 members—because of their permanency—generally took a greater interest and had longer institutional memories and records of participation in the affairs of the 661 Committee.<sup>32</sup>

Another 661 Committee Chairman noted that "the only political leverage" in the 661 Committee came from the P-5 countries. As he wryly recalled, "I could say yes to consensus" among the P-5 countries, and "[m]y role was to bridge the gap among the [P-5] and not to break unanimity."<sup>33</sup> A third 661 Committee Chairman commented that the Secretariat of the United Nations was also an "instrument" of the P-5 and that the full 661 Committee was sometimes sidelined by the P-5 countries acting with the Secretariat. Despite his chairmanship title, he was once excluded from discussion of a significant sanctions-related matter between the Secretariat and the P-5.<sup>34</sup>

Perhaps the most significant aspect of the 661 Committee's rules and procedures was what they did *not* require. Although established as a monitoring body, the 661 Committee's rules did not require it to take action of any kind in response to a report of a violation of the sanctions regime or a violation of the Programme. With the exception of information indicating illegal arms trafficking,<sup>35</sup> the 661 Committee rules were silent on any obligation to inquire or investigate—

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an affirmative vote of nine members," and "[d]ecisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members." United Nations Charter, ch. V, arts. 27(2)-(3).

<sup>30</sup> The following persons and countries served as chair of the 661 Committee: Marjatta Rasi of Finland (1990); Peter Hohenfellner of Austria (1991-92); Terence O'Brien and Colin Keating of New Zealand (1993-94); Detlev Graf zu Rantzau and Tono Eitel of Germany (1995-96); António Monteiro of Portugal (1997-98); Peter van Walsum of the Netherlands (1999-2000); Ole Peter Kolby of Norway (2001-02); and Gunter Pleuger of Germany (2003). 661 Committee Chairmanship roster (1990-2003).

<sup>31</sup> 661 Committee Chairman interview (Aug. 31, 2004); see also 661 Committee Chairman interview (Sept. 1, 2004) (describing reluctance to assume the position of chairman).

<sup>32</sup> 661 Committee Chairman interview (Nov. 19, 2004).

<sup>33</sup> 661 Committee Chairman interview (Sept. 23, 2004).

<sup>34</sup> 661 Committee Chairman interview (Nov. 19, 2004).

<sup>35</sup> S/RES/687, para. 26 (Apr. 3, 1991).



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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much less to report or redress—evidence of illegal activity undermining the sanctions and the Programme.

One ambassador's effort in 1999 to enhance the responsiveness of the 661 Committee did not take hold. Celso Amorim of Brazil, who was then the President of the Security Council, issued a formal "note" in which he "wishe[d] to state that all members of the Security Council have indicated their agreement" to certain "practical proposals" in order to "improve the work of the sanctions committees." These included three enforcement-related proposals. The first proposal suggested that member states furnish sanctions committees with "all information available on alleged violations" of sanctions regimes and that the sanctions committees "should seek to clarify all cases of alleged violations." The second proposal suggested to the sanctions committees that "[t]he Secretariat should be requested to provide the sanctions committee with information from published sources" such as media reports concerning violations of the sanctions regime. And the third proposal suggested that "the guidelines of the sanctions committees should include clear provisions for strict action to be taken by the committees on alleged violations of the sanctions regimes."<sup>36</sup>

The meeting notes of the 661 Committee do not indicate that it considered or debated the suggestions set forth in the note of Mr. Amorim. The 661 Committee did not make a standing request to the Secretariat to be advised of media reports concerning all sanctions violations. Nor did it amend its guidelines to require that "strict action" be taken in response to "alleged violations" of the sanctions regime. As discussed in later chapters of this Report, all these themes—the consensus rule, the lack of chairmanship authority, the domination of the P-5 countries, and the lack of requirement for action in response to allegations of violations—recurred throughout the life of the Programme as the 661 Committee faced continuing challenges due to Iraq's effort to manipulate transactions for its political and economic gain.

## B. THE UNITED NATIONS SECRETARIAT

The United Nations Charter provides that the Secretary-General acts as the "chief administrative officer of the Organization." The Secretary-General, in turn, is a member of the "Secretariat," which "comprise[s] a Secretary-General and such staff as the Organization may require."<sup>37</sup>

Although the 661 Committee retained a central role in the review and approval of transactions occurring under the Programme, the Secretary-General and Secretariat were assigned significant administrative responsibilities for the Programme. These powers included: (1) the selection of a bank to manage the escrow account (along with accountants to audit the account); (2) the

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<sup>36</sup> "Note by the President of the Security Council: Work of the Sanctions Committees," S/1999/92, paras. 1, 3-5 (Jan. 29, 1999). The Security Council President's note is posted on the United Nations' website concerning sanctions reform. United Nations, "Working Group on General Issues on Sanctions," <http://www.un.org/Docs/sc/committees/sanctions/index.html>.

<sup>37</sup> UN Charter, ch. XV, art. 97; see also ST/SGB/97/5 (Sept. 12, 1997), as amended by ST/SGB/2002/11 (Sept. 27, 2002) (describing entities and organization of the Secretariat).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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appointment of inspection companies to monitor oil exported from Iraq and goods entering Iraq under the Programme; (3) the review and approval of Iraq's distribution plan for goods imported under the Programme; (4) the preliminary review of goods contracts submitted for the 661 Committee's approval; (5) the in-country observation and monitoring of goods that entered Iraq under the Programme; and (6) reporting to the Security Council every 90 and 180 days as to the implementation of the Programme.<sup>38</sup>

Boutros Boutros-Ghali served as Secretary-General when the Security Council passed Resolution 986 in April 1995 and when the United Nations entered into the Iraq-UN MOU with Iraq in May 1996. In June 1996, he selected a French bank—Banque Nationale de Paris (“BNP”)—to manage and administer the escrow account and to issue letters of credit for the purchase of humanitarian goods. This was followed in July 1996 by the selection of a Dutch company—Saybolt Eastern Hemisphere BV (“Saybolt”)—to inspect and monitor oil exports from Iraq, and then the selection in August 1996 of a British firm—Lloyd's Register Inspection Ltd. (“Lloyd's”)—to inspect and monitor the humanitarian goods that would enter Iraq under the Programme. The politicized manner in which these three contractors were selected was a subject of the Committee's First Interim Report.<sup>39</sup>

Secretary-General Boutros-Ghali's first term expired at the end of 1996, just as the first oil sales transactions took place under the Programme. Because of opposition from the United States, he did not win appointment to a second term.<sup>40</sup> The circumstances surrounding negotiation and implementation of the Programme during Secretary-General Boutros-Ghali's final year in office and amidst his efforts to seek re-appointment are discussed in the next chapter of this Report.

Kofi Annan was appointed to serve as the seventh Secretary-General of the United Nations beginning in January 1997.<sup>41</sup> When Secretary-General Annan inherited the Programme, it was run jointly by two different departments of the Secretariat: the Department of Political Affairs (“DPA”) and the Department of Humanitarian Affairs (now the Office for the Coordination of Humanitarian Affairs). Ten months later, in October 1997, the Secretary-General decided to create OIP—consolidating the Secretariat's coordination of Iraq-related activities into a single organizational entity. On behalf of the Secretariat, OIP assumed administration of *both* the

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<sup>38</sup> S/RES/986, paras. 8(a), 11 (Apr. 14, 1995) (approval of distribution plan; 90 and 180-day reporting); Iraq-UN MOU, paras. 12 (selection of a bank), 25 (appointment of independent inspection agents), 34-41 (observation of distribution); 661 Committee Procedures, paras. 26-27 (approval of distribution plan), 33 (preliminary review of goods contracts submitted for the 661 Committee's approval), 36 (appointment of independent inspection agents).

<sup>39</sup> Independent Inquiry Committee, “Interim Report” (Feb. 3, 2005) (hereinafter “First Interim Report”), pp. 63-120.

<sup>40</sup> Madeleine Albright, *Madam Secretary—A Memoir* (Miramax Books, 2003), pp. 207-12; Boutros Boutros-Ghali, *Unvanquished—A U.S.-U.N. Saga* (Random House Press, 1999), pp. 317-18.

<sup>41</sup> S/RES/1090 (Dec. 13, 1996); A/RES/51/200 (Dec. 17, 1996).

# **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

## **VOLUME II - CHAPTER 1**

### **PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ**

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sanctions aspects of Resolution 661 and the humanitarian aspects of the Programme under Resolution 986.<sup>42</sup>

From its inception in October 1997 through the termination of the Programme in November 2003, OIP underwent several organizational changes. Nevertheless, OIP's basic structure remained the same and consisted of three primary divisions:

- The Contracts Processing and Monitoring Division in New York;
- The Programme Management Division in New York; and
- The United Nations Office of the Humanitarian Coordinator for Iraq (“UNOHCI”).

Each of these units within OIP reported to the Executive Director of the Programme, who in turn was accountable to officials within the Executive Office of the Secretary-General.<sup>43</sup>

Just as the 661 Committee had “oil overseers” to conduct a review of proposed oil contracts under the Programme, within OIP the Contracts Processing and Monitoring Division performed a similar function for humanitarian contracts under the Programme.<sup>44</sup> This included a review to ensure that contracts contained the required information for the 661 Committee to determine whether to approve a contract and that goods selected for purchase by the Government of Iraq were consistent with the overall objectives of the Programme and an approved distribution plan. Within the Contracts Processing and Monitoring Division, a group of customs experts reviewed contracts, interfaced with mission representatives on matters pertaining to suppliers from their respective countries, and prepared customs reports for review by members of the 661 Committee.<sup>45</sup>

The Programme Management Division provided policy and management advice to OIP's Executive Director in New York, and it coordinated with UNOHCI officials to gain an

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<sup>42</sup> Kieran Prendergast and Benon Sevan note-to-file (Oct. 31, 1997).

<sup>43</sup> Draft Secretary-General Bulletin, “Organization of the Office of the Iraq Programme,” sec. 6 (undated) (attached to Stephani Scheer note to Benon Sevan (Mar. 12, 2001)) (hereinafter “Draft Organizational Bulletin”). There were several variations of the Bulletin between 1999 and April 2001, and the names of the divisions within OIP underwent changes at various stages as responsibilities shifted among the divisions. While the Draft Organizational Bulletin never was formally issued, for purposes of this Chapter of the Report, the Committee has relied on the most recent version of the Draft Organizational Bulletin that is consistent with the recollections of witnesses familiar with OIP's operations.

<sup>44</sup> Although selected by and reporting at times directly to the 661 Committee, the oil overseers were employed within the Secretariat and were subordinate to the Executive Director of OIP. Ralph Zacklin note to Benon Sevan (Sept. 20, 2001) (Office of Legal Affairs opinion clarifying oil overseers' position within OIP).

<sup>45</sup> 661 Committee Procedures, para. 33; Kieran Prendergast and Benon Sevan note-to-file (Oct. 31, 1997); Felicity Johnston interview (May 26, 2005); Draft Organizational Bulletin, sec. 6.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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understanding of the Programme's field operations in Iraq. The Programme Management Division identified broader strategic issues affecting the implementation of the Programme. Further, the Programme Management Division was tasked with coordinating the preparation of the 90 and 180-day reports of the Secretary-General to the Security Council on the Programme and with identifying problems and proposing solutions for more effective implementation of the Programme.<sup>46</sup>

UNOHCI administered the Programme's field operations in Iraq and was run by a Humanitarian Coordinator in Baghdad and two Deputy Humanitarian Coordinators stationed in Baghdad and in Erbil in northern Iraq. UNOHCI's key functions included implementing observation and reporting mechanisms and ensuring the efficient and equitable distribution of supplies to Iraq. UNOHCI was also responsible for overseeing the implementation of the Programme in northern Iraq by United Nations humanitarian agencies.<sup>47</sup>

The Secretary-General appointed Benon Sevan to the position of Executive Director of OIP, and he served in that position until the end of the Programme in 2003. As the Committee concluded in its First and Third Interim Reports, Mr. Sevan compromised his position by secretly soliciting and receiving Iraqi oil allocations on behalf of a small oil trading company from which he corruptly derived nearly \$150,000 in income.<sup>48</sup>

In March 1998, the Secretary-General appointed Louise Fréchette to the newly created position of Deputy Secretary-General and delegated authority for the "overall supervision" of OIP to the Deputy Secretary-General.<sup>49</sup> Thereafter, Mr. Sevan *formally* reported directly to the Deputy Secretary-General, who in turn reported to the Secretary-General. However, Mr. Sevan continued to meet with and advise the Secretary-General concerning developments in the Programme, directly and through S. Iqbal Riza, the Secretary-General's Chef de Cabinet (Chief of Staff).<sup>50</sup> Chapters 1 through 5 of Volume III of this Report review the administration of the Programme by OIP and the roles of the Secretary-General, Deputy Secretary-General, and others within the Secretariat.

In December 1998, the United Nations selected a Swiss company, Cotecna Inspection SA ("Cotecna"), to replace Lloyd's. Kojo Annan, the son of the Secretary-General, was affiliated with Cotecna at the time that Cotecna was selected to receive this inspection services contract. The selection and retention of Cotecna—in the face of at least an appearance of a family conflict

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<sup>46</sup> Draft Organizational Bulletin, secs. 7-9; J. Christer Elfverson interview (Dec. 4, 2004); Gregoire de Brancovan interview (June 6, 2005).

<sup>47</sup> Draft Organizational Bulletin, secs. 12-16.

<sup>48</sup> "First Interim Report," pp. 121-64; "Third Interim Report," pp. 5-52.

<sup>49</sup> S. Iqbal Riza note to Benon Sevan (Mar. 4, 1998); Benon Sevan note to Louise Fréchette (Mar. 5, 1998); United Nations, "Deputy Secretary-General Louise Fréchette," <http://www.un.org/aboutun/DSG/dsgbio.htm>.

<sup>50</sup> Kofi Annan interview (July 27, 2005); Louise Fréchette interview (Feb. 16, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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of interest—was the principal subject of the Committee’s Second Interim Report.<sup>51</sup> In Volume III of this Report, the Committee assesses additional evidence concerning the selection of Cotecna and the conduct of the Secretary-General and his son.

Apart from OIP, the administration of the Programme also drew on services from several other offices within the Secretariat, including for accounting, legal, payroll, treasury, and internal audit functions. More than fifty administrative posts in various units of the Secretariat outside OIP were funded from the Programme’s administrative account. This included posts in the Office of Legal Affairs (“OLA”), the Office of Internal Oversight Services (“OIOS”), the United Nations Treasury (“Treasury”), and a number of other offices.<sup>52</sup>

## C. THE UN-RELATED AGENCIES

While the Government of Iraq administered and distributed humanitarian goods in central and southern Iraq, because of Saddam Hussein’s mistreatment of and animosity towards the Kurds in northern Iraq, a separate administration, procurement, and distribution system existed for goods furnished to the northern governorates of Dohuk, Erbil, and Suleimaniyah. This system was administered in the name of the United Nations Inter-Agency Humanitarian Programme (“UNIAHP”) and involved the following nine entities (collectively referred to as “the UN-related Agencies” or “the Agencies”): the Food and Agricultural Organization (“FAO”); International Telecommunication Union (“ITU”); United Nations Development Programme (“UNDP”); United Nations Educational, Scientific and Cultural Organization (“UNESCO”); United Nations Human Settlements Programme (“UN-Habitat”); United Nations Children’s Fund (“UNICEF”); United Nations Office for Project Services (“UNOPS”); World Food Programme (“WFP”); and World Health Organization (“WHO”). In addition to their administrative responsibilities in northern Iraq, the Agencies were tasked with observing the equitable distribution of humanitarian supplies throughout the entire country of Iraq.<sup>53</sup>

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<sup>51</sup> Independent Inquiry Committee, “Second Interim Report” (Mar. 29, 2005) (hereinafter “Second Interim Report”), pp. 1-80.

<sup>52</sup> United Nations payroll system and IMIS general ledger system for funding of posts from the ESD Account (or “2.2 percent Account”) (1997-2004).

<sup>53</sup> “Initial Briefing Paper,” p. 4; OIP, “About the Programme,” <http://www.un.org/Depts/oip/background/index.html>; Iraq-UN MOU, paras. 36-41 (describing observation procedures). These nine entities have varying legal relationships to the United Nations. UNDP, UN-Habitat, UNICEF, UNOPS, and WFP are considered “United Nations Funds and Programmes” and therefore are part of the United Nations. FAO, ITU, UNESCO, and WHO, on the other hand, are considered “specialized agencies” and therefore are separate autonomous organizations that coordinate their work with the United Nations. United Nations, “What is the United Nations?,” <http://www.un.org/geninfo/ir/ch1/ch1.htm>; United Nations, “The United Nations System – Principal Organs,” <http://www.un.org/aboutun/chart.html>.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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OIP retained the overall responsibility for supervising the Agencies' activities relating to the Programme.<sup>54</sup> UNOHCI's Humanitarian Coordinator in Baghdad and UNOHCI's Deputy Humanitarian Coordinator in Erbil were entrusted with implementing UNIAHP in the northern governorates. OIP and UNOHCI representatives periodically updated the 661 Committee on implementation of UNIHP and the Agencies' performance. Occasionally, representatives from the various Agencies themselves briefed the 661 Committee on matters involving the Programme.<sup>55</sup> Chapter 4 of Volume IV of this Report reviews the performance of the Agencies in connection with the Programme.

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<sup>54</sup> OIP, "About the Programme," <http://www.un.org/Depts/oip/background/index.html>; "Report of the Secretary-General pursuant to Paragraph 3 of Resolution 1111 (1997)," S/1997/935, para. 4 (Nov. 28, 1997); "Report of the Secretary-General pursuant to Paragraph 7 of Resolution 1143 (1997)," S/1998/90, paras. 2-3 (Feb. 1, 1998).

<sup>55</sup> OIP, "About the Programme," <http://www.un.org/Depts/oip/background/index.html>; Provisional record of 661 Committee meeting, S/AC.25/SR.174, pp. 3-6 (Sept. 1, 1998) (briefing by OIP's Director of Programme Management Division on implementation of the Inter-Agency Humanitarian Programme and the Agencies' performance); OIP notes of informal 661 Committee meeting, pp. 1-2 (May 31, 2002) (briefing by UNOHCI Deputy Humanitarian Coordinator on UNIHP); Provisional record of 661 Committee meeting, S/AC.25/SR.208, pp. 2-9 (Nov. 6, 2000) (briefing by UN-Habitat on housing sector in Iraq); OIP notes of informal 661 Committee meeting, pp. 1-3 (Feb. 20, 2002) (briefing by WFP on transport and food handling sector); OIP notes of informal 661 Committee meeting, pp. 1-3 (Mar. 20, 2002) (briefing by WHO, UNICEF, and UNOHCI on health and nutrition sector); OIP notes of informal 661 Committee meeting, pp. 1-2 (Sept. 10, 2001) (briefing by UNICEF on water and sanitation sector in central and southern Iraq); OIP notes of informal 661 Committee meetings, pp. 1-3 (Nov. 12, 2001) (briefing by UNESCO on education sector).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 1**

#### **PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ**

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### **III. RULES FOR THE REVIEW AND APPROVAL OF PROGRAMME CONTRACTS**

After the signing of the Iraq-UN MOU, the 661 Committee approved internal rules to govern its review of oil and humanitarian contracts under the Programme.<sup>56</sup> These rules, in conjunction with the requirements of the Iraq-UN MOU and with later resolutions of the Security Council, established the basic framework for the day-to-day review and approval of contracts under the Programme.

The operation of these rules played a key role in allowing Iraq to subvert the Programme by means of soliciting payments from companies outside of the United Nations escrow account. Section A below reviews the rules governing approval of oil contracts, and Section B below reviews the rules governing approval of humanitarian and other civilian goods contracts.

#### **A. OIL SALES**

A company that wished to buy oil could negotiate and enter into a contract with Iraq's State Oil Marketing Organization ("SOMO"). Once an agreement was reached between the company and SOMO, the company then sought approval of the contract from the United Nations. In the ordinary course, the company had to be registered with the United Nations through the diplomatic mission of its home country. This registration allowed the company to deal directly with and secure approval of its contract from expert oil overseers who worked at the United Nations and who advised the 661 Committee. The overseers' job was to negotiate on a monthly basis a fair market oil pricing formula with SOMO. The overseers then submitted their recommendation for approval of the monthly pricing mechanism to the 661 Committee. Once the 661 Committee approved the pricing mechanism, two or more overseers could approve jointly any particular contract between a company and SOMO if the contract terms included the approved pricing mechanism, the details of a confirmed irrevocable letter of credit, and a quantity of oil that would not result in exceeding the overall quantity limitations authorized under the Programme.<sup>57</sup>

Once a contract was approved, the oil was lifted from one of two approved oil port terminals: the port of Ceyhan in Turkey (the terminal point for the Kirkuk-Yumurtalik pipeline from Iraq to Turkey) or Mina al-Bakr (an offshore loading platform in the Persian Gulf). Each transfer of oil from Ceyhan and Mina al-Bakr was subject to on-site monitoring by Saybolt's inspectors. A company purchasing oil under the Programme was required to pay the full amount of the contract

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<sup>56</sup> 661 Committee Procedures.

<sup>57</sup> Beginning in the fall of 2001, the United States and the United Kingdom began a practice of putting holds on the approval of oil pricing mechanisms in the 661 Committee until the end of the monthly cycle and then approving the pricing mechanism only to the extent that it retrospectively corresponded to actual market prices. This effectively accomplished "retroactive pricing," restricting the margins for the payment of illegal surcharges by oil purchasers to the Iraqi regime. This development is discussed in Chapter 3 of this Volume.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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price by means of a letter of credit from its bank in favor of the escrow account maintained by BNP.<sup>58</sup>

## B. GOODS PURCHASES

A company that wished to sell humanitarian or other civilian goods under the Programme contracted with a domestic ministry of the Government of Iraq or, for most goods intended to be distributed in northern Iraq, with one of the UN-related Agencies. The goods were required to have been identified in advance on a distribution plan that the Secretary-General approved for each phase. The contract was forwarded through the company's home country mission to the Contracts Processing and Monitoring Division where it was subject to review for the details of pricing and value. If the contract's paperwork was in order, the contract was then subject to the 661 Committee's review and approval under a "no objection" procedure (i.e., the contract was deemed approved if no member of the 661 Committee lodged an objection within a prescribed time period).<sup>59</sup>

Upon the 661 Committee's approval of a goods contract, the goods could be transported into Iraq. The goods were required to be certified for entry by UN-retained border inspectors (Lloyd's from 1997 to January 1999 and Cotecna from February 1999 to 2003) at one of four border inspection points: (1) Zakho on the border of Turkey; (2) Trebil on the border of Jordan; (3) Al-Waleed on the border of Syria; or (4) the port of Umm Qasr on the Persian Gulf. Once entry was approved, the escrow bank (BNP) could pay the goods supplier from the escrow account.

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<sup>58</sup> S/RES/986, paras. 1(b), 6 (Apr. 14, 1995).

<sup>59</sup> *Ibid.*, para. 8 (distribution plan for central and southern Iraq); Iraq-UN MOU, paras. 5-11, annex 1 (distribution plan requirements); 661 Committee Procedures, paras. 26-38 (contract submission and review requirements). As discussed above, the Security Council eventually approved measures to reduce the scope of contracts for which review and approval would be formally required by the 661 Committee.



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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#### IV. IRAQ'S MANIPULATION OF TRANSACTIONS UNDER THE PROGRAMME

It was a basic assumption of the Programme that Iraq—not the United Nations—would choose the parties to whom it would sell oil and, except in northern Iraq, the parties from whom Iraq would purchase humanitarian and oil spare parts goods. The United Nations had long acknowledged that “[t]he most efficient way of selling Iraqi petroleum and petroleum products is for Iraq to carry out the marketing . . . in conformity with its normal trading practices” and that “[i]t would be highly unusual if the United Nations were to engage in trading Iraqi oil directly or through a third party.”<sup>60</sup>

Yet the decision to allow Iraq to choose its contracting partners unwittingly empowered Iraq with economic and political leverage to advance its broader interest in overturning the sanctions regime. According to numerous Iraqi witnesses interviewed by the Committee, Iraq decided early in the Programme to give contract preferences to companies from countries that it perceived as sympathetic to the lifting of sanctions, including most prominently members of the Security Council. Companies from Russia, France, and China—all permanent members of the Security Council that were more sympathetic to Iraq's wish for an end to sanctions than the United Kingdom and the United States—received highly favored access to Iraq's business under the Programme.<sup>61</sup>

Russian companies garnered more than \$19.3 billion of oil purchases from Iraq—nearly one-third of all oil sales under the Programme and four times more than any other country. French companies ranked second on the list of Programme sales with \$4.4 billion in oil purchases. Although Chinese companies technically ranked seventh in total oil purchases, this ranking understated the participation of Chinese companies because it did not include \$2.2 billion of oil purchases by a London-based subsidiary of a Chinese state-owned oil company. If that number is included in China's total oil purchases, then Chinese companies surpassed French companies for

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<sup>60</sup> “Report by the Secretary-General Pursuant to Paragraph 5 of the Security Council resolution 706 (1991),” S/23006, paras. 20-21 (Sept. 4, 1991); see also *ibid.*, para. 45 (noting that it was “recommended that the Government of Iraq be entrusted with the task of purchasing and arranging for deliveries of the goods to Iraq” and that it “would not be practical” to have purchases made by the United Nations or independent agents). As noted above, as the Programme eventually developed, UN-related Agencies were entrusted with purchasing humanitarian supplies for northern Iraq.

<sup>61</sup> Iraq officials interviews; Amer Rashid interview (Oct. 29, 2004); Tariq Aziz interview (Mar. 1, 2005); see also Shamkhi H. Faraj report to the Minister of Oil, “Allocations and Sales of Crude Oil in the phases of the Memorandum of Understanding 1996-2003,” pp. 3-4 (Feb. 19, 2004) (translated from Arabic) (summary by SOMO officials of Iraq's oil allocation and sales practices during the Oil-for-Food Programme) (hereinafter “SOMO Summary Report”). The SOMO Summary Report suggests that the practice of giving contracts to parties that “cooperated” with Iraq started in mid-1997. *Ibid.*, p. 3.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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second place on the list of Iraq's favored oil purchasers with \$4.9 billion in purchases of Iraqi oil.<sup>62</sup>

By contrast, companies from the United Kingdom ranked twelfth among countries in oil transactions with Iraq (not including sales attributable to the Chinese subsidiary referenced above). United States companies ranked twenty-sixth.<sup>63</sup> With one notable exception, Iraq blacklisted United States oil companies after Phase III of the Programme ended in May 1998.<sup>64</sup> Nevertheless, although Iraq chose not to sell directly to United States companies, thirty-six percent of Iraqi oil ultimately was sold to the United States market.<sup>65</sup>

According to Iraqi officials, a similar pattern of preference prevailed for Iraq's choice of suppliers for humanitarian and oil spare parts goods.<sup>66</sup> The Programme's statistics show that Russian and French companies ranked first and third, with \$3.8 billion and \$3.0 billion of sales respectively. Chinese companies ranked eighth with \$1.7 billion of sales, and companies from the United States and the United Kingdom ranked twenty-sixth and thirtieth with combined sales of only \$406.5 million.<sup>67</sup>

These disparities in allocations by country for either oil purchasers or suppliers of goods may be overstated to some degree, because Iraq's national preferences resulted in companies based in

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<sup>62</sup> Independent Inquiry Committee, "Transactions and Relationships System" (hereinafter "TaR") (Dec. 1996 to Mar. 2003). TaR is an analytical database maintained by the Committee that contains information gathered in the course of its investigation, including from the United Nations Treasury database of payments, OIP database of contracts, correspondence and data from Iraqi files, data from third-party sources such as Dun & Bradstreet and Platts, correspondence and records from certain companies involved in the Programme, and records from selected banks. Sinochem International Oil (London) Co., Ltd. was a subsidiary of Sinochem Corporation, a state-owned company of China, and it accounted for \$2.2 billion of the \$3.4 billion attributable to United Kingdom companies. *Ibid.*; Sinochem Corporation, "Europe and Africa/Fully-owned subsidiaries," <http://www.sinochem.com/en/business/petroleum/company/siol.asp> (identifying Sinochem Corporation's London subsidiary as a wholly owned).

<sup>63</sup> TaR (Dec. 1996 to Mar. 2003).

<sup>64</sup> *Ibid.* The one exception to the ban on selling oil to United States companies was for Phoenix International L.L.C., a United States company owned by Samir Vincent, an Iraqi native with close ties to the former Government of Iraq. The activities of Mr. Vincent and others in connection with the negotiation of the Iraq-UN MOU are discussed in the next Chapter of this Volume.

<sup>65</sup> *Ibid.*; United States Department of Energy, Energy Information Administration, "Historical Imports by Month Including Final Revisions" (Dec. 1996 to June 2003), [http://www.eia.doe.gov/oil\\_gas/petroleum/data\\_publications/company\\_level\\_imports/cli.html](http://www.eia.doe.gov/oil_gas/petroleum/data_publications/company_level_imports/cli.html). The thirty-six percent is calculated by dividing 1,236,507,000 barrels (based upon Energy Information Administration data) by the total amount of oil sold 3,430,722,041 barrels (based on TaR data).

<sup>66</sup> Iraq officials interviews; Mohammed Mehdi Saleh interview (Aug. 10, 2004); TaR (Dec. 1996 to May 2005). Mr. Saleh served as Iraq's Minister of Trade during the Programme.

<sup>67</sup> TaR (Apr. 1997 to May 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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non-favored countries applying for contracts through companies or subsidiaries located in countries favored by Iraq.<sup>68</sup>

For humanitarian and oil-spare-parts goods, Iraq's top officials frequently instructed its civilian ministries to procure goods on behalf of government organs that could not participate legitimately in the Programme, such as the Ministry of Military Industrialization, the Ministry of Defense and the *Mukhabarat*, or Intelligence Services. One ministry that purchased large numbers of these "diverted" goods was the Ministry of Agriculture, but many other ministries, including the Ministries of Transportation and Electricity, also played a part in diverting goods. The most common class of diverted goods was automobiles, especially trucks.<sup>69</sup>

In addition to directing contracts in favor of certain countries, Iraq's Ministry of Oil also pursued a policy beginning in 1998 of furnishing "allocations" of oil to certain individuals that it believed could assist its effort to lift the sanctions regime. This group of beneficiaries most prominently included Mr. Sevan—the principal United Nations official charged with the Programme's oversight—as well as many present and former politicians and diplomats, members of organizations supportive of Iraq, relatives of influential families in the Middle East, lobbyists, and journalists. The individual allocation recipients, in turn, would designate a company to enter into a contract for oil with SOMO and presumably received a commission from the company for the rights to the allocation.<sup>70</sup> A future report of the Committee will discuss evidence concerning Iraq's grant of allocations to particular entities and individuals.

The next step in Iraq's manipulation of transactions under the Programme was a turn from political preference to economic enrichment. In the latter part of 2000, Iraq started requiring its oil and goods contracting partners to make side payments to Iraq outside of the United Nations escrow account. Section A below describes the manner in which Iraq derived illicit revenues from oil contract "surcharges," and Section B describes the manner in which Iraq derived illicit revenues from humanitarian contract "kickbacks."<sup>71</sup>

A later report of the Committee will address the operation of these schemes in more detail and, in particular, the degree to which certain companies and individuals were complicit in making illegal payments outside the Programme. This Report furnishes a summary description below in order to give context to its discussion in later chapters of the United Nations' administration of the Programme.

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<sup>68</sup> France official #2 interview (Dec. 3, 2004).

<sup>69</sup> Iraq officials interviews; Mohammed Mehdi Saleh interview (Nov. 18, 2004).

<sup>70</sup> "First Interim Report," pp. 125-26; SOMO Summary Report.

<sup>71</sup> It is unnecessary to determine whether these illicit payments constituted true "kickbacks" in the strict sense of this term as used in criminal corruption laws. The term is used in this Report only for ease of reference—to distinguish these types of payments from oil contract "surcharges" and to signify the manner in which monies that were disbursed to companies from the escrow account were in effect remitted for the unregulated use of the former Iraqi regime.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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#### A. OIL SURCHARGES

In approximately August 2000, Iraq started requesting its oil customers to pay a surcharge of ten cents per barrel—separate from their required payments to the escrow account. Because the request was made in the middle of a Programme phase, many buyers chose not to comply with this request.<sup>72</sup>

In early November 2000, Iraq's Minister of Oil Amer Rashid wrote to the Secretary-General to complain that Iraq was not receiving money under the Programme for the costs it incurred to operate its oil production and distribution facilities, and the Oil Minister requested that the United Nations amend its letters of credit under the Programme to include a payment of 1.5 euros per barrel to meet these costs and for this to "be remitted to a special account designated by SOMO." The 661 Committee considered that this kind of payment to Iraq outside the escrow account would contravene the sanctions regime, and no action was taken on Iraq's request.<sup>73</sup>

In the face of impasse with the Security Council and refusal by some oil buyers to pay the requested ten-cent surcharge, Iraq decided by the end of November 2000 to make mandatory the buyers' payment of a surcharge and also to raise the surcharge to fifty cents per barrel—all without notice to or approval of the United Nations. At the same time, in order to allow oil buyers a sufficient margin from which to pay the surcharge, SOMO proposed below-market prices for the upcoming month of December 2000 to the United Nations oil overseers. The oil overseers and the 661 Committee declined to agree to these low prices, and this led to a shutdown of Iraq's oil trade for the first twelve days of December 2000. When exports resumed, far fewer companies elected to lift oil because of the instability and general reluctance to accede to Iraq's surcharge demand. Total exports plummeted, and it cost the Programme more than 2 billion euros in expected revenues between December 2000 and March 2001.<sup>74</sup>

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<sup>72</sup> SOMO Summary Report, pp. 4-5; Iraq official interview.

<sup>73</sup> Amer Rashid letter to Kofi Annan (Nov. 5, 2000); Notes to the Secretary-General of the meeting of Mr. Riza with the Permanent Representative of Iraq (Nov. 6, 2000); Kofi Annan letter to Peter van Walsum (Nov. 7, 2000). When Iraq's letter was discussed by the 661 Committee in mid-November 2000, France, the United Kingdom, and the United States all agreed that payments outside the escrow account would not be acceptable. OIP notes of informal 661 Committee meeting, pp. 1-2 (Nov. 17, 2000).

<sup>74</sup> SOMO Summary Report, pp. 4-5; Iraq officials interviews; "Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait on the implementation of the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of resolution 986 (1995)," S/2001/321 (Mar. 22, 2001) (describing dispute over pricing mechanism); OIP, "Implementation of Oil-for-Food: A Chronology," <http://www.un.org/Depts/oip/background/chron.html> (noting suspension of exports from December 1-12, 2000); "Report of the Secretary-General Pursuant to Paragraph 5 of Resolution 1330 (2000)," S/2001/186, para. 10 (Mar. 2, 2001) (estimating "loss of revenue of around 2 billions euros" between December 2000 and March 2001 because of "considerable difficulties between SOMO and the oil overseers").

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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Iraq decided in January 2001 to lower its surcharge demands to between twenty-five and thirty cents per barrel, and oil exports steadily rose again to near pre-surcharge levels by the end of the Programme's ninth phase in June 2001. The return to stability was accomplished in part by a small group of companies that were willing to go along with the surcharge scheme, but to do so by using various shell companies to mask their involvement with these illegal payments. Accordingly, companies that were, for example, incorporated in Liechtenstein displaced Russian companies as buyers of the largest share of oil from Iraq during the Programme's ninth phase.<sup>75</sup> And the United Nations oil overseers warned the Security Council that "practically all Iraqi oil" was sold to "contract holders" that "do not get involved in shipping, financing or other risk bearing activity," and that "[t]his is rather unprecedented in the oil industry and only exists in this shape and form in the case of Iraq."<sup>76</sup>

Iraq continued to collect surcharges from its oil sales until September 2002. Most of the payments were made to Iraqi-controlled accounts at banks in Jordan and Lebanon. In order to disguise the Iraqi regime's control, these accounts typically were registered in the names of SOMO officials or other Iraqi individuals. The money was transferred periodically to and held in accounts of the Central Bank of Iraq at these same banks. Employees from the Central Bank of Iraq then would withdraw cash from these accounts.<sup>77</sup>

Apart from these payments, according to payment records and receipts produced to the Committee by SOMO, nearly one-third of the surcharge payments were made by cash to various Iraqi embassies abroad, including in Egypt, Greece, Italy, Malaysia, Russia, Switzerland, Syria, Turkey, and Vietnam. By far the largest number of payments was from Russian companies (including many state-owned companies) to Iraq's embassy in Moscow—more than \$52 million from March 2001 to December 2002.<sup>78</sup>

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<sup>75</sup> SOMO Summary Report, p. 5; Iraq officials interviews. Liechtenstein companies purchased 17.3 percent of Iraqi oil during the ninth phase, compared to 13.2 percent for Russian companies. TaR (Dec. 2000 to June 2001).

<sup>76</sup> DPA notes of Security Council consultations (Sept. 24, 2001); Oil overseers briefing notes, p. 2 (undated) (attached to OIP notes of Security Council consultations (Sept. 24, 2001)).

<sup>77</sup> Jordan National Bank official interviews (Apr. 27 and May 10, 2005); SOMO Summary Report, p. 105 (noting the banks and entities that received surcharge payments).

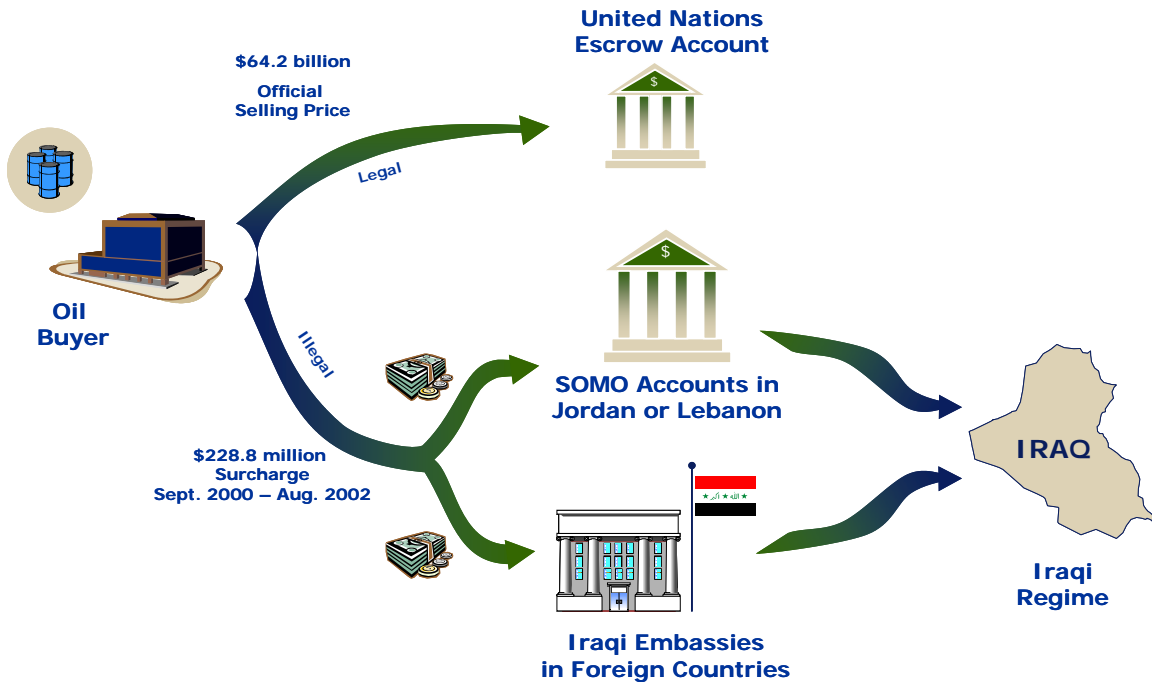
<sup>78</sup> SOMO has disclosed to the Committee tables of total surcharges levied and paid by companies, and it has also disclosed copies of payment receipts made in connection with company payments of cash to Iraqi embassies. SOMO surcharge summary tables; Iraqi Ministry of Oil record, copies of receipts of payments collected by Iraqi embassies (Mar. 2001 to Dec. 2002).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

Chart B – Oil Surcharges – Flow of Funds



Several Iraqi witnesses have described the mechanics of the payment scheme at the Iraqi embassy in Russia. Generally, lower-level Russian company representatives came on a regular basis to the Moscow embassy to drop off cash owed for surcharge payments. From time to time, Iraqi diplomats took charter flights from Moscow to Baghdad with the cash in diplomatic pouches for delivery to the Iraqi Ministry for Foreign Affairs. The cash was deposited later into a SOMO account at the Rafidain Bank in Baghdad and then periodically transferred to the Ministry of Finance’s account at the Central Bank of Iraq.<sup>79</sup>

In sum, as described in Volume I of this Report, Iraq derived \$228.8 million from its illegal surcharge scheme. Iraq decided to discontinue the surcharge scheme in August and September 2002 as it became more difficult—in light of a pricing policy change instituted by certain members of the 661 Committee—to attract oil buyers who would be willing to pay the surcharge.<sup>80</sup>

<sup>79</sup> Iraq officials interviews.

<sup>80</sup> SOMO Summary Report, p. 5 (noting that decrease in oil exports “forced the regime to cancel work on the surcharge from September 2002”); see also “Iraq appears to be phasing out crude surcharge,” *Platts Commodity News*, Sept. 16, 2002; “Iraq Drops Surcharge But Exports Still Constrained By Retroactive Pricing,” *Middle East Economic Survey*, Sept. 23, 2002, vol. XLV, no. 38.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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## B. HUMANITARIAN CONTRACT KICKBACKS

In August 2000, Iraq's Vice President Taha Yassin Ramadan, on orders from Saddam Hussein, circulated a memorandum to all ministries ordering the collection of a kickback on all contracts signed by suppliers of commodities to Iraq. This scheme was announced subsequently by the Minister of Trade, Mohammed Mehdi Saleh, at an exceptional meeting at which all Iraqi Ministers were present. The kickback scheme was ostensibly introduced to cover internal expenses incurred by the Government of Iraq in the administration of the Programme, but the Committee has not been able to verify that the funds derived were spent in such a manner.<sup>81</sup>

By late 2000, no prospective suppliers of goods to Iraq would see their bids approved by the ministries without agreeing to pay a kickback. Typically, suppliers would be notified of the kickback obligation after they had submitted a successful tender and been selected by the contracting ministry. At this point, if the supplier agreed to pay the kickback, the official contract price would be inflated by a set percentage—in order to allow the supplier a margin for the payment of a kickback—and then the contract would be submitted to the United Nations for approval. Sometimes the kickback was incorporated directly into the price of the goods or commodities being sold; other times it was disguised as an “after-sales-service fee,” performance bond, or training expense. This inflated percentage would later be paid by the contractor back to the Government of Iraq. From the perspective of Iraqi officials, the kickback scheme was a means of obtaining control over some of the money that would otherwise be in the escrow account, all of which they viewed as the legitimate property of the Government of Iraq.<sup>82</sup>

The kickback was initially set at two to five percent for contracts for medication and foodstuffs and five to ten percent for all other goods. By December 2000, the kickback was in all instances at least ten percent and occasionally as high as thirty percent. Certain ministries, in particular the Ministry of Trade, were more inclined than others to solicit larger kickback amounts. Different criteria were used to determine what percentage would be levied. In some instances, for example, goods that required assembly or maintenance incurred higher kickbacks than those that arrived ready to operate.<sup>83</sup> In many instances, suppliers were asked to sign “side letters” with the contracting ministry guaranteeing the payment of the kickback within a certain timeframe.<sup>84</sup>

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<sup>81</sup> Ministry of Oil record, Taha Yassin Ramadan letter to Iraqi Ministries (Aug. 3, 2000); Mohammed Mehdi Saleh interviews (Aug. 10 and Nov. 18, 2004); Amer Rashid interview (Oct. 29, 2004); Issam Al-Huwaysh interview (Feb. 21, 2005); Iraq officials interviews. Mr. Al-Huwaysh served as Governor of the Central Bank of Iraq during the Programme. Issam Al-Huwaysh interview (Feb. 21, 2005).

<sup>82</sup> Iraq officials interviews; Mohammed Mehdi Saleh interview (Nov. 18, 2004); Amer Rashid interview (Oct. 29, 2004).

<sup>83</sup> Ministry of Oil record, Taha Yassin Ramadan letter to Iraqi Ministries (Aug. 3, 2000); Ministry of Oil record, Khalil Yassin Al-Ma'mouri letter to Iraqi ministries (Oct. 25, 2000); Iraq officials interviews; Iraqi witness interview; Mohammed Mehdi Saleh interview (Aug. 10, 2004).

<sup>84</sup> Ministry of Oil record, Mohammed Mehdi Saleh letter to Taha Yassin Ramadan (Oct. 27, 2000); Iraq officials interviews; Iraq witnesses interviews (Dec. 11, 2004 and Sept. 18, 2005); Mohammed Mehdi

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

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The kickbacks were paid by several means: (1) directly into ministry accounts at a branch of Rafidain Bank (an Iraqi-controlled bank) in Jordan; (2) into one of many special clearing accounts known as “bridge accounts” at banks in Lebanon and Jordan; (3) into the bank accounts of front companies in Jordan, Egypt, and the United Arab Emirates, which then transferred the funds to Iraqi-controlled accounts; (4) in cash, either at the border between Iraq and a neighboring state or directly at the responsible ministry in Baghdad; (5) into Iraqi embassies in foreign capitals; or (6) to the Iraq State Company for Water Transport (“ISCWT”), a government body that oversaw activities at all Iraqi ports.<sup>85</sup>

Initially, Iraq’s Ministry of Finance was responsible for the collection of the kickbacks, but six months after the implementation of the scheme this responsibility shifted to the Central Bank of Iraq (“CBI”). The contracting ministries themselves were required to submit regular letters to the Ministry of Trade indicating the anticipated and received kickbacks imposed on their contracts. These figures were recorded scrupulously and transmitted ultimately to the Presidential Diwan for review by Saddam Hussein and his advisors.<sup>86</sup>

In addition to this formal kickback scheme, a further means of collecting illegal revenues began in June 1999 and expanded significantly in summer 2000. This mechanism involved charging a fee to the supplier for the cost of transporting goods from the border to points located *within* the country of Iraq. These “inland transportation” fees, which in practice should have been borne by the Government of Iraq rather than the supplier, were collected by the Ministry of Transportation and Communication from suppliers that shipped goods to Iraq’s port of Umm Qasr in the Persian Gulf. Contracts often contained designations for cost, insurance, and freight to points within Iraq—“CIF Baghdad” or “CIF all Iraqi Governorates.” The fees were to be paid directly to ISCWT or to alleged “transportation companies” outside Iraq that in practice provided no transportation services inside Iraq but instead funneled the payments received to ISCWT and eventual to the Central Bank of Iraq. These transportation charges were initially set as low as \$12 per metric ton of transported goods, but were subsequently raised as high as \$25 to \$30 per metric ton. Combined with the mandatory ten percent kickbacks, these fees to ISCWT or its affiliated front companies reached as high as \$45 to \$65 per metric ton.<sup>87</sup>

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Saleh interview (Aug. 10, 2004); Issam Al-Huwaysh interview (Feb. 21, 2005); Hikmat Al-Azzawi interview (Nov. 18, 2004). Mr. Al-Azzawi was Iraq’s Minister of Finance and a Deputy Prime Minister during the Programme. Ibid.

<sup>85</sup> Ministry of Oil record, Mohammed Mehdi Saleh letter to Taha Yassin Ramadan (Oct. 27, 2000); Ministry of Oil record, Hikmat Al-Azzawi letter to Iraqi ministries (Nov. 6, 2000); Ministry of Oil record, Hikmat Al-Azzawi letter to Iraqi ministries (Apr. 2, 2001) (concerning embassy payments); ISCWT record, Hikmat Al-Azzawi letter to Ministry of Transportation (Apr. 26, 2001); Iraq officials interviews; Confidential witness interview.

<sup>86</sup> Iraq officials interviews; Issam Al-Huwaysh interview (Feb. 21, 2005).

<sup>87</sup> Ministry of Transportation and Communication record, Ahmed Mortada Ahmed Al-Khalil letter to Hikmat Al-Azzawi (Mar. 11, 2003) (noting the imposition of fees in June 1999); Ministry of Oil record, Mohammed Mehdi Saleh letter to Taha Yassin Ramadan (Oct. 27, 2000); Ministry of Oil record, Hikmat

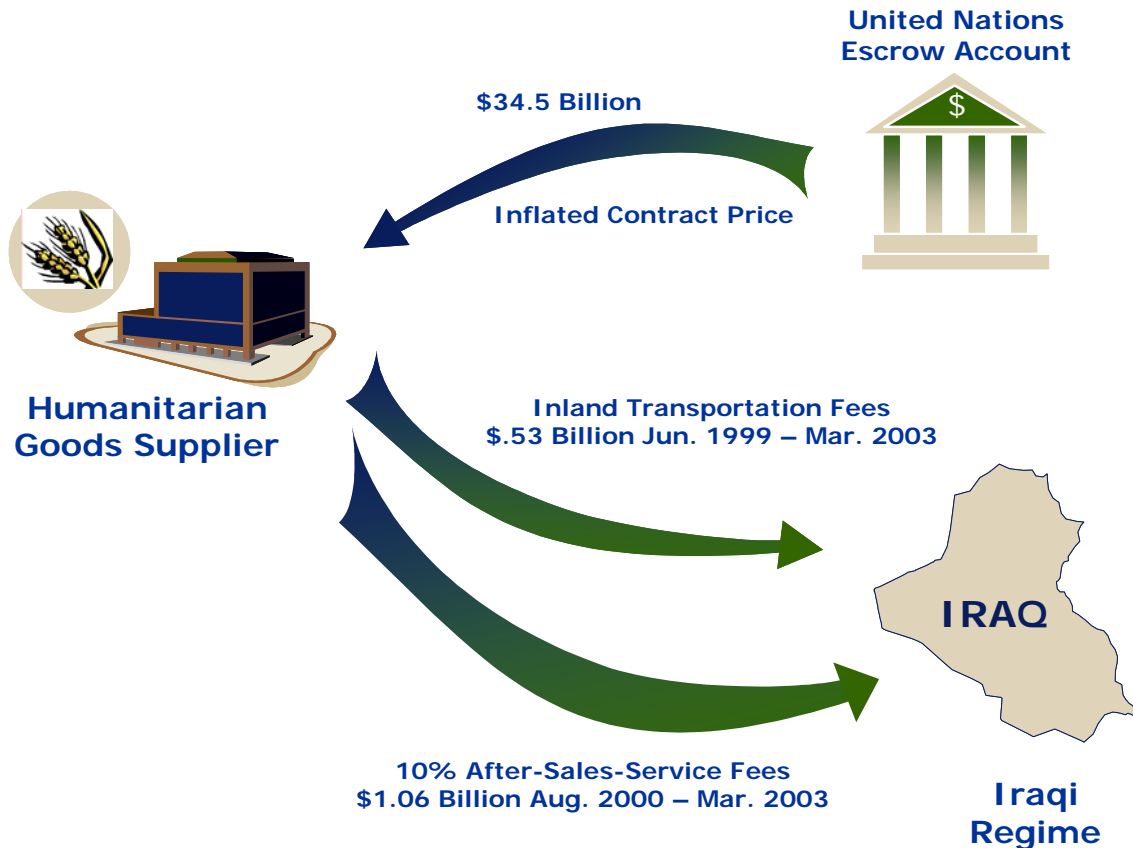


# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 1

### PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ

Chart C – Humanitarian Contract Kickbacks – Flow of Funds



Al-Azzawi letter to Iraqi Ministries (Nov. 6, 2000); ISCWT record, Hikmat Al-Azzawi letter to Ministry of Transportation (Apr. 26, 2001) (conveying that ISCWT “should inform the companies they deal with to receive transport and services fees in the currency of the approved contract or any other major currency determined in coordination with Al-Rafidain Bank in Amman”) (translated from Arabic); ISCWT record, Mohammed Mehdi Saleh memorandum to ISCWT (Dec. 21, 2000) (ordering that “[t]he State Company for Water Transport, through its representative in Amman, regularly follows up on the transfer of money received from MOU suppliers through Umm Qasr by Jordanian front companies . . . to the account of the State Company for Water Transport at Rafidain [Bank] Amman . . . to guarantee that the money is under the control of the Iraqi government . . .”) (translated from Arabic); ISCWT record, ISCWT Transportation Tariff Table (undated) (noting an initial fee of \$12 per metric ton of unpacked goods for Phase 6 and \$25 per metric ton for Phase 8); ISCWT record, “MOU goods transport form” (June 1, 2002) (noting a payment of \$2.2 million on 41,758 tons of wheat); Iraq officials interviews; Iraq witness interview (Dec. 11, 2004); Ahmed Mortada Ahmed Al-Khalil interview (Nov. 5, 2004); Othman Al-Absi interview (May 21, 2005); Amer Rashid interview (Oct. 29, 2004). Ahmed Mortada Ahmed Al-Khalil served as Iraq’s Minister of Transportation and Communication during the Programme, and Othman Al-Absi is the General Manager of a firm in Jordan that engaged in extensive business with Iraq in connection with the Programme.

# **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

## **VOLUME II - CHAPTER 1**

### **PROGRAMME BACKGROUND AND MANIPULATION BY IRAQ**

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The kickback schemes remained in place for the duration of the Programme until the military invasion of Iraq by coalition forces in the spring of 2003. Ultimately, at least \$1.6 billion in illicit revenues was acquired by the Iraqi regime through these kickback schemes—approximately six times more than the amount it derived from oil surcharges.<sup>88</sup>

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<sup>88</sup> Housing Bank for Trade and Finance record, Central Bank of Iraq account (Mar. 1, 2003 to Mar. 20, 2003) (reflecting the deposit of funds into a bridge account); Bank of Jordan record, Central Bank of Iraq account (Mar. 1, 2003 to Mar. 20, 2003) (reflecting the deposit of funds into a bridge account).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

## I. INTRODUCTION AND SUMMARY

Following Iraq's invasion of Kuwait in 1990, the United Nations Security Council passed a series of resolutions imposing comprehensive and mandatory sanctions on Iraq. Iraq's hopes for an end to sanctions depended on its compliance with numerous conditions, including stringent weapons inspection requirements. But compliance did not come quickly. In the meantime, as early as 1991—amid concerns for the effect of sanctions on the Iraqi population—the Security Council passed measures to authorize an oil-for-food program, and United Nations officials set out to secure an agreement with Iraq to allow such a program to go forward.

However, Iraq would not agree to such a program. It feared that its acquiescence to a relief program would remove pressure from the Security Council to lift the sanctions regime altogether. Throughout the early 1990s, Iraq periodically participated in rounds of oil-for-food negotiations with United Nations officials, only then to reverse course and reject any oil-for-food arrangement as an infringement on its national sovereignty.

The idea of an oil-for-food program attracted significant attention among numerous and varied parties. Security Council member states viewed the possibility of an oil-for-food program as one that necessarily engaged their respective national, security, and commercial interests; oil industry and market experts followed the talks closely and watched as the price of oil fluctuated with each new development; political figures, dealmakers, entrepreneurs, and middlemen saw the establishment of such a program as a beacon for lucrative business opportunities and private gain. The United Nations viewed an oil-for-food program not only as a means to address the humanitarian situation in Iraq but also as a potential source of funding for several other Iraq-related initiatives, such as weapons inspections and reparations to the victims of Iraq's invasion of Kuwait.

The evolution of oil-for-food negotiations is best understood against the backdrop of weapons inspection efforts and Iraq's tumultuous relationship with the United Nations Special Commission ("UNSCOM"). Resolution 687 mandated UNSCOM to carry out, among other things, weapons inspections, the destruction of specified weapons, and the monitoring and verification of Iraq's compliance with United Nations resolutions. Paragraph 22 of Resolution 687—a much-heralded provision in the course of ongoing discussions between Iraq and UNSCOM—provided that, upon the Security Council's agreement that Iraq had satisfied its weapons disclosure, inspections, and monitoring requirements, the sanctions ban on the import of commodities and products originating in Iraq would have "no further force or effect."<sup>89</sup>

The oil-for-food talks between the United Nations and Iraq ultimately succeeded not simply because of a humanitarian imperative, but also due to the convergence of two events. The first occurred in the beginning of 1995 when the United States, facing growing sentiment in the Security Council in favor of lifting or modifying sanctions, led a successful movement to pass Resolution 986, embracing a new oil-for-food proposal that was designed to be more palatable to

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<sup>89</sup> S/RES/687, secs. C, F, para. 22 (Apr. 3, 1991).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

the Iraqi leadership than earlier resolutions had been.<sup>90</sup> Still focused on achieving the outright termination of sanctions, Iraq would initially reject the new resolution.

But in the summer of 1995, the second significant event occurred—the defection of General Hussein Kamel, a high-level Iraqi official who had been responsible for overseeing the country’s weapons programs. This defection let loose a torrent of new disclosures about Iraq’s illicit weapons programs, causing the Security Council to defer indefinitely further consideration of modifying or lifting sanctions. Only then did the Iraqi leadership seriously entertain the new resolution and agree to negotiate toward implementation of an oil-for-food program. In May 1996, following several months of further negotiations, Iraq and the United Nations reached agreement on the terms of a memorandum of understanding (the “Iraq-UN MOU”) that set forth the basic working procedures governing implementation of the Oil-for-Food Programme.<sup>91</sup>

Part II of this Chapter reviews the course of the early efforts to develop a program, the formal negotiations, and the convergence of events leading to the Iraq-UN MOU. Part III of this Chapter examines a parallel line of informal, shadow discussions occurring through the early 1990s and into the initial months of the Programme’s implementation in 1996 and 1997. These were “backchannel” communications between the United Nations and Iraq through a conduit formed by two experienced political operatives: (1) Samir Vincent, an Iraqi-born American businessman with close ties to members of the Iraqi leadership; and (2) Tongsun Park, a Korean businessman with close ties to members of the Washington, D.C. political establishment and to Secretary-General Boutros Boutros-Ghali.

As an agreement on the Programme became imminent, the backchannel discussions evolved into something more: an Iraqi scheme to bribe Secretary-General Boutros-Ghali in order to ensure that he would be “flexible” with respect to the negotiations for and implementation of the Programme. During 1996, Iraq paid well over \$1 million in cash to Mr. Vincent (and through him a share of the payments to Mr. Park) in connection with this scheme. The Committee does *not* have evidence that Secretary-General Boutros-Ghali was aware of Iraq’s intentions or that he received any money from this scheme. Mr. Park—while receiving cash from Iraq—worked to garner support for the Secretary-General’s ultimately unsuccessful effort to secure reappointment to a second term as Secretary-General.

Part IV concludes this Chapter with a review of Mr. Park’s ongoing Iraq-related business efforts in 1997 after the departure of Secretary-General Boutros-Ghali and the appointment of Secretary-General Annan. By this point in time, Mr. Park communicated directly with high-level Iraqi officials—instead of going through Mr. Vincent. With the departure of Secretary-General Boutros-Ghali, Iraq also sought to secure another high-level contact at the United Nations. To this end, Mr. Park dealt with Maurice Strong, Secretary-General Annan’s newly appointed Executive Coordinator for United Nations Reform. In the summer and fall of 1997, Mr. Park traveled to Iraq on two occasions and collected a total of at least \$1.7 million in cash from Deputy

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<sup>90</sup> S/RES/986 (Apr. 14, 1995).

<sup>91</sup> Iraq-UN MOU.

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

#### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

Prime Minister Tariq Aziz. After his first trip to Iraq, Mr. Park converted about \$1 million in cash to a check in the name of “Mr. M. Strong,” before returning to the United States, where he promptly gave the check to Mr. Strong for the purchase of stock from a third party in a company controlled by the Strong family. The purchase relieved Mr. Strong of a guarantee he had made to the seller of the shares. Mr. Strong denies knowledge that the money he received from Mr. Park was from Iraq or that it was in exchange for any official act in favor of Iraq. The Committee does not conclude on the basis of available evidence that Mr. Strong was aware of the origins of Mr. Park’s payment.

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

## **II. EARLY EFFORTS, FORMAL NEGOTIATIONS, AND THE IRAQ-UN MOU**

### **A. UNSCOM AND THE PERSISTENCE OF SANCTIONS**

Following the end of the first Gulf War, the United Nations Security Council passed Resolution 687 not only to continue the sanctions put in place by Resolution 661, but also to specify the conditions under which those sanctions could one day be lifted. The resolution required Iraq to accept inspection of its weapons capabilities and destruction of all chemical, biological, and nuclear weapons, certain ballistic missiles, as well as related support and manufacturing facilities. To ensure the destruction of the banned weapons in Iraq, the Security Council provided for, among other things, the establishment of UNSCOM to verify and monitor the disarmament of Iraq. Resolution 687 provided that, during the weapons inspection process, the international ban on selling commodities to Iraq, and importing commodities and products originating in Iraq, as established in Resolution 661, would remain in force. The only exceptions to the ban were for food, medicine, and health supplies. Pursuant to paragraph 22 of Resolution 687, the Security Council would lift sanctions against Iraq's sale of oil only upon agreement that Iraq had fully complied with and satisfied all applicable obligations under United Nations resolutions.<sup>92</sup>

From 1991 through 1997, Rolf Ekeus, former Swedish ambassador to the United States, served as the Executive Chairman of UNSCOM. From the outset, Mr. Ekeus felt tremendous pressure to complete the weapons inspections because, in his view, every day signified a great loss of income to the Iraqi people. He initially thought the Iraqi regime would be "eager to get rid of the remnants of their weapons and weapons of mass destruction—because it could not be more than just remnants anyway—[he] thought the Iraqis would be eager to regain their oil income." But to his surprise, Iraqi officials did not cooperate with UNSCOM; instead, "they decided to take the slow road." Indeed, UNSCOM quickly encountered Iraq's resistance to disclosing information about its weapons programs.<sup>93</sup>

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<sup>92</sup> S/RES/661 paras. 2-5 (Aug. 6, 1990); S/RES/687, secs. C, F (Apr. 3, 1991); S/RES/707 (Aug. 15, 1991) (demanding that Iraq provide full disclosure of its weapons programs as required by Security Council resolution 687 and allow UNSCOM, IAEA, and their inspections teams immediate, unconditional, and unrestricted access to sites they wish to inspect). Resolution 687 provided for additional conditions, which Iraq must satisfy in order for the Security Council, in accordance with Resolution 661 and subsequent related resolutions, to take a further decision to permit states to supply or sell certain other items to Iraq. S/RES/687, paras. 20-25 (Apr. 3, 1991).

<sup>93</sup> Rolf Ekeus interview (Feb. 19, 2005); President of the Security Council note, S/22746 (June 28, 1991) (deploring Iraq's denial of access to an inspection site and asking the Secretary-General to send a high-level mission to Baghdad immediately); "Report of the high-level mission sent to Iraq," S/22761 (July 5, 1991); "Second report of the Executive Chairman of the Special Commission established by the Secretary-General pursuant to paragraph 9(b)(i) of Security Council resolution 687 (1991)," S/23268 (Dec. 4, 1991); "Report of the Secretary-General on the status of compliance by Iraq with the obligations placed upon it under certain of the Security Council resolutions relating to the situation between Iraq and Kuwait,"

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

But UNSCOM persisted in its inspection efforts. As time went on, paragraph 22 became a catch phrase, and conversations between UNSCOM personnel and Iraqi officials concerning weapons often reverted to a discussion of what it would take to satisfy the requirements of that provision for the lifting of sanctions.<sup>94</sup>

With no imminent end to sanctions in sight, the Security Council passed two resolutions in 1991 to authorize an oil-for-food program. As discussed in detail below, United Nations officials periodically met with Iraqi officials to attempt to craft a memorandum of understanding to establish and implement a program. But from 1992 through the fall of 1995, the Iraqi regime's interest in the lifting of sanctions eclipsed their interest in these negotiations, because Iraq feared that embarking on an oil-for-food arrangement could delay the lifting of the sanctions regime. Accordingly, Iraqi officials would periodically participate in various rounds of negotiations, only then to reverse course, denounce the oil-for-food proposal as an affront to Iraq's sovereignty, and resume a call for the lifting of sanctions.

## B. SECURITY COUNCIL RESOLUTIONS 706 AND 712

During the first Gulf War in early 1991, the United Nations turned its attention to the humanitarian situation of the Iraqi civilian population. In June of that year, Prince Sadruddin Aga Khan—the Executive Delegate of the Secretary-General for humanitarian assistance in Iraq—traveled to Iraq to assess its humanitarian needs, and concluded that “[i]t is clearly imperative that Iraq's ‘essential civilian needs’ be met urgently and that rapid agreement be secured on the mechanism whereby Iraq's own resources be used to fund them to the satisfaction of the international community.” In July 1991, Secretary-General Javier Pérez de Cuéllar reported that “the most obvious way of obtaining financial resources” to cover the costs of United Nations activities in Iraq was “the sale of some Iraqi petroleum and petroleum products.”<sup>95</sup>

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S/23514 (Jan. 25, 1992); Minister for Foreign Affairs of Iraq identical letters to the President of the Security Council and to the Secretary-General, S/22456 (Apr. 6, 1991) (stating that Iraq has “no choice but to accept” the provisions of Security Council Resolution 687).

<sup>94</sup> Rolf Ekeus interview (Feb. 19, 2005); David Kay interview (July 8, 2005); John Scott interview (June 14, 2005); Rachel Davies interview (July 19, 2005). Mr. Scott was a Senior Counsel to UNSCOM. John Scott interview (June 14, 2005). Ms. Davis led UNSCOM's Information Assessment Unit and later became the Director of the Division of Information for United Nations Monitoring, Verification and Inspection Commission (“UNMOVIC”). Rachel Davies interview (July 19, 2005). David Kay served as UNSCOM's Chief Nuclear Weapons Inspector and the Deputy Director of the IAEA Action Team. David Kay interview (July 8, 2005).

<sup>95</sup> Javier Pérez de Cuéllar letter to the President of the Security Council, S/22366 (Mar. 20, 1991); *The United Nations and the Iraq-Kuwait Conflict, 1990-1996* (United Nations Blue Book Series, Vol. IX, Department of Public Information, 1996), p. 99 (hereinafter “*The UN and Iraq-Kuwait Conflict*”); “Report to the Secretary-General dated 15 July 1991 on humanitarian needs in Iraq prepared by a mission led by Sadruddin Aga Khan, Executive Delegate of the Secretary-General,” S/22799 (July 17, 1991); “Report of the Secretary-General recommending the sale of some Iraqi petroleum and petroleum products to finance

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

One month later, the Security Council adopted Resolution 706, which set out the basic terms for the limited sale of Iraqi oil and oil products during a six-month period. The resolution was primarily designed to increase the level of funds available for humanitarian programs and for weapon inspections requirements. Shortly thereafter, it adopted Resolution 712 approving a basic structure for the implementation of Resolution 706.<sup>96</sup>

These two resolutions provided that:

- Iraq could sell no more than \$1.6 billion of oil over a six-month period;
- The 661 Committee would be required to approve each oil sale;
- Payment for the oil sales would be placed into an escrow account established by the United Nations and administered by the Secretary-General;
- Following a report of the Secretary-General, the Security Council would approve a scheme to purchase foodstuffs, medicine, and materials and supplies for essential civilian needs;
- The United Nations would monitor and supervise the distribution of goods in all regions of Iraq; and
- In accordance with prior resolutions, thirty percent of the value of Iraq's oil exports would be paid to the United Nations Compensation Fund to compensate claims by governments, individuals, and corporations stemming from Iraq's invasion of Kuwait in 1990.<sup>97</sup>

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the destruction or removal of weapons systems stipulated in Security Council resolution 687 (1991),” S/22792 (July 15, 1991).

<sup>96</sup> S/RES/706 (Aug. 15, 1991); S/RES/712 (Sept. 19, 1991); see also “Report of the Secretary-General Pursuant to Paragraph 5 of Security Council Resolution 706 (1991),” S/23006 (Sept. 4, 1991) (recommending procedures for the sale of Iraqi oil and transmitting estimates of humanitarian requirements in Iraq).

<sup>97</sup> S/RES/706, paras. 1, 3-4 (Aug. 15, 1991); S/RES/712, paras. 1, 6, 8 (Sept. 19, 1991); see also S/RES/705, para. 2 (Aug. 15, 1991); S/RES/687, para. 19 (Apr. 3, 1991); S/RES/692 (May 20, 1991). Resolution 706 also provided for contributions from the oil sales to fund the activities of UNSCOM, the return of Kuwaiti property, and the Iraq-Kuwait Boundary Demarcation Commission pursuant to previous resolutions. S/RES/706, para. 3 (Aug. 15, 1991). Resolution 712 further elaborated on some of the conditions that would apply to an oil-for-food program. S/RES/712 (Sept. 19, 1991). The United Nations Compensation Fund is administered by the United Nations Compensation Commission. S/RES/687, sec. E (Apr. 3, 1991); United Nations Compensation Commission, “Introduction,” <http://www2.unog.ch/uncc/introduc.htm>.



**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

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### C. EARLY ROUNDS OF NEGOTIATIONS IN 1992 AND 1993

On December 3, 1991, Dr. Boutros Boutros-Ghali formally took office and replaced Javier Pérez de Cuéllar as Secretary-General of the United Nations. Soon thereafter, in January 1992, the first round of formal negotiations between the United Nations and Iraq pursuant to Resolutions 706 and 712 took place in Vienna. The negotiations were led, for the United Nations delegation, by Kofi Annan, who was then the Controller and Assistant Secretary-General for Programme Planning, Budget and Finance, and, for the Government of Iraq, by Ambassador Abdul Amir Al-Anbari, who was then Permanent Representative of Iraq to the United Nations in New York. At the outset, the Iraqi delegation claimed that Iraq had satisfied all the conditions specified in paragraph 22 of Resolution 687 and therefore should no longer be subject to sanctions. Nevertheless, the negotiations proceeded, and the Iraqi delegation pressed for several concessions that were beyond the scope of what the Security Council's resolutions authorized, including: (1) a second oil export outlet; (2) funds to cover the cost of Iraq's production and transportation of oil; and (3) authorization for the importation of oil spare parts and equipment. The talks ended when the Iraq delegation decided to "discontinue contacts with the Secretariat" regarding the implementation of Resolutions 706 and 712.<sup>98</sup>

In the spring of 1992, Iraq's Deputy Prime Minister Tariq Aziz told Secretary-General Boutros-Ghali that "the situation had changed" and that Iraq would now cooperate with the inspection teams. Mr. Aziz was prepared, therefore, to stay in New York "as long as needed in order to get an assessment" from the Security Council "of where Iraq stood vis-à-vis the Council's resolutions." Mr. Aziz attempted to open a direct channel of communication to the Security Council on Iraq's compliance, which was viewed as a challenge to UNSCOM's authority and was firmly rejected by the Security Council.<sup>99</sup>

Mr. Aziz then agreed to resume oil-for-food negotiations in March 1992. This time Giandomenico Picco, Assistant Secretary-General for Political Affairs, led the United Nations delegation, and Ambassador Al-Anbari, once again, led the delegation for the Government of

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<sup>98</sup> Boutros Boutros-Ghali, *Unvanquished: A U.S.-U.N. Saga* (Random House, 1999), p. 12 (hereinafter "*Unvanquished*"); Boutros Boutros-Ghali interview (May 2, 2005); "Statement by the President of the Security Council concerning the sanctions regime imposed against Iraq, Iraq's compliance with Security Council resolution 687 (1991), and humanitarian conditions of the civilian population in Iraq," S/23517 (Feb. 5, 1992); Kofi Annan note to Boutros Boutros-Ghali (Jan. 13, 1992); Kofi Annan fax to Boutros-Boutros Ghali (Jan. 9, 1992); Arnstein Wigestrang interview (Nov. 30, 2004) (recalling these negotiations and stating his feeling "that the there was not a real attempt to come to an agreement—it was all theatre and acting"). An "informal and discreet" meeting between the United Nations and the Government of Iraq took place in Baghdad in November 1991. Kofi Annan note to Boutros Boutros-Ghali (Jan. 13, 1992) (on discussions between representatives of the United Nations and the Government of Iraq in Vienna from January 8-10, 1992). Mr. Wigestrang is an oil trading and marketing analysis expert who served as a consultant to the United Nations delegation from 1991 to 1996 and later served briefly as an oil overseer during the Programme. Arnstein Wigestrang interview (Nov. 30, 2004).

<sup>99</sup> Fayza Aboulnaga notes of Boutros Boutros-Ghali's meeting with Tariq Aziz (Mar. 10, 1992); Renjie Lin notes-to-file (Mar. 10-11, 1992) (regarding Security Council consultations).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 2

#### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

Iraq. After these March negotiations ended with no agreement, Iraq and the United Nations resumed discussions in Vienna in late June 1992. However, these talks were suspended when the Iraqi delegation returned to Baghdad to seek the Iraqi leadership's reaction.<sup>100</sup>

Following the failure of this series of talks, Iraq's Minister for Foreign Affairs, Ahmad Hussein, sent a letter to the Secretary-General denouncing Resolutions 706 and 712 for containing "many political and practical conditions and restrictions that seek to strip the people of Iraq of sovereignty which it won long ago . . . and in defence of which it has resisted colonialist and neocolonialist alike." He further claimed that the oil-for-food formula was "an operation to delude world public opinion that the embargo against Iraq has been eased although this is not so."<sup>101</sup>

In early July 1992, after the Iraqi regime denied UNSCOM inspectors access to one of their facilities, the Iraqi Foreign Minister took the offensive, calling for the lifting of sanctions and claiming all banned weapons and facilities had been destroyed. Shortly thereafter, however, the Security Council determined "there was no justification in lifting or modifying the sanctions" on Iraq.<sup>102</sup>

In the latter part of 1992, Iraq focused exclusively on developing a working relationship with UNSCOM. In an unsuccessful plea to the Security Council to lift sanctions in November 1992, Deputy Prime Minister Aziz claimed that all prohibited weapons had been destroyed, that all equipment used in the production of weapons had been identified, and that oil-for-food negotiations had been frustrated because Resolutions 706 and 712 were drafted not to mitigate the suffering of the Iraqi people, but to achieve "tendentious political objectives."<sup>103</sup>

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<sup>100</sup> Fayza Aboulnaga notes of Boutros Boutros-Ghali's meeting with Tariq Aziz (Mar. 13, 1992); Giandomenico Picco interview (Nov. 19, 2004); Judith Karam interview (Nov. 19, 2004); "Draft note prepared by the UN Secretariat on the discussions between the Government of Iraq and Representatives of the United Nations at Vienna from 26 to 28 March 1992" (Mar. 28, 1992); Notes of discussions held between the Government of Iraq and Representatives of the United Nations (Mar. 26-28, 1992); "Addendum to the draft note prepared by the UN Secretariat on the discussions between the Government of Iraq and Representatives of the United Nations at Vienna from 26 to 28 March 1992" (June 22, 1992); Notes of discussions held between the Government of Iraq and Representatives of the United Nations (June 19-22, 1992); Boutros Boutros-Ghali letter to the President of the Security Council (July 15, 1992); Winston Tubman note (Oct. 9, 1992) (regarding Iraqi oil and Security Council Resolutions 706 and 712). Judith Karam was the second officer in the United Nations Department of Political Affairs during that period. Judith Karam interview (Nov. 19, 2004).

<sup>101</sup> Ahmad Hussein letter to Boutros Boutros-Ghali, S/24276 (July 11, 1992).

<sup>102</sup> Ibid.; "Fourth report of the Executive Chairman of UNSCOM," S/24984 (Dec. 17, 1992); see also Boutros Boutros-Ghali letter to the President of the Security Council (July 15, 1992); DPA notes of Security Council consultations (July 27, 1992); President of the Security Council note, S/24352 (July 27, 1992).

<sup>103</sup> Provisional record of Security Council meeting, S/PV.3139 (Resumption 2) (Nov. 23, 1992). Mr. Ekeus believed that Iraq's inattention to the oil-for-food resolutions was a partial result of their concern that a

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

Following a series of UNSCOM-related crises over Iraq's noncompliance with its monitoring obligations, the Secretary-General met with Deputy Prime Minister Aziz in Geneva on June 29, 1993. In addition to discussing the funding of humanitarian aid to Iraq and the latest UNSCOM issues, they discussed further negotiations on an oil-for-food arrangement. The Secretary-General urged Iraq to view the humanitarian programme as opportunity for "reconciliation between Iraq and the international community," and the Deputy Prime Minister agreed to a new round of oil-for-food negotiations.<sup>104</sup>

A new round of oil-for-food negotiations started in New York in July 1993. During negotiations, Iraq reiterated its objections to the use of the Kirkuk-Yumurtaalik oil pipeline running through Turkey, as well as to the use of only one oil outlet, the quantity restriction on Iraq's oil sales, and the proposed distribution of humanitarian goods in northern Iraq by the United Nations. Iraq also resisted the stationing of United Nations inspectors at the offices of Iraq's State Oil Marketing Organization ("SOMO"). The Iraqi delegation continued to seek concessions to permit funding for oil infrastructure spare parts, oil production costs, and the in-country monitoring system. Despite their differences, the parties compiled the non-papers produced in previous rounds of negotiation into a draft memorandum of understanding. However, the talks ended abruptly on July 15, 1993, when the Iraqi delegation suddenly "returned to Baghdad for consultations."<sup>105</sup>

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violation of its obligations under Resolution 687 could lead to a resumption of military operations against it. Rolf Ekeus e-mail to the Committee (Feb. 26, 2005).

<sup>104</sup> Secretary-General report to the Security Council, S/25620 (Apr. 19, 1993), in *The Papers of United Nations Secretary-General Boutros Boutros-Ghali* (Charles Hill ed., Yale University Press, 2003), pp. 567-68 (hereinafter "*Secretary-General Boutros Boutros-Ghali Papers*"); *The UN and Iraq-Kuwait Conflict*, p. 102; *Unvanquished*, p. 209.

<sup>105</sup> Carl-August Fleischhauer interview (Dec. 6, 2004); Winston Tubman interview (Aug. 19, 2005); Gian Luca Burci interview (Dec. 1, 2004); Carl-August Fleischhauer memorandum to Jean-Claude Aimé (June 29, 1993) (on resumption of Iraqi oil talks and preparations for the upcoming talks); Carl-August Fleischhauer note-to-file (July 15, 1993) (regarding oil talks); Carl-August Fleischhauer memorandum to Boutros Boutros-Ghali (July 7, 1993) (on the first meeting with the Iraqi delegation on the sale of oil under Security Council resolutions 706 (1991) and 712 (1991)); "Memorandum of Understanding between the UN Secretariat and the Government of Iraq on Arrangements for the Implementation of the Scheme relating to Iraqi Oil Exports, the proceeds of which are to be used to cover the cost of essential Iraqi civilian needs, payment of compensation and other costs as prescribed by the United Nations" (July 14, 1993); Winston Tubman note-to-file (Aug. 3, 1993); Carl-August Fleischhauer memorandum to Boutros Boutros-Ghali (Aug. 3, 1993) (on Iraqi delegation returning to Baghdad for consultations); Hans Corell memorandum to Boutros Boutros-Ghali (Mar. 23, 1994) (on sale of Iraqi oil under Security Council Resolutions 706 (1991) and 712 (1991)). At that time, Mr. Fleischhauer, Mr. Tubman, and Mr. Burci all worked in the United Nations Office of Legal Affairs ("OLA") and participated in the 1993 round of negotiations. Mr. Fleischhauer was the United Nations Under-Secretary-General for Legal Affairs; Mr. Tubman was a Principal Legal Officer; and Mr. Burci served as an Associate Legal Officer. Carl-August Fleischhauer interview (Dec. 6, 2004); Winston Tubman interview (Aug. 19, 2005); Gian Luca Burci interview (Dec. 1, 2004).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

Iraq's abrupt suspension of oil-for-food talks in New York was due to Mr. Ekeus's contemporaneous visit to Baghdad in July 1993 to resolve an impasse between UNSCOM and Iraq.<sup>106</sup> During this trip, Mr. Ekeus created an impression among the leadership in Baghdad that there was a possibility that, under paragraph 22 of Resolution 687, sanctions would be lifted in the near future. The Iraqi Foreign Minister subsequently announced that while the oil-for-food talks were in progress, "important developments" had been taking place with Mr. Ekeus's visit to Baghdad, and positive results had been achieved on the weapons inspections front. As a reflection of the leadership's new optimism that sanctions would soon be lifted, the Iraqi Foreign Minister, Mohammed Said Al-Sahaf, wrote to the Secretary-General on July 25 to denounce Resolutions 706 and 712 as "an abusive and unwarranted encroachment on Iraq's sovereignty."<sup>107</sup>

Following the breakdown in oil-for-food talks, the Secretary-General met in early August 1993 with ambassadors from four of the five permanent members of the Security Council: France, Russia, the United Kingdom, and the United States. In his briefing, the Secretary-General explained that Iraq's hopes for the lifting of sanctions were, in his view, misplaced. It appeared to him that the message Baghdad received from Mr. Ekeus was too optimistic and did not accurately convey the "true situation existing in New York." The Secretary-General expressed similar concern to Nizar Hamdoon, Iraq's Permanent Representative to the United Nations, and conveyed that this concern was shared by the four Permanent Representatives. The Secretary-General pressed Ambassador Hamdoon to urge his government to view the oil-for-food plan as a stepping stone to the lifting of sanctions under Resolution 687.<sup>108</sup>

On August 10, 1993, one of the Secretary-General's assistants, Fayza Aboulnaga, met with Ambassador Hamdoon and expressed the Secretary-General's disappointment at Iraq's termination of negotiations. In a cable sent to the Iraqi Ministry for Foreign Affairs, Ambassador Hamdoon later recounted the concerns expressed on behalf of the Secretary-General during this meeting:

The negotiations regarding the exporting of oil is an issue that the Secretary-General has adopted personally and he dealt with the Security Council and the four permanent members on the basis that it is his specialty and he forbade any

<sup>106</sup> "Report to the Secretary-General by the Executive Chairman of the Special Commission established pursuant to paragraph 9(b)(i) of Security Council resolution 687 (1991)," S/26127 (July 21, 1993); Samir Vincent letter to Theodore Sorensen (Oct. 15, 1993) (claiming that Mr. Ekeus's visit to Baghdad, which coincided with the Iraqi delegation's presence in New York, resulted in a "change of heart (strategy) in Baghdad. They now truly believe that total sanction lifting is possible and soon; therefore no need to go the Humanitarian [*sic*] route as a starter."); Winston Tubman note-to-file (Aug. 3, 1993); Hans Corell memorandum to Boutros Boutros-Ghali (Mar. 23, 1994) (on sale of Iraqi oil under Security Council Resolutions 706 (1991) and 712 (1991)); Mohammed Said Al-Sahaf letter to Boutros Boutros-Ghali (July 25, 1993).

<sup>107</sup> Boutros Boutros-Ghali interview (May 2, 2005); Mohammed Said Al-Sahaf letter to Boutros Boutros-Ghali (July 25, 1993).

<sup>108</sup> Winston Tubman note-to-file (Aug. 3, 1993); Boutros Boutros-Ghali interview (May 2, 2005).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 2

#### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

leaks of information to any party during the negotiations which increased the Westerners' reservations towards him. . . . And when he sought their opinion about sending a letter to the minister encouraging Iraq to return its negotiating team to New York, they refused. The Secretary-General feels embarrassed now and is being asked to present a report to the Security Council about the status of the negotiations and he requests a quick reply from Iraq regardless of whether it is positive or negative.

The Secretary-General's assistant also expressed doubt that Mr. Ekeus's visit to Baghdad was intended to shift Iraq's interest away from the oil-for-food negotiations and toward a lifting of sanctions. Moreover, she added that no one on the Security Council believed that this policy change would occur in the near future.<sup>109</sup>

Nevertheless, further attempts by Secretary-General Boutros-Ghali to rekindle oil-for-food negotiations were unsuccessful. When recently interviewed about these events, the former Secretary-General confirmed that the Iraqi leadership was interested only in having sanctions lifted. In September 1993, the Secretary-General tried again to correct the misimpression held by Iraq in a meeting in Geneva with Deputy Prime Minister Aziz. But it was to no avail, as Iraq's Foreign Minister soon advised the Secretary-General that the oil-for-food resolutions were "adopted to colonize Iraq" and that "[w]e have forgotten about the resolution from the beginning." According to Iraq's Foreign Minister, his country stood willing to "wait and suffer" until sanctions were lifted.<sup>110</sup>

## D. UNSCOM AND THE SECRETARY-GENERAL

Iraqi officials placed intense pressure on UNSCOM to relent on its requirements and recommend the lifting of sanctions for the humanitarian good of Iraq. Mr. Ekeus, who faced protests from Iraqi citizens on some of his visits, stated that he felt pressure from Secretary-General Boutros-Ghali "as strongly as from any other place."<sup>111</sup>

<sup>109</sup> Iraq Mission cable to the Ministry for Foreign Affairs (Aug. 10, 1993). The Secretary-General's assistant, Fayza Abounaga, was a Principal Officer in the Executive Office of the Secretary-General at that time. United Nations Secretariat staff list, ST/ADM/R.49 (Aug. 31, 1996). Ms. Abounaga, presently an official in the Egyptian government, has not responded to multiple requests for interviews and has been consistently unavailable for telephone and in-person discussions.

<sup>110</sup> Boutros Boutros-Ghali interview (May 2, 2005); United Nations Information Service at Geneva, Tariq Aziz press statement (Sept. 1, 1993); Mourad Wahba notes of Boutros Boutros-Ghali's meeting with Mohammed Said Al-Sahaf (Oct. 5, 1993). Other documents similarly reflect Iraq's misimpression that sanctions would soon be lifted. Winston Tubman note-to-file (Aug. 3, 1993).

<sup>111</sup> Rolf Ekeus interview (Feb. 19, 2005); Charles Duelfer interview (July 8, 2005); Rachel Davies interview (July 19, 2005). Mr. Duelfer was the Deputy Executive Chairman of UNSCOM at the time. Charles Duelfer interview (July 8, 2005).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 2

#### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

The Secretary-General was skeptical of UNSCOM, which reported to the Security Council and not to him. According to Sir Marrack Goulding, who then served as Under-Secretary-General of the Department of Political Affairs, the Secretary-General viewed UNSCOM as “an American creation implanted in his Secretariat and which undermined his authority.”<sup>112</sup>

In early 1994, the Secretary-General expressed his concerns about UNSCOM to others, suggesting that Mr. Ekeus talked about being able to recommend that sanctions be lifted in order to “obtain concessions from Iraq,” even though the situation would not change. Later that year, in a meeting with the Secretary-General, Mr. Ekeus stated that he felt a responsibility toward Iraq because he had encouraged Iraq to cooperate with UNSCOM based on a “distinct hope” that it would lead to the lifting of sanctions under paragraph 22. The Secretary-General interjected that the responsibility for that political decision rested with the Security Council, not UNSCOM.<sup>113</sup>

When interviewed, Mr. Ekeus stated it was his impression that during UNSCOM briefings over the years, Secretary-General Boutros-Ghali’s main concern was to end sanctions in order to remedy the humanitarian situation; the Secretary-General lacked interest in UNSCOM’s reports on the status of weapons programs in Iraq. For his part, the former Secretary-General agreed when interviewed that he and Mr. Ekeus had had “different missions” with respect to Iraq. Dr. Boutros-Ghali claimed that, at the time, he was concerned only with the “terrible” humanitarian situation in Iraq. He knew that, although Mr. Aziz favored an oil-for-food program, Saddam Hussein opposed the program and only wanted sanctions lifted. The Secretary-General believed that Mr. Ekeus provided Iraq with “wrong information” about the likelihood of having sanctions lifted in order to induce further weapons disclosures. But this was a promise Mr. Ekeus could not realistically deliver. He believed that even if Iraq received a “clean bill” from UNSCOM on weapons, the United States would find a reason to avoid lifting sanctions.<sup>114</sup>

## E. PROMISING DEVELOPMENTS ON THE SANCTIONS FRONT IN 1995

In early 1995, UNSCOM reported great progress in fulfilling its weapons inspection and monitoring duties in Iraq. Although certain unresolved issues remained in the area of chemical and biological weapons, UNSCOM reported that Iraq showed a continued willingness to work with weapons inspectors. The positive developments with UNSCOM contributed to the growing division among the permanent members of the Security Council. France, Russia, and China, on the one hand, favored the consideration of modifying sanctions to reward Iraq for its cooperation,

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<sup>112</sup> Sir Marrack Goulding interview (Mar. 23, 2005); John Scott interview (June 14, 2005); Rolf Ekeus interview (Feb. 19, 2005); Rachel Davies interview (July 19, 2005); Jean-Claude Aimé interview (May 23, 2005). At the time, Mr. Aimé was Secretary-General Boutros-Ghali’s Chef de Cabinet. *Ibid.*

<sup>113</sup> Neil Briscoe notes of Boutros Boutros-Ghali’s meeting with Max Van der Stoel (Jan. 21, 1994); Wolfgang Weisbrod-Weber notes of Boutros Boutros-Ghali’s meeting with Rolf Ekeus (Mar. 4, 1994); Boutros Boutros-Ghali interview (May 2, 2005).

<sup>114</sup> Rolf Ekeus interview (Feb. 19, 2005); Charles Duelfer interview (July 8, 2005); Boutros Boutros-Ghali interview (May 2, 2005).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

and the United States and the United Kingdom, on the other, insisted on the maintenance of sanctions until all original Security Council demands on Iraq had been satisfied.<sup>115</sup>

On January 10, 1995, Executive Chairman Ekeus delivered an encouraging report to the Security Council on Iraq's weapons verification and monitoring system. The positive report provoked discussion in the Security Council on modifying sanctions. The representative of Russia noted that "[w]hile he agreed that all of the Council's resolutions adopted following the Gulf War must be implemented, he could not agree with the principles of 'all or nothing.'" The representative from France agreed, stating, "If the Council was seeking ways of encouraging Iraq to provide more information, then it must itself provide reasonable assurance that at some given time it would consider that Iraq had fulfilled its obligations [and] some political signal must be given in return to nudge Iraq further along the right path."<sup>116</sup>

On March 13, 1995, the Security Council undertook its periodic review of sanctions against Iraq, and, while there was general agreement that conditions did not yet exist to modify sanctions, there was disagreement as to the proper approach. Countries like Nigeria, Indonesia, and China proposed a "gradualistic approach to the eventual lifting of sanctions." France and Russia argued that the time to modify sanctions "might no longer be far off" and "they further suggested that the Council recognize the considerable distance Iraq had come towards complying with its obligations." The United States and the United Kingdom, among other countries, "stated flatly that they saw no grounds for change."<sup>117</sup>

## **F. SECURITY COUNCIL RESOLUTION 986**

In March 1995, the officials in the Secretariat perceived that, if UNSCOM reported in April that Iraq had fulfilled its weapons disclosures obligations, the Security Council sanctions review in mid-May was "likely to prove contentious, with France and Russia perhaps joined by others,

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<sup>115</sup> During Security Council consultations, the Russian Federation argued that, while demanding full compliance with all resolutions, the Security Council should acknowledge the fact that the progress made would not have been possible without the cooperation of Iraq and that the Council should not, for example, fail to react positively to Iraq's recognition of Kuwait—something the Council had long demanded. France and Russia also put forward a draft to consider partial reduction of sanctions to encourage further cooperation. France favored applying paragraph 22 of Resolution 687 as soon as circumstances permitted, but felt that the time had not yet come to lift or reduce sanctions. DPA notes of Security Council consultations (Jan. 12, 1995). China stated that Iraq should fully comply with Security Council resolutions and that the Council should encourage Iraq to cooperate further. China supported the proposal that the Council should wait for UNSCOM's upcoming report before taking any decision on sanctions. The United States and the United Kingdom argued that the draft resolution for a humanitarian program should not be viewed as "time-sensitive" and should not be linked to the UNSCOM report. DPA notes of Security Council consultations (Apr. 6, 1995).

<sup>116</sup> DPA notes of Security Council consultations (Jan. 10, 1995); DPA notes of Security Council consultations (Jan. 12, 1995); DPA notes of Security Council consultations (Apr. 6, 1995).

<sup>117</sup> DPA notes of Security Council consultations (Mar. 13, 1995).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

arguing for the easing or lifting of sanctions.”<sup>118</sup> Madeleine Albright, then serving as the United States Permanent Representative to the United Nations, was charged by the United States Government to take “a hard line” on Iraq. It was evident to United States officials, however, that, in the face of growing concern among Arab countries for the plight of the Iraqi people, the United States was beginning to lose support for sanctions in the Security Council. In an effort to maintain the embargo, President Clinton instructed Ambassador Albright to travel to several countries in the Middle East and Europe to garner support for sanctions. During her tour of these countries, which included new members of the Security Council, Ambassador Albright proposed passing a new oil-for-food resolution to address the humanitarian situation in Iraq.<sup>119</sup>

In drafting a new resolution for an oil-for-food program, the United States and the United Kingdom took seriously Iraq’s reasons for rejecting the prior resolutions, and sought to address the sovereignty concerns expressed by Iraq in prior negotiations. Anticipating Iraq’s “excuses” from earlier years, the aim of the United States was to “make a good-faith effort to draft a plan that Iraq would have no reason to reject.”<sup>120</sup>

By March 1995, Argentina introduced the new resolution and Oman, Rwanda, the United Kingdom, and the United States co-sponsored the proposal. Meanwhile, officials from the United Nations and Security Council member states were informally meeting with Iraqi officials for consultations on the resolution. In the spring of 1995, the Secretary-General met with Ambassador Hamdoun and stated that in his view Iraq should not reject the proposed oil-for-food resolution. Instead, the Secretary-General suggested that Iraq seek more favorable provisions by raising its concerns to the Security Council and having the member states debate the terms of the proposed resolution. The Secretary-General reiterated that the proposed resolution should not be viewed as a substitute for paragraph 22 of Resolution 687.<sup>121</sup>

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<sup>118</sup> Judith Karam and Raymond Sommereyns briefing note for Boutros Boutros-Ghali on Iraq-Kuwait (Mar. 6, 1995) (emphasis deleted).

<sup>119</sup> United States official #16 interview (Jan. 11, 2005); see also United States official #9 interviews (Dec. 22, 2004 and Aug. 17, 2005); DPA weekly report (Feb. 24, 1995) (reporting “Significant Developments In Preventative Diplomacy And Peacemaking”); Judith Karam and Raymond Sommereyns briefing note for Boutros Boutros-Ghali on Iraq-Kuwait (Mar. 6, 1995) (indicating that “the U.S. may be preparing a new initiative on this subject in a manner intended to overcome some of Iraq’s previous objections”); Luis Torres de la Llosa, “UN launches diplomatic offensive to keep Iraq under embargo,” *Agence France-Presse*, Feb. 23, 1995; “Albright tours seven countries on Iraqi embargo,” *Reuters News*, Feb. 23, 1995; Farhan Haq, “Iraq: Battle Lines are Firm as Sanctions Vote Nears,” *Inter Press Service*, Feb. 27, 1995.

<sup>120</sup> Provisional record of Security Council meeting, S/PV.3519 (Apr. 14, 1995); United States official #16 interview (Jan. 11, 2005); United States official #2 interviews (Jan. 10 and Aug. 17, 2005); United States official #9 interview (Aug. 17, 2005); France official #5 interview (Mar. 22, 2005).

<sup>121</sup> Draft Security Council resolution, Argentina, Oman, Rwanda, the United Kingdom, and the United States, S/1995/292 (Apr. 13, 1995); Provisional record of Security Council meeting, S/PV.3519 (Apr. 14, 1995) (indicating the beginning of the Security Council’s consideration of the draft resolution); Argentina official #1 interview (June 7, 2005); DPA notes of Security Council meeting (Mar. 31, 1995) (joint introduction of the resolution by Argentina, the United Kingdom, and the United States); Iraq official



# **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

## **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

On April 14, 1995, the Security Council adopted Resolution 986 establishing the basic framework for what would become the Oil-for-Food Programme. Later that day, the Secretary-General met with Deputy Prime Minister Aziz at the Secretary-General's residence to discuss the implementation of the new resolution. In a press release, the Secretary-General announced that "based on a step-by-step approach, I am hopeful that we will soon reach the time when Iraq implements the resolutions of the Security Council and that this would lead to a total lifting of the sanctions."<sup>122</sup>

Some provisions of the new resolution were more favorable to Iraq in order to address its concerns about resolutions 706 and 712, and some provisions were more stringent in order to address the concerns of certain Security Council members. In a concession to Iraq (and in contrast to Resolutions 706 and 712), Resolution 986 authorized Iraq to sell a larger quantity of oil. Additionally, the new resolution authorized Iraq to export oil through two outlets—the Kirkuk-Yumurtalik pipeline in the north as well as the Mina al-Bakr oil terminal in the south.<sup>123</sup>

Resolution 986 also assigned different Programme responsibilities to the Secretary-General, the Security Council through its 661 Committee, and the Government of Iraq. The new resolution shifted the Programme's center of gravity away from the Security Council and toward the Secretary-General by granting the Secretary-General greater discretion to implement the Programme. The Secretary-General had authority, among other things, to do the following:

1. Submit the report that would cause the Programme to enter into force (rather than following a decision by the Security Council);
2. Establish and administer the escrow account and keep Iraq fully informed (without prior authorization from the 661 Committee);
3. Monitor the sale of oil by appointing independent oil inspectors to oversee the oil exports (who would verify, among other things, that the purchase price was reasonable);
4. Approve the distribution plan (rather than the Security Council) for the use of the funds deposited in the escrow account for exported goods requested by Iraq;

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interview (stating that Iraqi officials held informal talks with Security Council member state representatives regarding Resolution 986).

<sup>122</sup> Provisional record of Security Council meeting, S/PV.3519 (Apr. 14, 1995); DPA notes of Security Council meeting (Apr. 14, 1995); *Unvanquished*, p. 220; Secretary-General Press Release, SG/SM/5613 (Apr. 14, 1995); *The UN and Iraq-Kuwait Conflict*, p. 103.

<sup>123</sup> See S/RES/986, paras. 1, 6 (Apr. 14, 1995) (mandating that a "larger share" of petroleum and petroleum products be shipped via the Kirkuk-Yumurtalik pipeline and that the remainder be shipped from the Mina al-Bakr oil terminal); see also Arnstein Wigestrang interview (Nov. 30, 2004) (stating that the opening of a second oil export outlet weakened the oversight of the program).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

5. Monitor the equitable distribution of goods, based on input from United Nations personnel and Iraq; and
6. Report to the Security Council in 90 and 180-day phases his observations on whether Iraq had ensured the equitable distribution of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs, including in his reports any observations on the adequacy of the revenues to meet Iraq's humanitarian needs, and on Iraq's capacity to export sufficient quantities of petroleum and petroleum products.<sup>124</sup>

Similar to the earlier resolutions, Resolution 986 also authorized the Secretary-General to take the actions necessary to ensure effective implementation of the resolution, to enter into any necessary arrangements, and to report to the Council when he had done so. The resolution's heightened role for the Secretary-General was a deliberate effort on the part of the Security Council to increase the likelihood of success in negotiating an oil-for-food program with Iraq. The earlier resolutions had provided a fixed and detailed program to be reviewed by the 661 Committee and later approved by the Security Council, but allowed for very little negotiating flexibility. This limited negotiating flexibility, coupled with Iraq's intransigence, contributed to the failure of earlier negotiations. In contrast, as Ambassador Albright noted during a Security Council meeting nearly a year later, Resolution 986 deliberately provided the Secretary-General with more negotiating flexibility while the Security Council retained the most important principles on which there could be no compromise.<sup>125</sup>

For its part, the 661 Committee retained the right to approve or reject all contracts submitted by prospective buyers of Iraqi oil or suppliers of humanitarian goods. The 661 Committee was also authorized to develop rules and procedures to implement designated provisions of the resolution.<sup>126</sup>

As for the Government of Iraq, Resolution 986, unlike Resolutions 706 and 712, recognized and affirmed the sovereignty and territorial integrity of Iraq. However, the new resolution mandated that the United Nations Inter-Agency Humanitarian Programme receive separate funding and administer the equitable distribution of goods imported under the resolution in the three northern governorates of Dohuk, Erbil, and Suleimaniyah. Although Resolution 986 limited Iraq's control over the distribution of humanitarian goods in the north, the new resolution tried to alleviate some

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<sup>124</sup> S/RES/986, paras. 3, 6-8, 11, 13 (Apr. 14, 1995); Gian Luca Burci interview (Dec. 1, 2004).

<sup>125</sup> S/RES/986, para. 13 (Apr. 14, 1995); see also DPA notes of Security Council meeting (Feb. 22, 1996) (concerning Security Council debate on the role of the Sanctions Committee during negotiations between the United Nations and Iraq under Resolution 986). The principles that could not be compromised concerned the equitable distribution of goods (in the northern governorates), the diversion of money to the Iraqi regime (which the Security Council wanted to avoid), and the mandatory thirty percent deduction for the Compensation Commission.

<sup>126</sup> S/RES/986, paras. 1(a), 8(a), 12 (Apr. 14, 1995).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

of Iraq's sovereignty concerns by allowing Iraq the right to guarantee the equitable distribution of the humanitarian aid throughout the rest of the country. Resolution 986 also granted Iraq the exclusive right to request the humanitarian goods it sought to purchase. The fact that the resolution did not propose any new in-country monitoring mechanisms led Ralph Zacklin, then Director in OLA, to write in a memorandum on the subject: "This is far less intrusive a condition than had been proposed under 706 and 712."<sup>127</sup>

## G. IRAQ'S REJECTION OF RESOLUTION 986

The dialogue between the Security Council and Iraqi officials during the drafting of Resolution 986 was unauthorized by Baghdad. Nevertheless, prior to the adoption of the resolution, Deputy Prime Minister Aziz and other Iraqi officials informally discussed their concerns regarding the proposed draft with Security Council members, including France, Russia, China, and the United Kingdom. According to a senior Iraqi official, Mr. Aziz sent a cable to Baghdad describing certain developments in the negotiations that were beneficial to Iraq. In the cable, he mentioned that the ambassadors of France and Russia had advised Iraq to accept the resolution. The senior Iraqi official recalls that Mr. Aziz appeared to be indirectly encouraging the leadership in Iraq to accept the resolution. However, the instructions from Baghdad were that Iraq would not accept the resolution.<sup>128</sup>

Despite the Security Council's efforts to address Iraq's concerns, Iraq rejected Resolution 986. Mr. Aziz returned to Baghdad in Saddam Hussein's disfavor as a result of his advocacy for the resolution.<sup>129</sup>

On May 15, 1995, a month after Resolution 986 was adopted, Iraq's Minister for Foreign Affairs, Mohammed Said Al-Sahaf, told Secretary-General Boutros-Ghali that Iraq would not participate in implementing Resolution 986 because it "would delay consideration by the Security Council members of implementing paragraph 22." Among other reasons for Iraq's resistance was concern that the monitoring plan was an opportunity for "spies" to wander the country and that the resolution infringed upon Iraq's sovereignty.<sup>130</sup>

<sup>127</sup> Ibid., paras. preamble, 8, 18; United States official #16 interview (Jan. 11, 2005); Ralph Zacklin memorandum to Boutros Boutros-Ghali (Apr. 7, 1995) (comparing drafts of Resolution 986 to Resolutions 706 and 712).

<sup>128</sup> Iraq official interview (on Iraq's informal discussions); DPA notes of Security Council meeting (Apr. 6, 1995) (noting that "a number of members indicated that they would be meeting with Tariq Aziz shortly").

<sup>129</sup> Iraq official interview.

<sup>130</sup> Yasser Sabra notes of Boutros Boutros-Ghali's meeting with Mohammed Said Al-Sahaf (May 15, 1995); see also France official #5 interview (Mar. 22, 2005) (referring to major problems that Mr. Aziz raised regarding Resolution 986); see also *Unvanquished*, p. 220; *The UN and Iraq-Kuwait Conflict*, p. 103; Iraq official interview. During a meeting with the President of the Security Council, the Minister for Foreign Affairs of Iraq described Iraq's objections: (1) to the requirement that a share of oil be shipped through Turkey; (2) to the United Nations administration of a program in the northern governorates as a

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

In the months after the Security Council adopted Resolution 986, there was no progress on gaining Iraqi acceptance. Debate intensified in the Security Council regarding the interpretation of what was required to modify or lift sanctions. On the one hand, the United States argued that Iraq must be “in full compliance with all resolutions” before sanctions could be eased or modified. On the other hand, France took the view that Iraq’s compliance with the weapons of mass destruction provisions of Resolution 687, as well as recent policies and practices of the Government of Iraq, would necessitate changes to the oil embargo.<sup>131</sup>

Along with debating which resolutions Iraq would need to satisfy in order for the Security Council to lift sanctions, member states argued over whether Iraq’s cooperation with UNSCOM at that time warranted a change in the sanctions regime. Russia favored a gradual lifting of sanctions while the United Kingdom contended that the “gloomy” review of Iraq’s cooperation warranted no change in the sanctions regime. The United States asserted sanctions be maintained because Iraq continued to defy the Security Council with “half measures and outright deception” by asserting its seeming compliance with Resolution 687 while ignoring UNSCOM’s request for full and complete disclosure of its biological weapons program.<sup>132</sup>

For his part, the Secretary-General continued to urge Iraq to accept the resolution and to begin negotiations. The Secretary-General claimed that Resolution 986 would help solve the international community’s “confidence crisis” with Iraq and that “the implementation of the resolution, despite all its deficiencies,” would permit a “political result that would be much more important than the final outcome of the resolution.” Despite the Secretary-General’s insistence that Iraq’s acceptance of Resolution 986 would not impede Iraq’s goal of lifting the sanctions, Iraq refused to accept the new resolution.<sup>133</sup>

In the meantime, during the summer of 1995, Iraq came as close as it ever had to having sanctions removed or eased, based on its cooperation with UNSCOM, and Resolution 986 was virtually ignored. Iraq took a major step in complying with its disclosure obligations on chemical weapons by revealing to UNSCOM the location of significant chemical weapons material, and UNSCOM

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violation of Iraq’s sovereignty; and (3) to the “spirit” of Resolution 986, which did not “reflect the cooperation demonstrated by Iraq over the past 18 months.” The Foreign Minister stated that Iraq’s “goal was to make it possible for para. 22 of resolution 687 (1991) to be applied by the Council.” DPA notes of Security Council consultations (May 12, 1995).

<sup>131</sup> DPA notes of Security Council consultations (Apr. 7, 1995); DPA notes of Security Council consultations (May 12, 1995); DPA notes of Security Council consultations (July 12, 1995); United States official #9 interview (Aug. 17, 2005).

<sup>132</sup> Ibid.

<sup>133</sup> Yasser Sabra notes of Boutros Boutros-Ghali’s meeting with Mohammed Said Al-Sahaf (May 15, 1995).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

inspectors felt that they had made “considerable progress in clearing up” the issue of Iraq’s chemical weapons.<sup>134</sup>

Mr. Ekeus also reported to the Security Council that “Iraq had no capability to threaten its neighbours with missiles, chemical and biological weapons.” He further confirmed that Iraq was “no longer acquiring weapons of mass destruction” and that he was “satisfied with progress achieved in the destruction and elimination of missiles and chemical weapons and with the ongoing monitoring and verification programme.” UNSCOM’s June report to the Security Council formally concluded that Iraq had “on the whole cooperated with UNSCOM in the ballistic missiles and chemical weapons areas and that most proscribed weapons had been accounted for.”<sup>135</sup>

However, UNSCOM had detected evidence that Iraq had been hiding information on its biological weapons program. Emboldened by the progress that Iraq was making with UNSCOM, Mr. Aziz told Mr. Ekeus, in June 1995, that Iraq was willing to disclose information on its biological weapons, but only if it received something in return. Iraq wanted UNSCOM and the IAEA “to certify that their files on Iraq’s chemical weapons, missiles and nuclear weapons were closed and that the United Nations monitoring and verification system was operational.” Iraq believed that information about its biological weapons program was the only unresolved issue separating it from implementation of paragraph 22.<sup>136</sup>

On July 1, 1995, Mr. Ekeus reported that Iraq had admitted to UNSCOM for the first time that it had had an offensive biological weapons program from 1985 to 1990. In July 1995, Mr. Ekeus and Charles Duelfer, Deputy Executive Chairman of UNSCOM, reported to the Security Council that Iraq’s verbal disclosure represented a “major change.” The Security Council reaffirmed the continuation of sanctions but discussed prospects for agreeing to the lifting of the sanctions in the future.<sup>137</sup>

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<sup>134</sup> Rolf Ekeus press briefing (June 21, 1995); see also Rolf Ekeus interview (Feb. 19, 2005); John Scott interview (June 14, 2005).

<sup>135</sup> DPA notes of Security Council meeting (June 20, 1995) (recounting that Iraq was no longer a threat to its neighbors); “Ninth report of the Executive Chairman of the Special Commission established by the Secretary-General pursuant to paragraph 9(b)(1) of Security Council resolution 687 (1991), on the activities of the Special Commission,” S/1995/494 (June 20, 1995) (hereinafter “Ninth report of the Executive Chairman of UNSCOM”); DPA notes of Security Council meeting (June 22, 1995) (on reactions of different members of the Security Council to the “Ninth report of the Executive Chairman of UNSCOM”).

<sup>136</sup> Rolf Ekeus interview (Feb. 19, 2005); David Kay interview (July 8, 2005); Rachel Davies interview (July 19, 2005); Rolf Ekeus press briefing (June 21, 1995); John Scott interview (June 14, 2005).

<sup>137</sup> DPA notes of Security Council consultations (Aug. 10, 1995) (discussing July 1, 1995 oral disclosure and referring to Iraq’s “formal declaration” on August 4, 1993); DPA notes of Security Council consultations (July 11, 1995) (referring to “the major change”); “Report of the Secretary-General on the Status of the Implementation of the Special Commission’s plan for ongoing monitoring and verification of Iraq’s compliance with relevant parts of section C of Security Council Resolution 687 (1991),” S/1995/864, paras. 10-20 (Oct. 11, 1995) (hereinafter “UNSCOM October Report”) (outlining the history of

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 2

#### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

A month later, in August 1995, Mr. Ekeus reported to the Security Council that Iraq had, upon request, provided UNSCOM with a formal declaration of its biological weapons program. Iraq claimed that it had, in a “unilateral decision,” destroyed all its biological agents in October 1990. Iraq also denied working on the “weaponization” of its biological agents. After UNSCOM questioned a number of Iraq’s claims, Deputy Prime Minister Aziz agreed to a plan for UNSCOM inspectors to verify Iraq’s declaration.<sup>138</sup>

Given its growing support in the Security Council, Iraq decided, however, that the time had come to force the issue of lifting the sanctions. On August 5, 1995, Deputy Prime Minister Aziz told Mr. Ekeus that Iraq would cease cooperation with both the Security Council and UNSCOM if no progress was made toward lifting the sanctions regime by August 31, 1995.<sup>139</sup>

## H. THE DEFECTION OF GENERAL HUSSEIN KAMEL

On August 8, 1995, in a stunning turn of events, General Hussein Kamel Hassan Al-Majid, Saddam Hussein’s son-in-law and former Iraqi Minister of Industry and Military Industrialization, defected to Amman, Jordan. With his defection, Iraq’s nuclear, biological, and missiles weapons programs under his command were exposed to the world and Iraq’s hopes for the imminent lifting of sanctions would soon be dashed. On August 14, 1995, Mr. Aziz advised Mr. Ekeus that Iraq’s deadline for the lifting of sanctions was no longer in effect.<sup>140</sup>

Mr. Ekeus had dealt primarily with Deputy Prime Minister Aziz and Oil Minister Rashid, but also on occasion with General Kamel—whom Mr. Ekeus believed to be closer to the circle of power than Mr. Aziz. The Deputy Prime Minister was a proponent of developing better relations with the United States as part of Iraq’s campaign to lift sanctions, and his views often fell on deaf ears with Saddam Hussein. In contrast, prior to his defection, General Kamel took a hard line approach against diplomacy. General Kamel’s views were often more in line with those of Saddam Hussein, who had an abiding hatred for the United States administration and its policies.

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UNSCOM’s interaction with Iraq); DPA notes of Security Council consultations (July 11, 1995) (in the meeting, the President of the Security Council stated at the outset that “[d]elegates shared the view that there was no agreement to suspend or lift the sanctions regime against Iraq” and that “the President would convey this to the Press along traditional format”).

<sup>138</sup> DPA notes of Security Council consultations (Aug. 10, 1995); see also “UNSCOM October Report,” paras. 13 and 71 (noting that Iraq made written disclosure on August 4 that its biological program had not been “weaponized” and noting that Iraq “firmly denied weaponization of these or any other biological warfare agents”).

<sup>139</sup> “UNSCOM October Report,” para. 13; see also DPA notes of Security Council consultations (Aug. 10, 1995) (noting Mr. Ekeus’s briefing to the Security Council of the Iraqi ultimatum).

<sup>140</sup> Iraq officials interviews; Rolf Ekeus press briefing (Aug. 28, 1995); John Scott interview (June 14, 2005); Lyndsay Griffiths, “Britain sees no quick letup in Iraq sanctions,” *Reuters News*, Oct. 11, 1995; John Lancaster, “Despite Defections, Saddam’s Grip on Power Seems Secure,” *Washington Post*, Sept. 3, 1995, p. A25; “UNSCOM October Report,” para. 14; “Iraq’s offer to reveal secrets could help end embargo: Ekeus,” *Agence France-Presse*, Aug. 15, 1995.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

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Mr. Ekeus's sense was that, first, Saddam Hussein had been deeply shaken by the defection—a press account suggested that he publicly denounced General Kamel as a “Judas”—and, second, Mr. Aziz had gained immense political backing to use diplomacy to mitigate the damage.<sup>141</sup>

Immediately following the defection, Iraqi officials invited Executive Chairman Ekeus, the Director General of the IAEA, and their respective delegations to Baghdad to receive information concerning Iraq's past nuclear program, which was allegedly withheld at the instruction of General Hussein Kamel, unbeknownst to senior Iraqi leaders. In the weeks that followed, Iraqi authorities provided information and some supporting documents to the delegations on, most significantly, Iraq's progress in its covert nuclear and weaponization programs from 1990-1991 (just prior to the first Gulf War). Iraq had initially hoped that IAEA and UNSCOM would be satisfied with interviews alone, but the delegations pressed the Iraqis to produce additional supporting documents relating to the weapons programs. Just prior to the departure of the IAEA and UNSCOM delegations, Iraqi authorities “announced the discovery of thousands of documents and several tons of metals and other materials on a farm said to be owned by the family of General Hussein Kamel.” The IAEA and UNSCOM delegations were brought to the farm to review and analyze the significant cache of documents and materials that had been locked in a chicken house on his property. Notably, among containers of documents on Iraq's nuclear weapons program, was significant documentation containing biological weapons information.<sup>142</sup>

It became immediately apparent to both IAEA and UNSCOM officials that given the “sheer magnitude” of new documentation revealed on Iraq's missile, chemical and biological programs, it would take months to inventory, translate, and process all the materials. It was further evident that, given the time it would take to process the new information on Iraq's illicit weapons

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<sup>141</sup> Rolf Ekeus interview (Feb. 19, 2005); Iraq officials interviews; Daniel Williams, “U.S. Questions Top-Level Iraqis; Saddam Calls Defectors ‘Judas,’” *Washington Post*, Aug. 12, 1995, p. A15; Leon Barkho, “Saddam denounces defecting son-in-law as a Judas,” *Reuters News*, Aug. 11, 1995; Charles Duelfer interview (July 8, 2005).

<sup>142</sup> “UNSCOM October Report,” paras. 15-24 (describing Iraq's response following General Kamel's defection); “Eighth report of the Director General of the International Atomic Energy Agency on the implementations of the Agency's plan for future ongoing monitoring and verification of Iraq's compliance with paragraph 12 of Resolution 687 (1991),” S/1995/844, paras. 23-24 (Oct. 6, 1995) (hereinafter “Eighth report of IAEA”) (outlining the events that followed General Kamel's defection and describing the material discovered on General Kamel's farm); Rolf Ekeus press briefing (Aug. 28, 1995); Rolf Ekeus interview (Feb. 19, 2005) (recalling that Iraqi officials arranged for him to interview Iraqi scientists involved in the weapons programs); John Scott interview (June 14, 2005) (recalling his visit to General Kamel's chicken farm); Rachel Davies interview (July 19, 2005) (same); Tariq Aziz interview (Mar. 1, 2005) (stating that he had encouraged Saddam Hussein to invite Executive Chairman Ekeus to Baghdad to provide him with the information that General Kamel had refused to give UNSCOM in the past); “U.N. Inspector Meets with Iraqi Defector,” *Federal News Service—Mid-East Newswire*, Aug. 22, 1995.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

programs, the Security Council would be in no position to reconsider the embargo on Iraq for another several months.<sup>143</sup>

On August 25, 1995, UNSCOM reported to the Security Council that the Government of Iraq claimed to have been misled by General Kamel and, contrary to its previous statements, UNSCOM disclosed that Iraq had produced significantly more anthrax than previously known, as well as aflatoxin, a toxic agent causing cancer. Iraq admitted to “weaponization immediately prior to the outbreak of the Gulf War, including the filling of biological warfare agents, like anthrax, botulium toxin, and aflatoxin, into 166 bombs and 25 Al Hussein missile warheads.” UNSCOM reported that Iraq had pursued intensive production of biological weapons and armed its weapons with them for use during the Gulf War. There were also new revelations on missile and nuclear weapons. According to notes of this meeting, “Council members were unanimous in their insistence on Iraq’s full compliance with Council resolutions,” and “[m]any saw Iraq’s new disclosures as a vindication of the ‘hard line’ the Council had taken and cast continued doubt on Baghdad’s credibility.”<sup>144</sup>

In February 1996, six months after he defected, General Kamel returned to Baghdad and was murdered, along with several members of his family.<sup>145</sup>

## I. IRAQ RECONSIDERS NEGOTIATIONS UNDER RESOLUTION 986

With the political situation that resulted from General Kamel’s defection, Iraqi officials realized that the sanctions would be extended for some time. This new political climate, coupled with the

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<sup>143</sup> General Kamel allegedly stored on his farm material that amounted to “over 680,000 pages of printed documents, computer disks, videotapes, microfilm and microfiche, and various items and materials relating to its past banned weapons programmes.” “Eighth report of the IAEA,” paras. 10, 13, 29 (outlining the events of August 20, 1995, and describing the nature and magnitude of the material discovered on Mr. Kamel’s farm); see also *The UN and Iraq-Kuwait Conflict*, pp. 94, 138; John Scott interview (June 14, 2005) (recalling his visit to General Kamel’s chicken farm); France official #5 interview (Mar. 22, 2005) (discussing the effect of the discovery of new evidence on the consideration of sanctions by the Security Council); Jack Redden, “Ekeus in Iraq seeking answers for report to the U.N..[sic],” *Reuters News*, Sept. 29, 1995.

<sup>144</sup> “UNSCOM October Report,” paras. 15, 75-76 (the former describing the events which transpired in August 1995 and the latter providing a detailed review of biological weapons revelations); DPA notes of Security Council consultations (Aug. 25, 1995) (describing Mr. Ekeus’s briefing on General Kamel’s defection, the new information on Iraq’s weapons capabilities, and the response by Security Council member states); Rolf Ekeus press briefing (Aug. 28, 1995); “Defection spurs Saddam to disclose biological arms info,” *USA Today*, Aug. 24, 1995, p. 15A; Maher Chmaytelli, “Iraq’s secret arms programmes bigger than once thought,” *Agence France-Presse*, Aug. 23, 1995.

<sup>145</sup> Iraq officials interviews; Patrick Cockburn, “Vengeance is a Family Affair for Saddam,” *The Independent*, Feb. 26, 1996; “Overseas news—Iraqi killings unlikely to hit oil-for-food deal,” *Financial Times*, Feb. 26, 1996; “Saddam wreaks revenge on Defectors,” *Middle East Economic Digest*, Mar. 4, 1996; Michael Binyon, “Saddam Role in Killing of Sons-in-Law Emerges—Murder,” *The Times*, Mar. 12, 1996.



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

continued deterioration of the Iraqi economy, created a growing willingness in Baghdad—even by Saddam Hussein—to enter into negotiations on implementing Resolution 986.<sup>146</sup>

In response to the new disclosures and revelations regarding Iraq’s weapons programs, the Security Council met on September 8, 1995 and, “in a display of unanimity,” indicated that “Iraq’s credibility had been severely undermined.” The “general atmosphere” was a “hardening of the Council’s position with regard to any easing of sanctions against Iraq,” and “it was suggested that Iraq should reconsider its position” on the oil-for-food proposal “in order to alleviate the suffering of the Iraq people.”<sup>147</sup>

But Iraq was still resistant. Those in Iraq who favored implementing a program sought reassurance from the Secretary-General that he would be open to Iraq’s concerns and would exercise the discretion afforded to him by Resolution 986 accordingly. The Secretary-General’s attitude—as perceived by some Iraqi officials—became an important factor in persuading the regime to permit negotiations pursuant to Resolution 986.<sup>148</sup>

On October 6, 1995, the Secretary-General met at the United Nations with Minister for Foreign Affairs Al-Sahaf and Ambassador Hamdoon to urge Iraq to try the program for an initial six months, and to suggest that Iraq consider entering another round of negotiations “aiming at softening some of the articles in the resolutions.” The Foreign Minister claimed that he needed a “change for the better” to persuade the Iraqi regime to return to the negotiating table. The Secretary-General replied there was none. Then, both the Foreign Minister and Ambassador Hamdoon noted that, unlike earlier resolutions, Resolution 986 granted the Secretary-General latitude to implement the resolution. Ambassador Hamdoon also noted that Resolution 986 provided the Secretary-General discretion to “enter into agreements should he find them necessary” to implement the program. The Secretary-General replied that his new discretion was “all very well in theory,” but the Security Council retained authority to determine whether he had exceeded his mandate. Ambassador Hamdoon clarified that “the Foreign Minister did not wish for amendments to the resolution, but a point of view of the Secretariat that would allow him to recommend restarting negotiations.”<sup>149</sup>

In the meantime, in its much anticipated October 1995 report, UNSCOM provided a full accounting of the new revelations concerning Iraq’s weapons programs. The report also explained that Iraq’s earlier declarations had now been proven false, and previous assessments by

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<sup>146</sup> Iraq officials interviews; Tariq Aziz interview (Mar. 1, 2005).

<sup>147</sup> DPA notes of Security Council consultations (Sept. 8, 1995).

<sup>148</sup> Iraq official interview; Tariq Aziz interview (Mar. 1, 2005).

<sup>149</sup> Mourad Wahba notes of Boutros Boutros-Ghali’s meeting with Mohammed Said Al-Sahaf (Oct. 6, 1995).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

the Commission also needed revision. On November 8, 1995, the Security Council again decided not to modify the sanctions regime.<sup>150</sup>

On October 27, 1995, the Secretary-General met in New York with Taha M. Marouf, Vice President of Iraq, along with Ambassador Hamdoun and others, to discuss initiating negotiations on Resolution 986. In an effort to convince Iraq to agree to an oil-for-food program, the Secretary-General adopted the argument made by Iraq's Minister for Foreign Affairs Al-Sahaf two weeks earlier. This time, the Secretary-General claimed Resolution 986 had granted him "some latitude as compared with Resolutions 706 and 712."<sup>151</sup>

At this meeting, the Vice President announced that Iraq no longer took issue with the export of oil through Turkey via the Kirkuk-Yumurtalik pipeline. The discussion then turned to Iraq's second concern—the amount of oil sales permitted under the resolution. Resolution 986 authorized the Secretary-General to report on the adequacy of the oil revenues to meet Iraq's humanitarian needs. The Secretary-General informed the Iraqi officials that they could request an increase in oil sales after the first six months of the program, but that first the "fears of some parties that increased sales of Iraqi crude would lower oil prices on the international market had to be allayed."<sup>152</sup>

Two weeks later, the Secretary-General met privately at his request with Ambassador Barzan Al-Tikriti, Iraq's Permanent Representative to the United Nations in Geneva (and Saddam Hussein's half-brother), to request that he convey to Baghdad the message that it ought to accept Resolution 986. The Secretary-General pointedly told Ambassador Al-Tikriti that Iraq would "never get another Arab Secretary-General." Following this meeting, the Secretary-General met with journalists and stated that "one element in negotiations could be to allow Iraq to sell larger quantities of oil than foreseen until now"—an assurance that was known to appeal to the Iraq leadership.<sup>153</sup>

In a recent interview, Secretary-General Boutros-Ghali recalled that he had assured Iraqi officials that Iraq would have "flexibility" under the oil-for-food program. He stated that he warned Iraq that there would soon be elections in the United States (for President) and in the United Nations (for Secretary-General), and that both elections could result in leadership that was completely unsympathetic to Iraq. He urged Iraq to negotiate Resolution 986 early in 1996, before any

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<sup>150</sup> "UNSCOM October Report," paras. 15-16, 19, 22, 24-28, 40-44, 55-63, 75-78; see also DPA Notes of Security Council consultations (Oct. 13, 1995) (briefing by Mr. Ekeus to Security Council); DPA notes of Security Council consultations (Nov. 8, 1995).

<sup>151</sup> Mourad Wahba notes of Boutros Boutros-Ghali's meeting with Taha M. Marouf (Oct. 27, 1995).

<sup>152</sup> Ibid.

<sup>153</sup> Hans Corell note to Marrack Goulding (Nov. 9, 1995); see also *Unvanquished*, p. 220; Boutros Boutros-Ghali appointments (Nov. 8, 1995); Boutros Boutros-Ghali interview (May 2, 2005). Mr. Aimé also reiterated that, as an Arab, the Secretary-General took a personal interest in securing the creation of an oil-for-food program. Jean-Claude Aimé interview (May 23, 2005).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

possible changes in the United States administration, while “key players” were still known and the Secretary-General was Iraq-friendly.<sup>154</sup>

During this same time frame, French and Russian diplomats traveled to Baghdad. They urged Iraq to accept Resolution 986. In an effort to persuade the Iraqi leadership to accept Resolution 986, the French Ministry of Foreign Affairs sent a mission to Iraq in late November 1995. During the mission, French officials impressed upon Iraqi officials that the Security Council was “united and firm” in its stance that sanctions would not be lifted until all conditions in Resolution 687 had been satisfied. Deputy Foreign Minister of Russia, Victor Possuvalyuk, also traveled to Baghdad around that time.<sup>155</sup>

With the Security Council’s extension of sanctions in October 1995, the prospect for reducing or lifting the sanctions appeared increasingly bleak. In light of the sanctions extension and the deteriorating conditions in Iraq, senior Iraqi officials reconsidered their position on Resolution 986.<sup>156</sup>

On December 10, 1995, Mr. Aziz met again with the Secretary-General in Geneva. The Secretary-General pointed out that Resolution 986 “provided that negotiations on the actual implementation of the program should occur between Iraq and the Secretary-General, not the Security Council.” According to Mr. Aziz, the Secretary-General also indicated that he would “show understanding” towards Iraq’s positions in implementing an oil-for-food program, but did not promise to do anything unauthorized by Resolution 986. Mr. Aziz suggested that the Secretary-General write a letter inviting Iraq to recommence oil-for-food negotiations as a “face-saving device” for Mr. Aziz to take to Saddam Hussein.<sup>157</sup>

Five days later, on December 15, 1995, the Secretary-General briefed the Security Council in New York on his meeting with Mr. Aziz. He advised that Mr. Aziz “had endeavored to obtain amendments to the resolution,” but the Secretary-General had indicated to Mr. Aziz that there was “‘not one chance in one thousand’ that the Council would agree to change the resolution.” The Secretary-General added that he had tried to impress upon Mr. Aziz that “it might be possible to find some acceptable formulas within the framework of that resolution.”<sup>158</sup>

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<sup>154</sup> Boutros Boutros-Ghali interview (May 2, 2005).

<sup>155</sup> Farouq Choukri, “UN, Iraq to leave the hard part of oil-for-food talks for last,” *Agence France-Presse* (Jan. 30, 1996); see also France official #5 interview (Mar. 22, 2005).

<sup>156</sup> Tariq Aziz interview (Mar. 1, 2005) (recounting that he recommended to Saddam Hussein to consider Resolution 986 because “the country was tired, the people were hungry, and things will take time”).

<sup>157</sup> *Ibid.*; see also *The UN and Iraq-Kuwait Conflict*, pp. 104, 113 (describing the Secretary-General’s meeting with Mr. Aziz in Geneva and encouraging Iraq to start negotiations on the implementation of Resolution 986); *Unvanquished*, p. 258 (describing the Secretary-General’s statement to Iraqi officials that he had the authority to conclude a memorandum of understanding with Iraq on the application of Resolution 986).

<sup>158</sup> DPA notes of Security Council consultations (Dec. 15, 1995).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

In the meantime, UNSCOM developments in late 1995 made matters even worse for Iraq on the sanctions front. UNSCOM reported to the Security Council that the Government of Jordan had intercepted the second of two large shipments of high-grade missile components meant for Iraq. On December 27, 1995, it was reported that Jordanian authorities had also intercepted chemical materials bound for Iraq. At a Security Council sanctions review meeting on January 5, 1996, the member states unambiguously reiterated their collective disappointment in continuing weapons disclosures and reaffirmed the Security Council's decision not to lift sanctions so long as Iraq had "failed the test of UNSCOM."<sup>159</sup>

One further development pushed Iraq to reconsider Resolution 986. On January 5, 1996, in the course of Security Council consultations, the French delegation proposed that the Secretary-General send a mission to Iraq to assess the deterioration of the humanitarian situation and report back to the Security Council with suggestions before the next review of sanctions. The proposal found immediate support among other member states, including the United States, which stressed that such a report should reflect "not only the consequences but also the causes" of the humanitarian situation. Other Security Council members suggested that, to obtain the necessary data, the mission would need "complete freedom of movement." Iraqi officials viewed the proposed mission as an opportunity for the Americans and the British to embarrass Iraq for not agreeing to Resolution 986. In a cable to Baghdad, an Iraqi official recommended that the best way to "kill this initiative" was to agree to implement Resolution 986.<sup>160</sup>

On January 6, 1996, Mr. Aziz sent his special envoy to meet the Secretary-General, then in Cairo, to advise him that Iraq would accept an invitation to start negotiations. Ten days later, on January 16, 1996, the Secretary-General received another message from Mr. Aziz via Ambassador Hamdoon. Mr. Aziz reiterated that, "further to our discussion in Geneva and Cairo, I wish to inform you that if you send us a letter, we would be prepared to enter into a dialogue with you without preconditions to be imposed on us." Two days later, on January 18, 1996, the Secretary-General invited the Deputy Prime Minister to start negotiations. Iraq accepted the invitation the very next day. On Ambassador Hamdoon's request, the parties agreed to postpone the French mission so as not to "complicate" the situation.<sup>161</sup>

<sup>159</sup> Ewen Buchanan and Gustavo Zlauvinen note-to-file (Dec. 21-22, 1995) (regarding the Executive Chairman's briefing of the Security Council); DPA notes of Security Council consultations (Dec. 21, 1995); Randa Habib, "Iraq tried to import 25 million dollars of missile gear: officials," *Agence France-Presse*, Dec. 8, 1995; "Jordan Authorities Seize Chemicals Bound For Iraq," *Dow Jones International News*, Dec. 27, 1995; Ewen Buchanan note-to-file (Jan. 5, 1996) (regarding the Security Council Sixty Day Sanctions Review).

<sup>160</sup> DPA notes of Security Council consultations (Jan. 5, 1996); DPA notes of Security Council consultations (Jan. 15, 1996); Iraq official personal account.

<sup>161</sup> Fayza Aboulnaga briefing of SECCO in Consultations (Jan. 22, 1996); Boutros Boutros-Ghali interview (May 2, 2005); Boutros Boutros-Ghali letter to Tariq Aziz (Jan. 18, 1996); *The UN and Iraq-Kuwait Conflict*, pp. 114, 823-24; Mourad Wahba notes of Boutros Boutros-Ghali's meeting with Nizar Hamdoon (Jan. 19, 1996); *Unvanquished*, p. 259; United States official #16 interview (Jan. 11, 2005). Jean-Bernard Raimond, former French Minister of Foreign Affairs, led a five-day French parliamentary mission to Iraq in

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

#### J. FORMAL NEGOTIATIONS—A FLEXIBLE APPROACH

On the eve of negotiations in early 1996, the Secretary-General gathered his senior staff and directed them to take a “flexible” approach with Iraq. When recently interviewed, the former Secretary-General recalled instructing his lead negotiator—Hans Corell, the Under-Secretary-General for Legal Affairs—to maintain this “flexible approach” with Iraq. The Secretary-General explained what he meant by “flexible approach” in a recent interview: “My instructions were very simple. I just told Corell, they’re obsessed with their sovereignty, so use the word ‘sovereignty’ as much as you can and just keep saying ‘territorial integrity.’ When tensions get high, just repeat those words.”<sup>162</sup>

Negotiations between the United Nations and Iraq spanned fifty meetings from February to May 1996, and involved mostly technical discussions of the mechanics of the Programme’s operation.<sup>163</sup> The Iraq delegation, led by Ambassador Abdul Amir Al-Anbari, took the literal view that, under Resolution 986, the memorandum of understanding would be an agreement between Iraq and the Secretary-General. One senior member of the Iraqi delegation recalled that Iraq entered into the negotiations because of the Secretary-General’s “flexibility” to operate within the arrangement under Resolution 986. This Iraqi official hoped such flexibility would allow Iraq to play more of “a role” in the implementation of the Programme.<sup>164</sup>

The Secretary-General did not concern himself with the technical aspects of the negotiations, but occasionally he interceded on political matters to maintain the momentum in the negotiations. Indeed, on sensitive matters, the Secretary-General met alone with Ambassador Al-Anbari. A senior member of the Iraqi delegation stated that it was helpful to discuss highly sensitive matters during the negotiations with Secretary-General Boutros-Ghali, whom he described as someone capable of “find[ing] a solution to every problem.” This Iraqi official further stated that Iraq trusted the Secretary-General in part because he was at odds with the United States. According to this senior Iraqi official, the Secretary-General seemed sympathetic to the Iraqi positions during the negotiations. Throughout the negotiations, Ambassador Al-Anbari met with the Secretary-

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January 1996 and concluded upon his return that “President Saddam Hussein appears to be very eager to open a dialogue with the UN on the ‘oil-for-food’ formulae.” Mr. Raimond further stated that, “[w]ithout officially referring to resolution 986, that they have rejected, the Iraqi officials’ view is that the Secretary-General of the UN, Boutros Boutros-Ghali, has a maneuvering space in applying the resolution in a manner which does not officially violate the Iraqi sovereignty.” He added that there was no doubt that, “in this difficult dialogue, Baghdad counts on the support of France and Russia.” Francoise Chipaux, “L’Irak veut renouer le dialogue avec l’ONU sans perdre la face,” *Le Monde*, Jan. 25, 1996 (translated from French).

<sup>162</sup> Boutros Boutros-Ghali interview (May 2, 2005); Wolfgang Weisbrod-Weber notes of Boutros Boutros-Ghali’s meeting with his senior aides on Iraq (Jan. 25, 1996).

<sup>163</sup> Hans Corell interview (Nov. 22, 2004); Iraq officials interviews; Arnstein Wigstrand interview (Nov. 30, 2004); Werner Meier interview (Oct. 21, 2004); Secretary-General Press Release, “‘Oil-for-Food’ Talks with Iraq to Begin 6 Feb.,” SG/SM/5886 (Jan. 29, 1996).

<sup>164</sup> Gian Luca Burci interview (Dec. 1, 2004); Iraq official interview.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

General on a number of occasions to seek the latter's assistance in overcoming the "hard-line positions" advocated by certain members of the Security Council.<sup>165</sup>

Before negotiations began, the Secretary-General instructed his delegation to keep the talks confidential so that members of the Security Council would not have an opportunity to obstruct or "micro-manage" developments. Given the divergence of opinions held by the permanent members of the Security Council—between France and Russia which were "generally in favour of Iraq" and the United States and the United Kingdom which were "generally opposed"—the Secretary-General instructed his aides that the progress of the negotiations could only be assured if Security Council member states did not intervene. In a recent interview, former Secretary-General Boutros-Ghali said that, at the time of the negotiations, he was concerned that Iraq would seek to play the Security Council member states against one another in light of their disparate views.<sup>166</sup>

Nonetheless, throughout negotiations, the United States and the United Kingdom still succeeded in making their views well-known to both the Secretary-General and to Mr. Corell. Initially, the United Nations delegation followed the Secretary-General's directive of maintaining confidentiality. For example, upon meeting with representatives from the United States and the United Kingdom in late February 1996, Mr. Corell, while cautiously receptive to the concerns of these member states, reiterated the Secretary-General's strict instructions of confidentiality.<sup>167</sup>

During the negotiations, the Secretary-General was also preoccupied by an additional consideration—the American opposition to the Secretary-General's bid to be reappointed, at the end of that year, to a second term. When recently interviewed, the Secretary-General remarked that by March 1996, "I was less interested in the oil-for-food talks because of my reelection."<sup>168</sup>

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<sup>165</sup> Boutros Boutros-Ghali interview (May 2, 2005); Hans Corell interview (Nov. 22, 2004); Gian Luca Burci interview (Dec. 1, 2004); Iraq official interviews; Iraq Mission cable to Ministry for Foreign Affairs (Apr. 22, 1996) (translated from Arabic) (noting that a separate one-hour meeting took place between Ambassador Al-Anbari and the Secretary-General on the insertion of new language into the draft memorandum of understanding by the Americans); Wolfgang Weisbrod-Weber notes of Boutros Boutros-Ghali's meeting with Abdul Amir Al-Anbari (Apr. 12, 1996) (indicating that the meeting was preceded by a twenty-minute tête-à-tête between the Secretary-General and Ambassador Al-Anbari); Boutros Boutros-Ghali's residence log (May 12 and 19, 1996) (registering Ambassador Al-Anbari's visits to the Secretary-General's residence). In 1996, Ambassador Al-Anbari was Iraq's Representative to UNESCO in Paris. Iraq official interview; Hans Corell interview (Nov. 22, 2004).

<sup>166</sup> Wolfgang Weisbrod-Weber notes of Boutros Boutros-Ghali's meeting with his senior aides on Iraq (Jan. 25, 1996); Boutros Boutros-Ghali interview (May 2, 2005).

<sup>167</sup> Hans Corell interview (Nov. 22, 2004); United States official #16 interview (Jan. 11, 2005); United States official #2 interview (Jan. 10, 2005); United Kingdom official #3 interview (Jan. 5, 2005); Marrack Goulding note to Boutros Boutros-Ghali (Mar. 28, 1996); Hans Corell memorandum to Boutros Boutros-Ghali (Mar. 1, 1996) (recounting Mr. Corell's meeting with representatives of the United States and the United Kingdom).

<sup>168</sup> Boutros Boutros-Ghali interviews (May 2 and July 25, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

A member of the Iraqi delegation affirmed that during the talks, the Secretary-General's reappointment concerns seeped into the negotiation process. The Secretary-General privately told a senior Iraqi official that his problems with the United States prevented him from being as effective a mediator between Iraq and the Security Council as he would have liked because the United States was opposing his reappointment.<sup>169</sup>

Recently, the former Secretary-General denied he ever talked to Ambassador Al-Anbari about his reappointment. From the Iraqi delegation's viewpoint, however, the Secretary-General's reappointment concerns meant that he was no longer in a position to fully mediate between the United Nations and Iraq without first consulting with Security Council members such as the United States and the United Kingdom, and without the support of France and Russia.<sup>170</sup>

On April 14, 1996, the Secretary-General was informed that the United States would oppose his reelection. On April 17, 1996, as the parties neared completion on the draft agreement, the Secretary-General arranged for a working version to be disclosed to representatives of the United States and the United Kingdom. Secretary-General Boutros-Ghali informed Ambassador Al-Anbari of this development and he explained that the disclosure of the draft to the United Kingdom and the United States was intended to ensure that the final agreement would be approved by the Security Council.<sup>171</sup>

The United States and the United Kingdom used their access to the draft agreement to tighten some of the provisions. For example, the two member states added language governing the selection of the bank holding the escrow account, the procurement and distribution of

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<sup>169</sup> Iraq official interview; Madeleine Albright, *Madam Secretary-A Memoir* (Miramax Books, 2003), pp. 207-12 (explaining the reasons for United States opposition to the Secretary-General's bid for reappointment); Warren Christopher, *In the Stream of History: Shaping Foreign Policy for a New Era* (Stanford University Press, 1998), pp. 330-34 (same); *Unvanquished*, pp. 317-18 (discussing his clash with the United States over his reappointment).

<sup>170</sup> Boutros Boutros-Ghali interview (July 25, 2005); Iraq officials interviews.

<sup>171</sup> Boutros Boutros-Ghali interview (May 2, 2005); United States official #19 interview (Aug. 1, 2005); David Hamburg interview (June 21, 2005); *Unvanquished*, p. 5; Warren Christopher, *In the Stream of History: Shaping Foreign Policy for a New Era*, (Stanford University Press, 1998), pp. 332-33; Gian Luca Burci interview (Dec. 1, 2004); Hans Corell interview (Nov. 22, 2004); Hans Corell memorandum to Boutros Boutros-Ghali (May 29, 1996); "Boutros-Ghali Intervenes in UN-Iraq 'Oil-for-Food' Talks," *Al-Hayat*, May 14, 1996 (translated from Arabic); Iraq official interview; Wolfgang Weisbrod-Weber notes of Boutros Boutros-Ghali's meeting with Abdul Amir Al-Anbari (Apr. 12, 1996); Hans Corell memorandum to Boutros Boutros-Ghali (May 29, 1996). During the final stage of negotiations and on the Secretary-General's instruction, Mr. Corell maintained informal contacts with Ambassador Edward Gnehm, then Deputy Permanent Representative to the United States Mission, "so as to make sure that there would be no problem when the MOU was presented to the Security Council." Hans Corell memorandum to Boutros Boutros-Ghali (May 31, 1996). Dr. Hamburg was President of the Carnegie Corporation of New York and he was recruited by United States Secretary of State Warren Christopher, along with former Secretary of State Cyrus Vance, to facilitate a dignified departure for the Secretary-General. David Hamburg interview (June 21, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

humanitarian goods in the three northern governorates, and the overall coordination of Programme activities. Their additions also tightened the key provisions concerning the in-country monitoring and in-country distribution systems.<sup>172</sup>

The new language inserted into the draft effectively shifted the center of decision-making and oversight from Baghdad to the Secretary-General or the 661 Committee, but it did not address the basic design of the program. Further, the new additions did not alter the basic presumption of the Programme—that the export of oil and the import of humanitarian goods would be governed by fair market value and that Iraq, and not the United Nations, would choose the parties to whom Iraq would sell oil and, except in northern Iraq, the parties from whom Iraq would purchase humanitarian and oil-spare-parts goods.<sup>173</sup>

#### 1. In-Country Distribution System

One of Iraq's main goals in the negotiations was to enhance its control over the disposal of its oil income from the Programme. The purchase and distribution of aid within Iraq was, therefore, one of the most sensitive priorities for Iraq. Iraq wanted to be responsible for the procurement of goods and supplies throughout its territory, including procurement for the northern governorates.<sup>174</sup>

Prior to commencing negotiations, Secretary-General Boutros-Ghali asked his senior staff to find “a face-saving device” to ensure the equitable distribution of aid within Iraq, especially in the northern governorates, without appearing to interfere with Iraqi sovereignty. However, the United States opposed Iraq's ambitions, seeking to ensure that the United Nations, not Iraq, would control the distribution of humanitarian goods to the northern governorates.<sup>175</sup>

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<sup>172</sup> Non-Paper, Consolidated Version 9 ½, paras. 5, 12, 16-17, 19-30, 43 (Apr. 22, 1996).

<sup>173</sup> As referenced in Chapter 1 of this Volume, the United Nations had long acknowledged that “[t]he most efficient way of selling Iraqi petroleum and petroleum products is for Iraq to carry out the marketing . . . in conformity with its normal trading practices” and that “[i]t would be highly unusual if the United Nations were to engage in trading Iraqi oil directly or through a third party.” See “Report by the Secretary-General Pursuant to Paragraph 5 of the Security Council resolution 706 (1991),” S/23006, paras. 20-21 (Sept. 4, 1991); see also *ibid.*, para. 45 (noting that it was “recommended that the Government of Iraq be entrusted with the task of purchasing and arranging for deliveries of the goods to Iraq” and that it “would not be practical” to have purchases made by the United Nations or by its independent agents). As noted above, as the Programme developed, United Nations agencies were eventually entrusted with purchasing humanitarian supplies for northern Iraq. See also Arnstein Wigestrang interview (Nov. 30, 2004).

<sup>174</sup> Tariq Aziz interview (Mar. 1, 2005); Hans Corell memorandum to Boutros Boutros-Ghali (Feb. 8, 1996).

<sup>175</sup> Tariq Aziz interview (Mar. 1, 2005); Hans Corell memorandum to Boutros Boutros-Ghali (Feb. 8, 1996); Gian Luca Burci interview (Dec. 1, 2004); Hans Corell interview (Nov. 22, 2004); “Oil-for-food talks reaching make-or-break point: MEES,” *Agence France-Presse*, May 13, 1996; “Iraq-UN talks adjourn, key issues unresolved,” *Reuters News*, Mar. 12, 1996; Wolfgang Weisbrod-Weber notes of



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

Prior to its disclosure to the United States and the United Kingdom, the draft agreement provided that the distribution plan for the northern governorates would be prepared by the Government of Iraq “in consultation” with the United Nations. The United States and the United Kingdom reduced Iraq’s role by amending the draft to read that the United Nations would prepare the distribution plan for the northern governorates for “discussion with Iraq.” The earlier draft also provided that the general distribution plan prepared by Iraq would be submitted to the Secretary-General only for “review.” This provision was amended to bolster the Secretary-General’s role by requiring that Iraq submit its distribution plan for the Secretary-General’s “approval.”<sup>176</sup>

## 2. In-Country Monitoring System

The issue of designing an in-country monitoring system for the Programme was also a central concern for the Iraqi delegation—one that Iraq was particularly sensitive in light of its tumultuous experience with UNSCOM.<sup>177</sup> UNSCOM operated with great flexibility in Iraq; its inspectors were not required to obtain visas to enter the country, they were permitted to travel freely within the country, and they were allowed to visit any facility in the country without any prior notice to Iraqi authorities. Mr. Ekeus was of the view that these rights and modalities were essential to a successful inspections and monitoring program. In discussions with Mr. Corell, Mr. Ekeus “pushed for the UNSCOM modality.” But the Iraqi delegation impressed upon Mr. Corell the “fatigue” experienced by Iraq concerning international personnel “enjoying apparently unlimited freedom” which, Mr. Corell noted, was “a clear reference to UNSCOM.” Iraq did not want the UNSCOM modalities to apply, and the Iraqi delegation asserted that there would be no agreement on an oil-for-food program if the United Nations insisted that Iraq agree to an UNSCOM model of inspections.<sup>178</sup>

During the negotiations, Iraq sought to retain as much flexibility as possible in the monitoring system for imports of goods into Iraq. The Iraq-UN MOU provided that independent inspection agents, appointed by the Secretary-General, would authenticate the arrival of goods at the border. But the number and location of the stationing points for inspection was left to be determined by the United Nations at a later date, subject to approval by the 661 Committee. Prior to the amendments made by the United States and the United Kingdom, the draft memorandum of

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Boutros Boutros-Ghali’s meeting with his senior aides on Iraq (Jan. 25, 1996); Hans Corell memorandum to Boutros Boutros-Ghali (Feb. 12, 1996); United States official #16 interview (Jan. 11, 2005).

<sup>176</sup> Non-Paper, Consolidated Version 9, paras. 7-8 (Apr. 15, 1996); Non-Paper, Consolidated Version 9 ½, paras. 7-8 (Apr. 22, 1996).

<sup>177</sup> Iraq official interview; Gian Luca Burci interview (Dec. 1, 2004); Hans Corell memorandum to Boutros Boutros-Ghali (Feb. 8, 1996); Hans Corell memorandum to Boutros Boutros-Ghali (May 29, 1996).

<sup>178</sup> Rolf Ekeus interview (Feb. 19, 2005); Rachel Davies interview (July 19, 2005); Charles Duelfer interview (July 8, 2005); Hans Corell interview (Nov. 22, 2004); Hans Corell memorandum to Boutros Boutros-Ghali (May 29, 1996); Iraq official interview.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

understanding contained no provision for the verification of use and destination of goods and supplies in Iraq.<sup>179</sup>

The UN-Iraq MOU also provided for United Nations monitors to observe and ensure the equitable distribution and adequacy of the humanitarian supplies. But the draft agreement left it so that the exact number of the monitors would be determined at a later date by the United Nations in consultation with the Government of Iraq. The final draft omitted provisions that would have required the Government of Iraq to secure “the inviolability of official communications and correspondence” of United Nations personnel and take “all the effective and adequate measures to ensure the appropriate security, safety and protection” of United Nations personnel.<sup>180</sup>

## K. REACHING A FINAL AGREEMENT

After the United Nations and Iraq delegations incorporated into the draft memorandum some of the new language suggested by the Americans and the British, the parties completed a final draft agreement. However, for Iraq, the ultimate authority to approve the agreement rested with Saddam Hussein. On May 19, 1996, at a meeting at the Secretary-General’s residence, Ambassador Al-Anbari informed the Secretary-General and Mr. Corell that he did not yet have final approval on the text.<sup>181</sup> Secretary-General Boutros-Ghali called Mr. Aziz to say that no changes would be made to the text. The next day, Mr. Aziz informed the Secretary-General in a letter that Iraq was prepared to sign the agreement. Mr. Aziz’s letter made clear Iraq’s continuing confidence and trust in the Secretary-General’s implementation of the agreement:

Indeed, our confidence in you, the United Nations and the rules of international law has led to our acceptance of formulae and conditions contained in the memorandum that we had hoped it would not contain. We accepted them, however, in the hope that, under your leadership, the United Nations would proceed with implementation using a fair and balanced approach, bearing in mind the principles of the Charter.<sup>182</sup>

Accordingly, the parties formally concluded the Iraq-UN MOU on May 20, 1996. Sounding a note of caution, however, a senior advisor to the Secretary-General warned: “[T]he story the press will be looking for next is how Saddam Hussein circumvents the agreement and diverts the oil for his own, or military, use. It will be critical for the UN’s monitoring of the agreement, and

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<sup>179</sup> Iraq official interview; Iraq-UN MOU, paras. 25-28; Non-Paper, Consolidated Version 9, paras. 25-28 (Apr. 15, 1996); Non-Paper, Consolidated Version 9 ½, paras. 25-28 (Apr. 22, 1996).

<sup>180</sup> Iraq-UN MOU, secs. VII-VIII; Non-Paper, Consolidated Version 9, paras. 49-50 (Apr. 15, 1996); Non-Paper, Consolidated Version 9 ½, paras. 49-50.

<sup>181</sup> Tariq Aziz interview (Mar. 1, 2005); Hans Corell memorandum to Boutros Boutros-Ghali (May 31, 1996).

<sup>182</sup> Tariq Aziz letter to Boutros Boutros-Ghali (May 19, 1996).

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

delivery of medical aid to the needy, to be watertight. If there are flaws, the story will quickly turn negative.”<sup>183</sup>

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<sup>183</sup> John Hughes note to Boutros Boutros-Ghali (May 21, 1996).

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

**III. BACKCHANNEL DISCUSSIONS**

**A. THE BACKCHANNEL—SAMIR VINCENT AND TONGSUN PARK**

During the early 1990s, two men—Samir Vincent and Tongsun Park—insinuated themselves into the discussions involving the United Nations and Iraq that eventually led to the Oil-for-Food Programme. As discussed below, Iraq eventually paid them large amounts of money during 1996 with the understanding that at least part of the money would be paid to the Secretary-General to encourage him to be more favorable to Iraq in connection with the negotiation and implementation of the Programme.

In the course of describing these events, this Part of the Report references or relies in part on several sources for which a preliminary explanation and caution is warranted. One significant source of information is an unpublished personal account of events by a former Iraqi official. Examination of the account, its context, and its references indicate that it was written between approximately 2001 and June 2003—prior to the emergence of public allegations of wrongdoing in the Programme. The Committee is convinced of the authenticity of this written account and knows the identity of the official who wrote the account, but the Committee is bound by the terms of a confidentiality agreement not to disclose the name of this Iraq official. The account is hereinafter referred to as “Iraq official personal account.”

This Part of the Report also uses as another source of information certain individuals personally familiar with the activities of Mr. Park and Mr. Vincent. These persons were willing to speak with Committee staff but not to have statements attributed by name. The Committee has granted confidential source status to those persons whose information cannot be obtained from other sources and where the Committee is circumstantially able to verify that the source is in a position to have knowledge of the information that is reported. These witnesses are each identified below simply as a “confidential witness.”

The Committee has also obtained diplomatic communications between Iraqi officials in New York and Baghdad involved in negotiations for the Programme. These communications corroborate several aspects of the accounts identified above and are themselves corroborated by records obtained from the United Nations and other witnesses.

Another source is publicly available materials stemming from the ongoing prosecution of Samir Vincent and Tongsun Park in a United States federal court in New York. On January 18, 2005, Mr. Vincent entered a plea of guilty in New York to criminal counts charging him with conspiring to and acting as an unregistered agent of the Government of Iraq, engaging in a prohibited financial transaction with Iraq, and making false statements on his United States income tax returns. In connection with this guilty plea, he described under oath his efforts to facilitate negotiations leading to the Oil-for-Food Programme. He stated that “[b]etween 1992 and 1996, I met on a number [of] occasions with Iraqi officials in Manhattan and in Baghdad” who “gave me proposals to pass on to officials at the United Nations,” which “I conveyed” to

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

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“high-ranking United Nations officials.” Mr. Vincent “then reported what I was told by the U.N. representatives to Iraqi officials in Manhattan and in Baghdad.”<sup>184</sup>

Mr. Vincent further stated that “[d]uring the course of these negotiations, the Iraqi government promised to pay millions of dollars to me and others if a satisfactory agreement was reached with the United Nations on implementation of an oil for food program.” He stated that “[s]everal million dollars in cash was sent” by the Government of Iraq “to Iraqi government officials in New York,” and “[s]everal hundred thousand dollars of this money was given to me, in Manhattan, and the rest was given to others, one of whom I understood was a United Nations official.” Mr. Vincent did not identify this United Nations official.<sup>185</sup>

Following Mr. Vincent’s guilty plea, a federal criminal complaint was issued from New York on April 14, 2005 against Mr. Park charging him with conspiring to act as an unregistered agent of the Government of Iraq with a cooperating witness known as CW-1 (who for reasons set forth below is known to be Mr. Vincent). An affidavit filed by a law enforcement officer in support of the criminal complaint against Mr. Park describes separate agreements by the Government of Iraq in or about February 1996 to pay \$5 million to Mr. Park and \$10 million to CW-1 (Mr. Vincent) and an unnamed Iraqi official. According to the affidavit, “both groups were to ‘take care’ of” a United Nations official. The affidavit further describes several cash payments from the Government of Iraq to both Mr. Park and CW-1 (Mr. Vincent), including a total of \$2 million for Mr. Park in 1996 and 1997 and \$300,000 for CW-1 (Mr. Vincent), along with a promise to CW-1 (Mr. Vincent) of future allocations of oil under the Programme.<sup>186</sup>

Because of the pending criminal charges against Mr. Vincent and Mr. Park, Committee investigators have not been granted access to conduct formal, on-the-record interviews of Mr. Vincent or Mr. Park. Committee investigators also have not been granted access to earlier accounts of former Iraqi officials who have been detained in connection with the recent war in Iraq. The earlier accounts of these detainees were taken before they were charged by the Iraqi

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<sup>184</sup> Samir Vincent Guilty Plea Transcript, *United States v. Samir Vincent*, No. 05 Cr. 59 (DC) (S.D.N.Y. Jan. 18, 2005), para. 16 (hereinafter “Vincent Guilty Plea Transcript”); Criminal Information, *United States v. Samir Vincent*, No. 05 Cr. 59 (DC) (S.D.N.Y. Jan. 18, 2005).

<sup>185</sup> Vincent Guilty Plea Transcript, para. 17.

<sup>186</sup> Complaint Affidavit, paras. 9(i)-(l), 10(b), *United States v. Tongsun Park*, 05 Cr. Mag. No. 499 (S.D.N.Y. Mar. 21, 2005) (hereinafter “Park Complaint Affidavit”); Criminal Docket Sheet, *United States v. Tongsun Park*, No. 05 Cr. 499 (S.D.N.Y. 2005). The guilty plea transcript of Mr. Vincent involves sworn statements by Mr. Vincent based on the advice of his legal counsel; these self-incriminating statements are presumptively reliable. On the other hand, the affidavit filed against Mr. Park does not contain sworn admissions by Mr. Park, and the Committee has not been granted access by New York federal law enforcement authorities to the underlying information upon which the Park Complaint Affidavit is based (much of which appears to be information from Mr. Vincent). In light of Mr. Vincent’s cooperation, the Committee has identified Mr. Vincent as the cooperating witness defined in as “CW-1” in the Park Complaint Affidavit. Because the Committee has not been able to test the reliability of these affidavit statements, references to the Park Complaint Affidavit against Mr. Park are set forth in this Report only for context concerning other information that the Committee has obtained.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

Special Tribunal (“IST”). Independently, however, the Committee has acquired a vast amount of information from other persons and other sources—including former Secretary-General Boutros Boutros-Ghali—concerning the dealings of Mr. Vincent and Mr. Park relating to negotiation and implementation of the Programme. Given the limitations placed on the Committee’s access to evidence, additional facts may emerge after the publication of this Report. However, the information collected to date by the Committee and identified herein offers valuable content and context beyond previous public disclosures.

#### **1. Samir Vincent and Officials of the Former Government of Iraq**

Mr. Vincent, an Iraqi-born citizen of the United States, headed Phoenix International, L.L.C. (“Phoenix International”), a company based in McLean, Virginia, and worked as a consultant in the early 1990s for Coastal Corporation (“Coastal”), an oil company based in Houston, Texas with long-standing business interests in Iraq. He had ties to senior Iraqi officials with whom he met on numerous occasions, including Deputy Prime Minister Aziz and Ambassador Hamdoon. Mr. Vincent attended the same Jesuit high school in Baghdad as Mr. Aziz and Ambassador Hamdoon. He also maintained a close working relationship with Oscar Wyatt, chairman of Coastal. Several witness accounts indicate that Mr. Vincent also had ties to politically well-connected individuals in the Washington, D.C. establishment, including the late former Central Intelligence Agency Director Richard Helms and former Secretary of Defense Frank Carlucci.<sup>187</sup>

Prior to the first Gulf War, Mr. Vincent attempted to intercede between American and Iraqi officials in an effort to prevent the war, and coordinated with Mr. Wyatt to arrange for the release of American hostages from Iraq. Mr. Vincent communicated a negotiation proposal from Ambassador Nizar Hamdoon, then serving as Iraqi Deputy Foreign Minister in Baghdad, to high-level United States officials.<sup>188</sup>

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<sup>187</sup> John Venners interview (Aug. 9, 2005); John Sabanosh interview (Dec. 6, 2004); Samir Vincent letter to Theodore Sorensen (Apr. 6, 1993); Ameer Vincent letter to Chevron Products, Inc. (Oct. 10, 2000); David Ivanovich, “Oil-for-Food Probe nets first guilty plea,” *Houston Chronicle* (Jan. 19, 2005) (describing Mr. Vincent’s work with both Phoenix International Ltd. and Coastal and his long history of involvement with Iraq); Iraq official personal account; Iraq officials interviews; Confidential witness interview; William Timmons interview (July 22, 2005); see also Vincent Guilty Plea Transcript, para. 16 (“I began talking to Iraqi officials, including some who were my former schoolmates at Jesuit High School in Baghdad.”); Jack Kemp interview (Aug. 16, 2005); Frank Carlucci interview (Aug. 25, 2005). John Venners was an independent oil consultant who had conducted business in Iraq in the 1970s and 1980s. John Venners interview (Aug. 9, 2005). John Sabanosh worked with Mr. Vincent at Phoenix International from December 1995 until June 1998. John Sabanosh interview (Dec. 6, 2004). Mr. Timmons served in senior positions on Capitol Hill for twelve years and, in 1975, founded Timmons and Company, a lobbying and consulting firm. William Timmons interview (July 22, 2005).

<sup>188</sup> Iraq official personal account; see also “The peace feeler that was; did Saddam want a deal? Saddam Hussein sent negotiation proposal through two Arab American businessmen August 9, 1990,” *The Nation*, Apr. 15, 1991, p. 480; Patrick E. Tyler, “Iraq to fly hostages out // Americans expected to leave today,” *New York Times*, Dec. 9, 1990, p. A1.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

In early 1992, Mr. Vincent joined together with John Venners, then a public relations consultant, and William Timmons, a Washington lobbyist, to pursue the purchase and sale of Iraqi oil and the exploration by a consortium of companies of the Majnoon oil field in Iraq. The business plan, intended as a possible alternative to a United Nations oil-for-food program, envisaged that the United Nations would receive the bulk of the profit from sales of Iraqi crude oil from this field. Mr. Vincent suggested that sanctions against Iraq would be lifted imminently and that the Iraqi government might grant a long-term concession to an American oil company.<sup>189</sup>

At the same time that Mr. Vincent was pursuing oil deals in Iraq, he sustained a close relationship with Ambassador Hamdoun. After Ambassador Hamdoun arrived at the Iraq Mission to the United Nations (“Iraq Mission”) in September 1992, Mr. Vincent was seen there and at the Iraqi ambassador’s residence frequently. A review of the Iraq Mission telephone records for 1996 and 1997 shows as many as 162 telephone calls from the Iraq Mission to Mr. Vincent. Mr. Vincent was also known by Iraqi officials to have close ties to Iraqi intelligence officials and to Mr. Aziz with whom he was seen meeting while the latter was in New York during this period.<sup>190</sup>

In late 1992, Mr. Vincent met twice with United Nations officials in New York to offer his services as an informal channel of communication between Iraq, the United States, and the United Nations. On November 10, 1992, Mr. Vincent met with Ralph Zacklin, a senior attorney at OLA and another staff member. An internal memorandum states that this meeting was set up at the “directive” of the Secretary-General. Mr. Vincent explained to Mr. Zacklin that his oil-for-food proposal—set forth on a document entitled “Talking Points”—was based on “informal discussions between himself and United States officials on the one hand, and Iraqi Government officials including the [Deputy] Prime Minister of Iraq, Mr. Tariq Aziz, on the other hand.” Mr. Vincent stated that he was anxious to obtain the Secretariat’s reaction to these points before meeting the following week with Deputy Prime Minister Tariq Aziz and “possibly” Saddam Hussein in Baghdad.<sup>191</sup>

<sup>189</sup> William Timmons interview (July 22, 2005); John Venners interview (Aug. 9, 2005); William Timmons memorandum to Rady Johnson (Oct. 7, 1994); William Timmons memorandum to Samir Vincent (Sept. 14, 1994); William Timmons concept papers (Dec. 29, 1994 and undated). Mr. Vincent also wanted their assistance to determine more specifically when the United States administration expected sanctions to end. William Timmons interview (July 22, 2005).

<sup>190</sup> Iraq officials interviews; Tariq Aziz interview (Mar. 1, 2005); Iraq Mission telephone records (1996-1997) (including all phone numbers for which the Iraq Mission paid the bills, including the Iraqi ambassador’s residence telephone number, and Mr. Vincent’s home and office numbers); John Donnelly, “Iraq’s appointment to U.N. may signal shift in policy Officials believe Iraq has dismissed the importance of the U.N.,” *York Daily Record*, Feb. 3, 1999, p. A4; “Saddam Orders Replacement of 18 Iraqi Ambassadors,” *Dow Jones International News*, Nov. 24, 1998.

<sup>191</sup> Mr. Tubman was also present at the meeting between Mr. Zacklin and Mr. Vincent. Carl-August Fleischhauer memorandum to Boutros Boutros-Ghali (Nov. 12, 1992) (describing meeting and attaching “Talking Points”); Ralph Zacklin interview (Feb. 11, 2005); Carl-August Fleischhauer interview (Dec. 6, 2004); Winston Tubman interview (Aug. 19, 2005). Mr. Zacklin was Mr. Fleischhauer’s deputy in OLA. Ralph Zacklin interview (Feb. 11, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

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Mr. Vincent's proposal called for some terms that Iraq had been unable to obtain in negotiations with the United Nations in March and June 1992, including an increase in oil exports and a second export outlet through Iraq's Persian Gulf loading terminal in Mina al-Bakr. Mr. Vincent suggested that proceeds from the sale of oil would largely follow the program outlined in Resolutions 706 and 712, but with added emphasis on preventing infringement of Iraqi sovereignty. Mr. Vincent also proposed a role for Elizabeth Dole, then President of the American Red Cross, and James Baker, then White House Chief of Staff and senior counselor to United States President George H.W. Bush, as well as other United States officials. In response, Mr. Zacklin explained that the Secretary-General remained bound by Resolutions 706 and 712, but that the Secretariat would be responsive to an Iraqi call for the resumption of talks.<sup>192</sup>

After the meeting on November 10, 1992, Mr. Vincent traveled to Baghdad, where he met with top Iraqi officials, including Deputy Prime Minister Aziz, General Kamel, and Oil Minister Rashid. Two weeks later, on November 24, 1992, when Mr. Aziz was in New York to address the Security Council on sanctions, Mr. Vincent met with him and Ambassador Hamdoun at the Iraq Mission. At this meeting, Mr. Vincent enumerated some of the contacts that he and Oscar Wyatt, chairman of Coastal, had made with the new United States administration and briefed Mr. Aziz on his meetings with Secretary-General Boutros-Ghali's staff at the United Nations regarding the establishment of an oil-for-food type of agreement with Iraq.<sup>193</sup>

On December 1, 1992, Mr. Vincent met again with Mr. Zacklin, this time bearing a diplomatic-style "non-paper" that he suggested should be adopted by the United Nations Secretariat and sent to Iraq as the basis for further oil-for-food discussions. Mr. Vincent informed Mr. Zacklin about his meeting with Mr. Aziz in Baghdad and conveyed that because sanctions had not been lifted as Mr. Aziz thought they would be, Mr. Aziz "has allegedly shown great interest in Mr. Vincent's efforts." Mr. Aziz "allegedly has no objection to the ideas being advanced by Mr. Vincent and

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<sup>192</sup> See Carl-August Fleischhauer memorandum to Boutros Boutros-Ghali (Nov. 12, 1992) (describing meeting and attaching "Talking Points"); Iraq official personal account (describing Mr. Vincent's contacts with several additional US administration officials); David Arnold interview (Aug. 5, 2005). In the early 1990s, Mr. Vincent met with Red Cross officials other than Ms. Dole regarding his proposals, but the Red Cross never actively pursued them. Ms. Dole states that she does not recall ever meeting Mr. Vincent. Elizabeth Dole interview (Aug. 23, 2005). James Baker states that he does not recall working with Mr. Vincent. James Baker interview (Aug. 2, 2005).

<sup>193</sup> Iraq official personal account; DPA notes of Security Council meeting (Nov. 23, 1992) (noting Mr. Aziz's statement that "the unjust sentence passed by the Council to starve the people of Iraq and deny them their right to life remains in place, simply because this has been the will of certain influential Governments in the Council"); Samir Vincent travel records (indicating that Mr. Vincent arrived from an international flight at Washington Dulles International Airport on November 21, 1992). Following the meeting at the Iraq Mission, Mr. Aziz expressed his displeasure regarding Mr. Vincent's general demeanor and insensitivity concerning Iraq's position on the issue of internal inspections for distribution of goods. Mr. Aziz decided not to see Mr. Vincent again, although, by the following year, their relationship was "back to normal." Iraq official personal account.



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

would be ready to give serious consideration to them if the Secretariat would embrace and submit them to Iraq in the form of a United Nations Secretariat non-paper.”<sup>194</sup>

Mr. Zacklin again explained to Mr. Vincent that the Secretary-General was bound by the limits imposed by Resolutions 706 and 712. He added that the Secretariat would deal directly with the Iraq Mission and “there was therefore no point in resorting to the use of intermediaries.” As Mr. Zacklin would later recall: “This chap was obviously wheeling and dealing . . . [h]e came with his talking points, and I sent him packing.”<sup>195</sup>

In or around October 1992, Mr. Vincent was introduced to Mr. Park through their mutual friend, Mr. Timmons, to discuss the plan for developing the oil field in Iraq. Through Mr. Park, Mr. Vincent met and gained access to Secretary-General Boutros-Ghali and began working with Mr. Park to forward communications between the Secretary-General and Iraqi officials.<sup>196</sup>

## 2. Tongsun Park and Secretary-General Boutros-Ghali

Although Mr. Park had met Boutros Boutros-Ghali before the latter became Secretary-General, the two developed a closer relationship after he had assumed the helm of the United Nations. According to the former Secretary-General, because he did not have a formal intelligence service at the United Nations, he felt compelled to supplement his knowledge through private sources and informal channels of communication. Mr. Park provided the Secretary-General with “first class information.” Mr. Park was a valuable advisor because he “knew everybody” and was “an integral part of the Washington *nomenclatura*.”<sup>197</sup>

Mr. Park, however, had a checkered past. In the late 1970s, he had been at the center of an influence-peddling scandal (“Koreagate”) in Washington, D.C., and he was indicted by United States law enforcement authorities on bribery, conspiracy, and racketeering charges in 1977. These charges were eventually dismissed, and by the 1990s, Mr. Park was again well-established

<sup>194</sup> Carl-August Fleischhauer memorandum to Boutros Boutros-Ghali (Dec. 4, 1992) (with “non-paper” attachment); Mourad Wahba interview (Aug. 3, 2005) (describing the Secretary-General review process). The correspondence log for the Secretary-General reflects that the Secretary-General reviewed Mr. Fleischhauer’s memorandum summarizing the meeting with Mr. Vincent. Boutros Boutros-Ghali outgoing log (Dec. 8, 1992). Mr. Wahba was a Senior Officer in the Executive Office of the Secretary-General at that time. Mourad Wahba interview (Aug. 3, 2005).

<sup>195</sup> Ralph Zacklin interview (Feb. 11, 2005); Carl-August Fleischhauer memorandum to Boutros Boutros-Ghali (Dec. 4, 1992); Tariq Aziz interview (Mar. 1, 2005).

<sup>196</sup> Confidential witness interview; William Timmons interview (July 22, 2005); Iraq official personal account.

<sup>197</sup> Confidential witness interview; Boutros Boutros-Ghali interviews (May 2 and July 25, 2005); see also Lisa Buttenheim interview (Aug. 3, 2005) (recounting that when she raised concern about the presence of Mr. Park during an official trip to Japan, the Secretary-General told her that Mr. Park had “first class” or “first hand” information). Ms. Buttenheim served as a Principal Officer in the Executive Office of the Secretary-General at that time. Lisa Buttenheim interview (Aug. 3, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

in influential circles in Washington, D.C.<sup>198</sup> Mr. Park advised Secretary-General Boutros-Ghali, during his tenure at the United Nations, on matters as varied as Haiti, North and South Korea, and Japan as well as private affairs.<sup>199</sup>

In 1993 and 1994, Mr. Park assisted the Secretary-General in fundraising for the fiftieth anniversary of the United Nations. A commission of over \$500,000 was paid to an “off-the-shelf” company Mr. Park controlled in London for arranging a \$4 million contribution from a Taiwanese entity, the Chinese National Association of Industry and Commerce, to the United Nations Association of the United States of America (“UNA-USA”). Although the Secretary-General knew Mr. Park to be a lobbyist for Taiwan, the Secretary-General has stated that he was not aware of a donation from Taiwan. There is no evidence that Secretary-General Boutros-Ghali heard of this particular donation, or that he was told that Mr. Park received a large commission from this donation.<sup>200</sup>

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<sup>198</sup> Maxine Cheshire and Charles R. Babcock, “Letters Reveal Legislators’ Ties to Korean; Letters Reveal Legislators’ Ties to Tongsun Park; Letters Landed Korean’s Lobbying,” *Washington Post*, Apr. 17, 1977; Harry R. Rosenthal, Untitled, *The Associated Press*, Apr. 5, 1978; “Park Indictment Dropped,” *Facts on File World News Digest*, Aug. 24, 1979, p. 630 D1; John Burgess, “Seoul Scandal Spotlights Corruption, Subsidies; Shipping Company Hit by Arrests, Suicide,” *Washington Post*, May 25, 1987, p. A21; William Timmons interview (July 22, 2005) (describing Mr. Park as a “heavy hitter” in 1992 who owned a large house where he had parties); Wyatt Dickerson interview (May 27, 2005) (describing Mr. Park’s residence in Washington D.C. in the 1990s and his active involvement in the Historic George Town Club); Mary Lee Leary interview (Aug. 19, 2005) (detailing Mr. Park’s involvement in the Historic George Town Club and his occasional travel between residences in Washington, D.C. and New York in the 1990s). Mr. Dickerson is a colleague and business partner of Mr. Park. Mr. Dickerson recalled that Mr. Park “imagined himself to be an ambassador of sorts,” and goes by the name “Ambassador Park.” Mr. Dickerson stated that Mr. Park purchased the title of “ambassador” from a Nicaraguan official for around \$150,000. Wyatt Dickerson interview (May 27, 2005). Ms. Leary, an employee and friend of Mr. Park, worked as a controller at the Historic George Town Club. Mary Lee Leary interview (Aug. 19, 2005)

<sup>199</sup> Confidential witness interview; Boutros Boutros-Ghali interviews (May 2 and July 25, 2005); Ben Haraguchi interview (Apr. 15, 2005); Joseph Reed interview (Apr. 26, 2005); Gillian Sorensen interview (May 17, 2005); Lisa Buttenheim interview (Aug. 3, 2005); Maurice Strong letter to Tongsun Park (Oct. 15, 1999) (“Of course, I am most familiar with the significant contributions you have made to the United Nations both as a valued advisor and source of help and support to former United Nations Secretary-General Boutros Boutros-Ghali and more recently to a number of United Nations programmes and causes in the environment, development and peace-related fields in Asia.”). Ms. Sorensen served as Special Advisor for Public Policy for Secretary-General Boutros Boutros-Ghali. Gillian Sorensen interview (May 17, 2005). Mr. Reed served as Under-Secretary-General and Special Representative for Public Affairs for Secretary-General Boutros Boutros-Ghali. Joseph Reed interview (Apr. 26, 2005).

<sup>200</sup> Confidential witness interview; Thomas Bell interview (June 27, 2005); Edward Ney interview (May 31, 2005); John Whitehead interview (Apr. 21, 2005); UNA-USA record, Burson-Marsteller invoice to UNA-USA (Nov. 30, 1993); UNA-USA record, Liongate International Public Affairs Ltd. invoice to Burson-Marsteller (Nov. 30, 1993); Boutros Boutros-Ghali interview (May 2, 2005). Mr. Bell and Mr. Ney were associated with Burson-Marsteller, and Mr. Whitehead was associated with UNA-USA. Thomas Bell interview (June 27, 2005); Edward Ney interview (May 31, 2005); John Whitehead interview (Apr. 21, 2005). Mr. Park had also been involved in fundraising for the World Federation of United Nations

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

According to the former Secretary-General, Mr. Park generally appeared more frequently when he was lobbying the Secretary-General on specific matters or providing the Secretary-General with information. Senior staff members recall that, although Mr. Park was not part of any official entourage, he would “hover” around the hotel during the Secretary-General’s missions to South Korea and Japan.<sup>201</sup> Mr. Park informed a friend that he had lunch with the Secretary-General each time he was in New York and Mr. Park often sent flowers to Mrs. Boutros-Ghali.<sup>202</sup> A review of the records of a telephone calling card account used by Mr. Park during most of 1995 shows that Mr. Park made at least eleven calls to the main number of the office of the Secretary-General and at least twenty-eight calls to the residence of the Secretary-General. The former Secretary-General has stated that he only met Mr. Park on a few occasions, but that Mr. Park created the sense that he was a “real friend.”<sup>203</sup>

In late spring 1996, it became increasingly and publicly apparent that the United States would not support the Secretary-General’s bid for a second term. Mr. Park was among those who supported the Secretary-General’s reappointment. Mr. Park brought Washington, D.C. insiders to meet with the Secretary-General and to advise him on reappointment strategy. This included meetings with, among others, Congressman Charles Rangel (a member of the United States House of Representatives who publicly supported the Secretary-General’s reappointment bid), and Tony Coelho (a former member of the United States House of Representatives and advisor to the

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Associations (“WFUNA”). Mr. Grenville-Wood served as Chairman of the Executive Committee of WFUNA. Geoffrey Grenville-Wood interview (Aug. 24, 2005). Because Taiwan is not a recognized member of the United Nations, the donation was directed to the UNA-USA instead. Edward Ney interview (May 31, 2005).

<sup>201</sup> Boutros Boutros-Ghali interview (July 25, 2005); Boutros Boutros-Ghali residence log (June 15, 1995 to July 23, 1996); Confidential witness interview; Jean-Claude Aimé interview (May 23, 2005); Joseph Reed interview (Apr. 26, 2005). Some of the Secretary-General’s senior staff thought Mr. Park had a “shadowy personality” and cautioned the Secretary-General against keeping such questionable company. Mourad Wahba interview (June 8, 2005); Lisa Bутtenheim interview (Aug. 3, 2005). The former Secretary-General confirmed that his senior staff warned him to “beware” of Mr. Park. Boutros Boutros-Ghali interview (May 2, 2005).

<sup>202</sup> Wyatt Dickerson interview (May 27, 2005) (recounting Mr. Park’s descriptions of his meals with the Secretary-General); Boutros Boutros-Ghali (July 25, 2005) (describing Mr. Park bringing flowers for Mrs. Boutros-Ghali); Boutros Boutros-Ghali residence log (Nov. 15, 1995) (recording the delivery of flowers from “Ambassador Park”); Lisa Bутtenheim interview (Aug. 3, 2005) (recounting Mr. Park’s “rapport” with Mrs. Boutros-Ghali). Ms. Leary recalled that Mr. Park “liked to have Sunday brunch” with the Secretary-General, and that, on occasion, he cancelled his existing brunch reservations at the Historic George Town Club to meet with the Secretary-General. Mary Lee Leary interview (Aug. 19, 2004).

<sup>203</sup> Boutros Boutros-Ghali interview (July 25, 2005); *Secretary-General Boutros Boutros-Ghali Papers*, pp. 2999-3018; Tongsun Park telephone records, AT&T calling card account (Feb. 3 to Nov. 21, 1995). These calls were made when the Secretary-General was not traveling. Isiah Speller, an employee of Mr. Park, had opened the calling card account in his own name for Mr. Park. Mary Lee Leary interview (Aug. 19, 2005); Tongsun Park telephone records, AT&T calling card account (Feb. 3 to Nov. 21, 1995). Mr. Dickerson also recalled that Mr. Park organized events for the Secretary-General at his residence and assisted in preparing guest lists for these events. Wyatt Dickerson interview (Aug. 9, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

Democratic National Committee). In a recent interview, the former Secretary-General acknowledged that Mr. Park had discussed his reappointment with him and had “pretended” to help. He added that Mr. Park had pretended to “do a lot of things.”<sup>204</sup>

### **3. Early Efforts to Facilitate an Agreement on the Oil-for-Food Programme**

According to two accounts, Mr. Park introduced Mr. Vincent to the Secretary-General at the Secretary-General’s residence in early 1993.<sup>205</sup> One account—based on statements by Mr. Vincent to Ambassador Hamdoun after the meeting—indicates that the Secretary-General instructed Mr. Vincent to inform the Iraqi leadership that, contrary to its position during the oil-for-food talks in 1992, it would have to agree to export part of the Iraqi oil through Turkey (and the rest through the south) and to demonstrate goodwill. The Secretary-General also indicated that Iraq had to work within the framework of existing Security Council resolutions.<sup>206</sup>

These accounts conflict with the recollections of the former Secretary-General, who denied ever meeting Mr. Vincent. Moreover, while confirming that he communicated with Mr. Park on several matters, the Secretary-General insisted that he never spoke to Mr. Park about Iraq or an oil-for-food plan.<sup>207</sup>

During the spring of 1993, Mr. Vincent sought legal advice on how to obtain an agreement between the United Nations and Iraq on the implementation of an oil-for-food program under Resolution 706. He retained Theodore Sorensen, a New York attorney and former special

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<sup>204</sup> Mourad Wahba interview (June 8, 2005) (noting a sense of “crisis” in the Secretariat over the reappointment issue); Confidential witness interview; Steven Erlanger, “U.S. Will Oppose Move to Re-elect Top U.N. Official,” *New York Times*, June 20, 1996, p. A1; Thomas W. Lippman and John M. Goshko, “U.N. Decision Cuts 2 Ways For Clinton; Boutros-Ghali Retains Much Support Abroad,” *Washington Post*, June 21, 1996, p. A25; Charles Rangel interview (Aug. 3, 2005); Tony Coelho interview (July 21, 2005); Boutros Boutros-Ghali interviews (May 2 and July 25, 2005); *Unvanquished*, pp. 312, 318.

<sup>205</sup> Iraq official personal account (noting Mr. Vincent’s claim that he and Mr. Park met in January 1993 with the Secretary-General at the latter’s residence for ninety minutes); Theodore Sorensen note-to-file (Apr. 5, 1993); Confidential witness interview (claiming that Mr. Vincent was briefly introduced to the Secretary-General during a visit by Mr. Park with the Secretary-General at his residence). There is some indication that Mr. Vincent’s introduction to Secretary-General Boutros-Ghali occurred sometime before Mr. Vincent’s November 1992 meeting with OLA staff. Winston Tubman interview (Aug. 19, 2005) (noting that Mr. Vincent told the OLA officials that he had met Secretary-General Boutros-Ghali prior to the November 1992 meeting).

<sup>206</sup> Iraq official personal account.

<sup>207</sup> Boutros Boutros-Ghali interviews (May 2 and July 25, 2005). In addition, Mr. Vincent met with the Secretary-General shortly thereafter in the company of Mr. Wyatt, the Houston-based oil trader. Again, this meeting was arranged by Mr. Park. See Confidential witness interview. Former Secretary-General Boutros-Ghali has stated that he does not recall ever meeting Mr. Wyatt or hosting him at his residence. Boutros Boutros-Ghali interviews (May 2 and July 25, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

counsel and advisor to United States President John F. Kennedy, to provide advice on how a “Plan of Compliance” could be proposed to the United Nations in order to reach agreement between the two parties.<sup>208</sup>

Several months later, in June 1993, Mr. Park and Mr. Vincent met with Deputy Prime Minister Aziz, Ambassador Hamdoon, and Ambassador Barzan Al-Tikriti at the Intercontinental Hotel in Geneva, Switzerland. The Iraqi officials stated that they did not want the proposed oil-for-food program to undermine the lifting of sanctions. They observed that Mr. Park had a close relationship with the Secretary-General and indicated their hope that Mr. Park could use his relationship with the Secretary-General to encourage the lifting of sanctions. Mr. Park and Mr. Vincent hoped to capitalize on business opportunities arising from the lifting of sanctions.<sup>209</sup>

The meeting arranged by Mr. Park and Mr. Vincent in Geneva occurred around the same time as a separate meeting in Geneva between the Secretary-General and Mr. Aziz. This meeting led to a new round of oil-for-food negotiations from July 7 to July 15, 1993, culminating in a preliminary agreement on the terms of a memorandum of understanding. During the negotiations, Mr. Vincent communicated in detail the progress of the talks to his attorney. Mr. Vincent’s attorney prepared a draft letter for Mr. Vincent to present to Iraqi officials designating him as the “principle intermediary” to arrange for American suppliers to sell humanitarian goods to Iraq. The Iraqi delegation later abandoned negotiations under a new—but ultimately unfounded—hope that sanctions would soon come to an end, in light of statements made by Mr. Ekeus of UNSCOM.<sup>210</sup>

On July 19, 1993, just four days after the negotiations ended, the Iraq Mission sent a cable to the Ministry for Foreign Affairs informing Baghdad, “Mr. Samir contacted us today and said that the Secretary General has been asking about the matter of oil exports and he is awaiting your response.” Two days later, Mr. Vincent delivered a message through the Iraq Mission to Baghdad claiming that the Secretary-General had warned “that any changes that Iraq requests in the draft of the agreement . . . would open the doors to discussions about the entire document.”<sup>211</sup>

Following these events, on July 22, 1993, Ambassador Hamdoon sent a cable to Deputy Prime Minister Aziz regarding a communication he had received from Mr. Vincent. Ambassador Hamdoon informed Mr. Aziz that the Secretary-General was frustrated with the abrupt end to the

<sup>208</sup> Theodore Sorensen note-to-file (Apr. 5, 1993); Samir Vincent letter to Theodore Sorensen (Apr. 6, 1993).

<sup>209</sup> Confidential witness interview; Iraq official personal account; John Venners interview (Aug. 9, 2005); William Timmons interview (July 22, 2005).

<sup>210</sup> See Section II.C above; Handwritten notes of negotiations (July 9, 1993); Theodore Sorensen letter to Samir Vincent (July 15, 1993); Samir Vincent letter to Theodore Sorensen (Oct. 15, 1993) (explaining that Mr. Ekeus’s visit to Baghdad while the Iraqi delegation was in New York caused the Iraqi leadership to believe that the lifting of sanctions was possible and an oil-for-food program would be unnecessary); Theodore Sorensen interview (Aug. 22, 2005).

<sup>211</sup> Iraq Mission cables to the Ministry for Foreign Affairs (July 19 and 21, 1993) (translated from Arabic).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

negotiations “after he had done all within his authority to facilitate the oil agreement and is now enduring a lot of pressure.” Mr. Vincent informed Ambassador Hamdoon that the Secretary-General had, “[a]gainst custom,” kept the negotiations away from the Security Council and, had decided to only brief the Security Council once the negotiations had finished. Mr. Vincent informed Ambassador Hamdoon that the Secretary-General expected “to reach an agreement this week especially since all the matters that Iraq wanted to be treated within the agreement have been taken into consideration.” Ambassador Hamdoon recommended that a letter be sent from Baghdad “explaining the situation” from Baghdad’s point of view.<sup>212</sup>

An Iraqi official had been pleasantly surprised by the concessions Iraq had won during the latest negotiation round:

During the negotiations, we relied on several relationships we had arranged with the Secretary-General through common friends for whom financial interests were not far from the issue. We believe, as does the head of the Iraqi delegation, that we arrived at a preliminary agreement that is sensitive to a large degree to Iraq’s position, especially with respect to the two issues of oil outlets and internal inspections. Even the Iraqi delegation was not expecting to reach such an agreement.<sup>213</sup>

Meanwhile, throughout this period and continuing through 1994 and 1995, Mr. Vincent and Mr. Park, along with Mr. Timmons and others, persisted in their efforts to establish a foothold in the Iraqi oil business. In February 1995, Mr. Vincent circulated talking points, drafted by both himself and Ambassador Hamdoon, to Mr. Timmons and other influential Washington, D.C. figures to assist in meetings with other American officials to press them to “rethink the Iraqi situation” and to urge the easing of sanctions.<sup>214</sup>

## **B. IRAQ’S PLAN TO BRIBE THE SECRETARY-GENERAL**

As noted in Part II of this Chapter, the Security Council passed Resolution 986 in April 1995. Then, after the highly damaging disclosures resulting from the defection of General Hussein Kamel in August 1995, Iraq agreed to consider an oil-for-food program. The Iraqi leadership also

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<sup>212</sup> Iraq Mission cable to the Ministry for Foreign Affairs (July 22, 1993) (translated from Arabic); Iraq official personal account. The two accounts of this communication are remarkably similar. A few days after this communication and Ambassador Hamdoon’s recommendation to Mr. Aziz to explain the situation, Ambassador Hamdoon delivered a letter to Secretary-General Boutros-Ghali from the Iraqi Foreign Minister explaining that the Iraqi position was centered on lifting the sanctions based on paragraph 22 of Resolution 687. Mohammed Said Al-Sahaf letter to Boutros Boutros-Ghali (July 25, 1993); Iraq official personal account.

<sup>213</sup> Ibid. (quoting from a letter sent from one Iraqi official to another).

<sup>214</sup> William Timmons interview (July 22, 2005); William Timmons calendar (1992-1995); William Timmons memorandum to Rady Johnson (Oct. 7, 1994); William Timmons record, Concept Paper (Dec. 29, 1994); William Timmons record, Nizar’s Points (Feb. 15, 1995).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

decided to attempt to bribe the Secretary-General. The purpose of the bribe, according to Oil Minister Amer Rashid, would be to ensure that the Secretary-General would be “more flexible” and would take steps to “ease the conclusion” of oil-for-food negotiations.<sup>215</sup> This plan occurred at a time when both the Secretary-General and high-level Iraqi officials were emphasizing the considerable discretion vested in the Secretary-General by Resolution 986.

Former Oil Minister Amer Rashid recounted that Mr. Aziz instructed him to give money to Mr. Vincent in approximately November 1995. Mr. Rashid understood that the money paid to Mr. Vincent would go to the Secretary-General. Mr. Aziz advised Mr. Rashid to “create a debt” on the books of the Ministry of Oil to Mr. Vincent, and explained that this instruction was given with the full consent and approval of Saddam Hussein. Mr. Rashid then created at the Ministry of Oil what was in effect an “IOU” for an aggregate amount of \$13.5 million or \$15 million per the arrangement, to be paid in installments to a fictitious company.<sup>216</sup>

During 1996, as the Iraq-UN MOU was signed and the Programme first implemented, well over \$1 million was paid to Mr. Vincent and others in three installments. Each of these payments and the surrounding events in 1996 are described at length below. Former Secretary-General Boutros-Ghali denies receiving a bribe from Iraq or from Mr. Park and Mr. Vincent. The available evidence does not indicate that the former Secretary-General received or agreed to receive any money paid by Iraq. Nor does the available evidence show that the former Secretary-General was aware of the payments made by Iraq to Mr. Vincent and Mr. Park.<sup>217</sup>

Mr. Aziz also denied authorizing any payments to Mr. Vincent or other payments for the Secretary-General in connection with the negotiation of the memorandum of understanding. This denial is inconsistent with the overwhelming weight of evidence, including statements by Mr. Rashid, statements of other Iraqi witnesses who observed the large cash transaction involving Mr.

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<sup>215</sup> Amer Rashid interviews (Oct. 29, 2004 and Feb. 20, 2005); Tariq Aziz interview (Mar. 1, 2005).

<sup>216</sup> Amer Rashid interviews (Oct. 29, 2004 and Feb. 20, 2005). It has not been possible to locate records from the Ministry of Oil reflecting any payments to Mr. Vincent. However, as noted above, Mr. Vincent himself has admitted to receiving large cash payments. Vincent Guilty Plea Transcript, para. 17 (describing a promise from Iraq to pay “millions of dollars” in accordance with agreements that he wrote out “under the direction of an Iraqi official”). Another Iraqi official who witnessed the payments recalled that the purpose of the payments was to lobby certain individuals in the United States and the United Nations and that the money was for the benefit of “BB” (who this official understood to be Boutros Boutros-Ghali) for his efforts in completing the memorandum of understanding. This Iraqi official further recalled that Mr. Vincent claimed to have a relationship with “BB” through a Korean. This Iraqi official also understood that the payments under this arrangement would amount to \$11 million or \$13 million in the aggregate. Iraq official interviews. Another Iraqi official recalled hearing from an Iraqi intelligence official between approximately 2001 and 2003 that there was an agreement to pay \$11 million to Mr. Vincent. Iraq official interview. A further Iraqi official stated that Mr. Rashid told him Mr. Vincent had come to Mr. Rashid’s office and the events that ensued were “all because of Tariq Aziz.” Iraq official interview.

<sup>217</sup> Dr. Boutros-Ghali has been voluntarily assisting in a review and evaluation of financial affairs relating to this aspect of the investigation, which is continuing.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

Vincent in February 1996, and Mr. Vincent's own admissions that he in fact received a large amount of cash from Iraq. In addition, Mr. Aziz is known to have made other false statements and has a significant motive to deny involvement in this scheme.<sup>218</sup>

#### 1. The First Payment to Mr. Park and Mr. Vincent in Early 1996

Iraq's first payment to Mr. Vincent occurred during Mr. Vincent's trip to Baghdad in early 1996. Accounts of the exact amount vary concerning the first payment to Mr. Vincent by Iraq. According to Mr. Rashid, this first payment was either \$350,000 or \$500,000. Based on a review of various accounts from persons familiar with the circumstances of this first payment in early 1996, it is most likely that Mr. Vincent received his first payment in the following manner: One evening, two men arrived at Mr. Rashid's office from the Presidential Diwan. One of them carried a dark-colored briefcase. The briefcase had "Presidential Diwan Accounts" written on it with "typex" or "whiteout." The men asked to see Mr. Rashid. Mr. Rashid then phoned Saddam Zibn Hassan, the director of SOMO, and two other officials from the Ministry of Oil. The three men soon arrived and joined the others in Mr. Rashid's office. Shortly thereafter, the two men from the Presidential Diwan were seen leaving, but neither one of them was carrying the briefcase. Mr. Rashid kept the briefcase overnight in his office safe.<sup>219</sup>

The morning after the visit by the two men from the Presidential Diwan, Mr. Hassan and a second Oil Ministry official returned to Mr. Rashid's office just before 9:00 a.m. Five minutes later, Mr. Vincent arrived and asked to see Mr. Rashid, and he was brought into Mr. Rashid's office holding

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<sup>218</sup> Tariq Aziz interviews (Mar. 1 and Aug. 16, 2005); see Vincent Guilty Plea Transcript, para. 17 (describing Mr. Vincent's admissions). Mr. Aziz's credibility is cast into further doubt by his denial that he used Mr. Vincent as an intermediary. This denial is contradicted by an Iraqi official's account of numerous meetings that occurred in 1992 and 1993. Iraq official personal account. Contrary to Mr. Ekeus's account, Mr. Aziz has denied a separate unsuccessful attempt to bribe UNSCOM Executive Chairman, Rolf Ekeus. See Tariq Aziz interview (Mar. 1, 2005); Rolf Ekeus interview (Feb. 19, 2005). At the time of his interviews with Committee staff (which occurred in the presence of officials associated with the IST), Mr. Aziz had been indicted by the IST for several criminal offenses, including the charge of "wastage of natural resources and squandering of public assets and funds," an offense punishable by a minimum of fifteen years in prison pursuant to the Iraq Law, *inter alia*, art. 2(g) of Law no. 7, 1958, as amended. See Coalition Provisional Authority, "The Statute of the Iraqi Special Tribunal," [http://www.cpairaq.org/human\\_rights/Statute.htm](http://www.cpairaq.org/human_rights/Statute.htm); Iraq officials interviews. The presence of uniformed United States army guards and use of uniformed United States army interpreters during the Committee investigators' interviews with these detainees has reinforced the detainees' impression that Committee investigators were associated with the United States Government and were working with the IST to convict the witnesses of crimes. It is likely that statements of knowledge of or participation in this scheme by the detainees to Committee investigators may be perceived by the detainees as an admission before the IST. Taha Yassin Ramadan interview (Aug. 17, 2005).

<sup>219</sup> Amer Rashid interviews (Oct. 29, 2004 and Feb. 20, 2005); Iraq officials interviews; see also Park Complaint Affidavit, para. 9(j) (stating that CW-1 [Mr. Vincent] received "in Baghdad a bag containing approximately \$450,000 cash"). Another Iraqi official familiar with the transaction recalled that the first payment to Mr. Vincent was around \$600,000 or \$650,000. Iraq official interviews.



## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

a suitcase. In accordance with Mr. Aziz's instructions, Mr. Rashid prepared and executed a number of documents in the presence of Mr. Vincent and the other officials. According to Mr. Rashid, one of the documents included what was, in effect, an IOU for a fictitious company—the name of which was suggested by Mr. Vincent. Although Mr. Rashid could not remember the name of the company, he stated that it may have sounded Korean. One of the Iraqi officials who witnessed the transaction recalled seeing a note for cash (United States currency) from the Presidential Diwan which stated “to deliver \$1,000,000 for the benefit of the Iraqi people.” Once executed, copies of the documents were made and handed to Mr. Vincent, Mr. Rashid, and at least one of the other officials present.<sup>220</sup>

Mr. Vincent immediately left the Ministry with his suitcase and departed in an automobile that was waiting to take him out of the country. Mr. Vincent entered the United States on February 21, 1996. The next day, Mr. Vincent received a phone call from the Iraq Mission. Two weeks later, on March 6, 1996, Mr. Vincent met with Ambassador Hamdoon at the Iraq Mission.<sup>221</sup>

After Mr. Vincent's return from Baghdad, Mr. Park went to Mr. Vincent's office in McLean, Virginia. Mr. Vincent showed Mr. Park an agreement signed by Mr. Rashid that was written by Mr. Vincent; the agreement stated the Government of Iraq's pledge to pay Mr. Vincent \$5 million if the Oil-for-Food Programme was initiated. Mr. Vincent also gave Mr. Park at least \$60,000 in cash in old bills in a grocery store shopping bag.<sup>222</sup>

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<sup>220</sup> Iraq officials interviews; Amer Rashid interviews (Oct. 29, 2004 and Feb. 20, 2005); Vincent Guilty Plea Transcript, para. 17; Park Complaint Affidavit, para. 9(i). These accounts vary in the amount of money paid (between \$350,000 and \$1 million) and the dates (most accounts suggest the time frame of around the end of 1995 or beginning of 1996, and one suggests late 1996 or early 1997), but the accounts are substantially consistent regarding the circumstances surrounding Mr. Vincent's receipt of cash in the Oil Minister's office.

<sup>221</sup> Iraq official interview; Samir Vincent travel records (demonstrating that Mr. Vincent returned to the United States on February 21, 1996); Iraq Mission telephone records (Feb. 22, 1996); Nizar Hamdoon calendar (Mar. 6, 1996).

<sup>222</sup> Confidential witness interview; Wyatt Dickerson interview (May 27, 2005) (claiming that on two occasions he drove Mr. Park to Mr. Vincent's office; Mr. Dickerson assumed Mr. Park was picking up payments from Mr. Vincent); John Sabanosh interview (Apr. 14, 2005) (recalling Mr. Park visiting Mr. Vincent's office on “a couple of occasions” between December 1996 and June 1998); see also Park Complaint Affidavit, para. 9(j) (stating that Mr. Park received \$100,000 on the first occasion he was paid by Mr. Vincent). The Park Complaint Affidavit states that Mr. Vincent first delivered the cash to the Iraq Mission before providing Mr. Park with his payment. Park Complaint Affidavit, paras. 9(j)-(l). A review of the records made available at the Iraq Mission has not disclosed how the money was handled or whether any Iraqi official received a portion of monies paid to Mr. Vincent.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

Chart A – The First Payment in Early 1996



## 2. Intermediary Activities of Mr. Park and Mr. Vincent in Early 1996

The February 1996 payment to Mr. Vincent and Mr. Park occurred during a period of intense negotiations between Iraq and the United Nations in which Mr. Vincent and Mr. Park participated as a backchannel.<sup>223</sup> There were at least four instances of backchannel communications between the Secretary-General and Ambassador Hamdoon that occurred in early 1996 through the services of Mr. Vincent and Mr. Park:

- January 24, 1996 – Only a few days after Iraq accepted the Secretary-General’s invitation to start negotiations, Mr. Vincent told Ambassador Hamdoon that he had recently met Mr. Park who had stated that the Secretary-General wanted to make sure that Iraq “would be serious this time because this will be his last attempt to assist Iraq.” On this same date, a call was placed from the cellular telephone used by Ambassador Hamdoon to a Washington, D.C. telephone number used by Mr. Park.
- March 4, 1996 – Ambassador Hamdoon received another message from the Secretary-General through Mr. Vincent stating the Secretary-General’s wish to conclude the negotiations as soon as possible because the Secretary-General was under pressure and pre-occupied with his reappointment for another term.

<sup>223</sup> For discussion of the formal Iraq-UN MOU negotiations, see Section II.J above.

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

- April 8, 1996 – Ambassador Hamdoon sent a letter to the Secretary-General through Mr. Vincent affirming Iraq’s seriousness of intent to reach a positive outcome and emphasizing that the Iraqi delegation was authorized to sign an agreement even in the absence of Mr. Aziz.
- April 22, 1996 – When the United States and the United Kingdom made revisions to the draft agreement, Ambassador Hamdoon informed Mr. Aziz that the Secretary-General was informing the Iraqis through Mr. Park that “this is the best that he can do and that this is the final formula that can be implemented and once executed, he guarantees that it will not be changed by the other side.”<sup>224</sup>

It is important to note that these communications, recorded as received by Iraqi officials, were made to persuade these officials involved in the negotiations to reach an agreement with the United Nations.

Apart from these instances of intermediary communication, other records reflect that Mr. Park and Mr. Vincent maintained steady contact with Iraqi officials and the Secretary-General during the critical negotiation phase. Between February and May 1996, Mr. Park visited the Secretary-General’s residence at least ten times, including a visit on May 21, 1996—the day after the Iraq-UN MOU was signed. And Ambassador Hamdoon’s calendar reflects three meetings with Mr. Vincent during this same time period. In addition to these meetings, Iraq Mission telephone records for the same time period show at least forty-four telephone calls from the Iraq Mission to Mr. Vincent. Moreover, during the negotiations of the Iraq-UN MOU in the spring of 1996, Mr. Vincent was observed waiting outside the negotiation conference room on the 34<sup>th</sup> floor of the Secretariat building to try to learn of the progress in the negotiations.<sup>225</sup>

When recently interviewed, the Secretary-General acknowledged meeting Mr. Park a few times, but stated categorically that he “never discussed” an oil-for-food plan with him. He did not recall ever meeting Mr. Vincent. He did not recall talking to Mr. Park or Mr. Vincent about the Iraq-UN MOU negotiations in March 1996. The Secretary-General explained that he did not need Mr.

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<sup>224</sup> Iraq official personal account; Iraq Mission telephone records (Feb. 1, 1996); Ministry for Foreign Affairs to the Iraq Mission cable (Apr. 8, 1996) (translated from Arabic) (directing Ambassador Hamdoon to inform the Secretary-General that Iraq “remained serious” and that Mr. Aziz’s absence from the negotiations should not be interpreted negatively); Iraq Mission cable to the Ministry for Foreign Affairs (Apr. 22, 1996) (translated from Arabic) (recounting that the Secretary-General “strongly advises” Iraq to accept the new language inserted into the draft agreement).

<sup>225</sup> Boutros Boutros-Ghali residence log; John Sabanosh interview (Apr. 14, 2005); Nizar Hamdoon calendar (Feb. 9 and 13, and Mar. 6, 1996); Iraq officials interviews; Iraq Mission telephone records (Feb. to May 1996); Wyatt Dickerson interview (May 27, 2005).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

Park to act as a backchannel with the Government of Iraq as he had his own United Nations advisors to trust for such tasks, and he could communicate directly with Iraqi officials.<sup>226</sup>

When the former Secretary-General was advised by investigators of evidence that Mr. Park did convey messages to the Iraqis about the oil-for-food talks, he claimed that such evidence was “not true.” In the former Secretary-General’s opinion, Mr. Park exaggerated his contacts because he was a lobbyist and he had to sell his connections. The former Secretary-General suggested that, if Mr. Park had made such representations, he may have had direct contact with certain American experts, and tried to conceal such contact by claiming that he received his information from the Secretary-General.<sup>227</sup>

Former Secretary-General Boutros-Ghali observed that it seemed unlikely that Iraqi officials would listen to Mr. Park, especially when they could talk to the Secretary-General directly:

Iraqis are not stupid; they would not listen to Park. Maybe Park was giving the Iraqis something more; maybe Park was saying that he was getting his information from the Secretary-General. What did Park know about Iraq? He knew about China and Taiwan. They don’t need him to contact me, they can call me at home.<sup>228</sup>

On May 20, 1996—the day that the parties formally signed the Iraq-UN MOU—an account of an Iraqi official recounts that Ambassador Hamdoon wrote to Mr. Aziz referencing the reliable intermediary assistance furnished by Mr. Vincent and Mr. Park, referred to as “the Korean:”

I have no doubt that Samir Vincent through the Korean was in continuous contact with the Secretary-General during this period, as we checked what the Korean would transmit to us, and we found his information in accordance with our other channels of communication with the Secretary-General either through your direct phone calls with him, my direct phone calls with him, or through his personal secretary Fayza Aboulnaga. I would sometimes intentionally not tell Samir [Vincent], and other times tell Samir [Vincent] and ask him not to tell the Korean about some of your contacts or my contacts with the Secretary-General, and then I would receive from them signs that guaranteed that they knew what was occurring between us and the Secretary-General.

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<sup>226</sup> Boutros Boutros-Ghali interviews (May 2 and July 25, 2005). The former Secretary-General acknowledges that on occasion he did enlist his United Nations advisors Ismat Kittani and Ms. Aboulnaga to speak to Iraqi officials on his behalf.

<sup>227</sup> Boutros Boutros-Ghali interview (July 25, 2005).

<sup>228</sup> Ibid.

# **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

## **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

In that letter, Ambassador Hamdoon expressed the view that the Secretary-General “has made an important effort to make the negotiations succeed.”<sup>229</sup>

Although the negotiations were complete, Ambassador Hamdoon’s letter stressed the fact that Iraq would continue to require the cooperation of the United Nations Secretariat in the course of implementing, and possibly expanding, the Programme and advised that Mr. Vincent would visit Baghdad soon for discussions:

Our need for the cooperation of the Secretariat continues in order to implement the resolution in a healthy/balanced manner. Therefore, it remains important to seek to execute/implement our previous agreement. Therefore, Samir [Vincent] will visit Baghdad shortly to discuss how to deal with the issue. In addition, the implementation of the previous agreement will be important not just to maintain our word but also to reinforce the possibilities of achieving other benefits such as the possibility of increasing the size of the deal upon renewal (keeping in mind the possibility of a complete lifting of sanctions based on circumstances) and the possibility of the Secretary-General adopting other steps such as lifting restrictions on the Iraqi Airways planes and others.<sup>230</sup>

It is not clear if Mr. Vincent traveled to Baghdad following Ambassador Hamdoon’s letter to Mr. Aziz. However, as Mr. Vincent’s travel records of entry and exit to the United States reflect, he left the United States for an unknown destination on May 23, 1996—three days after Ambassador Hamdoon’s letter—and returned to the United States on June 1, 1996. The night prior to his departure, Mr. Vincent received a phone call at home from the Iraq Mission to the United Nations.<sup>231</sup>

### **3. The Second Payment to Mr. Park and Mr. Vincent in Mid-1996**

A second payment was made by Iraqi officials to Mr. Vincent following the signing of the Iraq-UN MOU agreement and around the time of his scheduled visit to Baghdad. Mr. Vincent, in turn, paid a portion of these funds to Mr. Park. As with the first payment, there are variations in the descriptions of the transactions from persons with knowledge about these payments to Mr. Vincent. Mr. Rashid recalled two additional payments in 1996, one of which was paid in cash to Mr. Vincent at Mr. Rashid’s office at the Oil Ministry and a second payment in the amount of \$1 million sent by diplomatic pouch to Ambassador Hamdoon at the Iraq Mission. Mr. Rashid did not recall the exact date of these payments, although another Iraqi official recalled that a payment to Mr. Vincent occurred after the signing of the Iraq-UN MOU in the Oil Minister’s office.

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<sup>229</sup> Iraq official personal account.

<sup>230</sup> Ibid.

<sup>231</sup> Samir Vincent travel records; Iraq Mission telephone records (May 22, 1996).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

The delivery of cash to the Iraq Mission in New York is supported by a statement made by Mr. Vincent stated during his guilty plea hearing that “[s]everal million dollars in cash was sent by the Iraqi Government to Iraqi government officials in New York,” including “[s]everal hundred thousand dollars of this money [that] was given to me, in Manhattan.” An Iraqi official familiar with the transaction recalled Oil Minister Rashid asking this official to deliver \$1 million that Mr. Rashid had received from the Presidential Diwan to the Ministry for Foreign Affairs to be sent by pouch to the Iraq Mission in New York.<sup>232</sup>

The funds may have been delivered to New York via diplomatic pouch to avoid the risk of discovery by customs officials. According to a staff member who worked at the Iraq Mission, diplomatic pouches, the contents of which are immune to customs review, were carried by an individual who was often an Iraqi Intelligence Service staff member and was sent “99% of times” on board a Royal Jordanian flight from Amman. Upon arrival at the Iraq Mission, the pouch was always opened by Ambassador Hamdoun or his appointee (who could be the accountant). The Iraq Mission staff member was not aware of whether an inventory of the pouches was kept at the mission.<sup>233</sup>

As with the first payment of February 1996, Mr. Park picked up his share of the payment at Mr. Vincent’s office in McLean, Virginia. This time, he asked an associate, Wyatt Dickerson, to drive him to Mr. Vincent’s office. According to Mr. Dickerson, Mr. Park was angry that Mr. Vincent, his contact with Iraq, was trying to cheat him out of an arrangement they had. When Mr. Park arrived at Mr. Vincent’s office on McLean, Virginia, Mr. Vincent paid Mr. Park between \$150,000 to \$250,000.<sup>234</sup>

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<sup>232</sup> Amer Rashid interviews (Oct. 29, 2004 and Feb. 20, 2005); Iraq officials interviews; Vincent Guilty Plea Transcript, para. 17; Park Complaint Affidavit, para. 9(k). Mr. Vincent further stated that the “rest” of the money that came to New York “was given to others, one of whom I understood was a United Nations official.” He did not identify this United Nations official, and the basis for assertion that there were payments to others is not clear. Vincent Guilty Plea Transcript, para. 17; Park Complaint Affidavit, para. 9(o). According to the Park Complaint Affidavit, which references information apparently furnished by Mr. Vincent to law enforcement authorities, the second payment occurred in approximately June 1996 when Mr. Vincent traveled to Manhattan and received \$650,000 in cash out of the \$1 million that had been delivered to the mission via diplomatic pouch. Park Complaint Affidavit, para. 9(k); see also Iraq official interview. These accounts may not necessarily conflict as to the manner in which the money was transported from Iraq to New York, but such a determination cannot be made without additional information. Because of intervention by law enforcement authorities in New York, Mr. Vincent has declined to speak with the Committee, and the Committee has not been able to verify this information.

<sup>233</sup> Iraq official interview. A review of the financial records of the Iraq Mission did not reflect “irregular” receipt of \$1 million in 1996.

<sup>234</sup> Confidential witness interview. Mr. Dickerson recalled that driving Mr. Park to Mr. Vincent’s office twice but, on neither occasion, did he go inside or observe an exchange of money. On what Mr. Dickerson believes was the second time he drove Mr. Park to Mr. Vincent’s office, Mr. Dickerson recalled that Mr. Park complained Mr. Vincent was trying to cheat him out of a business arrangement. Wyatt Dickerson interview (May 27, 2005). The Park complaint affidavit against Mr. Park states that Mr. Park received \$400,000 while Mr. Vincent kept \$250,000. Park Complaint Affidavit, para. 9(k).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

Chart B – The Second Payment in Mid-1996



#### 4. The Implementation of the Programme

Even after the Iraq-UN MOU was concluded in May 1996, Mr. Vincent and Mr. Park continued to participate in discussions between Iraq and the United Nations as there still remained implementation issues outstanding. The signing of the Iraq-UN MOU led to many months of preparation activities—including the hiring of banking and inspection contractors—before the first oil transactions would take place under the Programme in December 1996.

One obstacle to implementing the Programme arose with a flare-up of military tensions between Iraq and the United States. At the end of the summer of 1996, Iraqi troops made incursions into Kurdish territory in northern Iraq, and United States forces retaliated with military strikes in southern Iraq. As a result, the Secretary-General announced on September 1, 1996 the temporary delay of deployment of some personnel connected with the implementation of the Programme for security reasons.<sup>235</sup> The delay provoked a strong response from Iraqi officials and, on September 12, 1996, the Minister for Foreign Affairs of Iraq sent a letter to the Secretary-General:

We would very much like to know...what ideas you may have regarding possible guarantees that the memorandum of understanding will be properly implemented, and not

<sup>235</sup> Boutros Boutros-Ghali interview (July 25, 2005); David Knott, “Saddam the puppet master,” *Oil and Gas Journal*, Sept. 16, 1996, p. 25; Wolfgang Weisbrod-Weber notes on Developments Leading to the Implementation of Res. 986 (1995) (Dec. 23, 1996).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

halted or frozen for any unconnected reason, and how this operation can be protected from American pressure and interference.

The Minister for Foreign Affairs of Iraq noted that “cooperation and consultation with Iraq were being disregarded” by United Nations Secretariat staff and called upon the Secretary-General to supervise “personally” the “extremely sensitive” issue of the number of observers “to guarantee an honest and balanced implementation of the memorandum.”<sup>236</sup>

In light of these developments, the Secretary-General passed an *oral* message through Mr. Vincent to an Iraqi official on September 16, 1996:

I have always maintained my honesty as a Secretary-General and I did not depart from principles under pressure, especially from the United States. I had to make a quick decision and I thought that I can be more effective if I did not have a confrontation with the United States through an announcement that they did not have a legal basis for their actions. Rather, I have worked to resist American efforts to adopt a resolution in the Security Council to condemn Iraq. I have not frozen the oil agreement but I have postponed it. I have done so for reasons related to the safety of United Nations staff and because there are no resources to send the inspectors. I have always tried to deal with the oil agreement independently from other issues such as inspections. I was always suspicious of Mr. Ekeus’s relationship with the United States but I did not find a way to marginalize him but I will find it soon. Three days ago I signed the document creating the Iraqi special account. I encourage Iraq as they have done before to deal with the media in a positive manner to facilitate the oil agreement. I am Iraq’s most loyal friend and if there had been another Secretary-General under this tremendous pressure from the United States, he would not have been able to do what I did including signing the MOU. And this is the main reason that makes the United States oppose my reelection. I want to repeat my loyalty to my Arab friends in Iraq and I will try by all my means to get the oil agreement back on track, and this time it will be achieved in a final manner. I call on my friends in Iraq to assist in my reelection campaign.<sup>237</sup>

When recently interviewed and asked if he had ever sent such a message the Secretary-General, again adamantly denied it and responded, “I never sent that message.” He said that the only part of that message that was factually accurate was that he had temporarily suspended implementation of the Iraq-UN MOU until the safety of United Nations personnel in Iraq could be secured.<sup>238</sup>

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<sup>236</sup> Mohammed Said Al-Sahaf letter to Boutros Boutros-Ghali (Sept. 12, 1996).

<sup>237</sup> Iraq official personal account.

<sup>238</sup> Boutros Boutros-Ghali interview (July 25, 2005).



## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

However, this oral message has several points in common with a letter sent the next day through formal diplomatic channels by the Secretary-General to the Minister for Foreign Affairs of Iraq, in which he referred again to his delaying of implementation of the Iraq-UN MOU and to his recent selection of an escrow bank:

As you are aware, I have been committed to an early and comprehensive implementation of resolution 986. The efforts that I personally have made to commence the process which led to the signing of the Memorandum of Understanding on 20 May 1996 are no doubt known to you. My commitment has not changed. In fact, through diligent work by the Secretariat as well as by the Committee established pursuant to resolution 661 (1990), the United Nations had reached a point where the final steps necessary to start the oil-for-food mechanism seemed to be within reach. We had even set a tentative target date in early September for this purpose. However, on 1 September 1996, I was obliged to take the decision to delay the deployment of certain personnel who would supervise the implementation of resolution 986 because of the deterioration of the situation in Northern Iraq. This delay in deployment should not be interpreted as freezing or suspending the implementation of resolution 986. All the work that could be done without risking the safety of United Nations personnel has continued including, for example, the negotiations with the bank which were concluded on 13 September 1996.<sup>239</sup>

On the evening of September 17, 1996, the Secretary-General met with Iraqi officials to discuss the implementation of the Programme. According to a cable from the Iraq Mission sent to Baghdad, the Secretary-General “welcomed the dialogue with the Iraqi side” and was “trying to expedite the execution of the Memorandum.” The Secretary-General assured Iraqi officials that he would “put all his effort” into obtaining American acceptance of the opening of the escrow account and the oil pricing mechanism.<sup>240</sup>

Following this exchange, Iraqi and Secretariat officials met on at least three occasions in October 1996 to discuss Iraqi objections over the implementation of the Iraq-UN MOU. Iraq sought guarantees that the Programme would not be suspended, that the contracts with the companies hired to carry out parts of the Programme (i.e., the bank, the oil, and the goods inspection companies) would be disclosed, that the number of in-country observers would be reduced, that SOMO (instead of the United Nations) would be the beneficiary of the letters of credit used to purchase the oil, and adoption of the oil pricing mechanism proposed by Iraq. The Secretariat

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<sup>239</sup> Boutros Boutros-Ghali letter to Mohammed Said Al-Sahaf (Sept. 17, 1996). The Secretary-General met with Ambassador Hamdoon the same day. Iraq Steering Committee meeting notes (Sept. 20, 1996).

<sup>240</sup> Iraq Mission cable to Ministry for Foreign Affairs (Sep. 17, 1996) (translated from Arabic).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

remained, to the frustration of Iraqi officials, inflexible on these matters. Despite Iraq's frustration, it proceeded with the Programme.<sup>241</sup>

#### 5. The Third Payment in Late 1996

By early November, Iraq's positions with respect to outstanding implementation issues had become more flexible, but certain reservations remained. On November 7, 1996, Mr. Park contacted Ambassador Hamdoon in response to these reservations and advised that the Secretary-General thought that he would be able to address the reservations, except the matter of the oil pricing formula, which was outside the Secretary-General's authority. This communication was recounted in a cable, sent from the Iraq Mission to the Ministry for Foreign Affairs. The cable, which used aliases to identify Mr. Park, Mr. Vincent, and Secretary-General Boutros-Ghali, also stated that Mr. Park asked about the fate of his "remaining payments" and the possibility of providing "them" quickly or "an important portion of them."<sup>242</sup>

Iraqi officials seem to have responded to Mr. Park's request. As with the first two payments, there are variations in the accounts of how transactions occurred. Mr. Rashid recalled that a third payment was made to Mr. Vincent, although he could not recall the amount of the third payment or the details of the transaction. According to the Park Complaint Affidavit, a third payment of cash, amounting to \$1.55 million, was sent from Baghdad to the Iraq Mission via diplomatic pouch. The available evidence does not indicate what portion of this money Mr. Vincent received. Mr. Park is believed to have received from Mr. Vincent no more than \$500,000 in cash—in old bills that fit into a single shopping bag. On December 22, 1996, shortly after 1:00 a.m., Mr. Park made a deposit of \$500,000 at the MGM Grand Hotel in Las Vegas.<sup>243</sup>

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<sup>241</sup> Iraq Mission cable to Ministry for Foreign Affairs (Oct. 14, 1996) (translated from Arabic); Ministry for Foreign Affairs cable to Iraq Mission (Oct. 16, 1996) (translated from Arabic).

<sup>242</sup> Nizar Hamdoon letter to Chinmaya Gharekhan (Nov. 3, 1996). Iraq Mission cable to the Ministry for Foreign Affairs (Nov. 7, 1996) (translated from Arabic); see also Iraq official personal account (describing the November 7, 1996 cable).

<sup>243</sup> Amer Rashid interviews (Oct. 29, 2004 and Feb. 20, 2005); Iraq official interview; see also Park Complaint Affidavit, para. 9(*l*) (stating that in "late 1996" there was "a shipment of approximately \$1.55 million in cash"). According to the complaint affidavit against Mr. Park, Mr. Vincent was paid \$550,000, of which he was instructed "to deliver approximately \$500,000" to Mr. Park and "to keep approximately \$50,000 for himself." *Ibid.*; Confidential witness interview; Wyatt Dickerson interview (May 27, 2005) (recalling that Mr. Dickerson drove Mr. Park to Mr. Vincent's office on two occasions); Official financial record (evidencing only one single \$500,000 cash deposit in the United States made by Mr. Park in December 1996). Additional information is required to determine with precision the manner in which Mr. Vincent's payment was transported from Iraq to New York. As with the second payment, Mr. Vincent may have arranged for the money to be shipped to New York via diplomatic pouch in order to avoid the scrutiny of customs inspectors.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

According to Mr. Rashid, Mr. Aziz decided after this third payment that there should be no more payments for the Secretary-General. The Government of Iraq was not pleased with the Secretary-General's stance on the Programme.<sup>244</sup>

Chart C – The Third Payment in Late 1996



## 6. Oil Allocations for Mr. Vincent

Mr. Vincent received more than just cash from Iraq for his work over the years. From 1997 to 2001, Mr. Vincent received five oil contracts from the Government of Iraq under the Programme, giving him the right to purchase nine million barrels of Iraqi oil through his company, Phoenix International. Phoenix International received revenues in an amount up to \$2,297,258.91 from the sale of Iraqi crude oil under the five contracts from August 1997 to April 2001.<sup>245</sup>

<sup>244</sup> Amer Rashid interview (Oct. 29, 2004); see also Park Complaint Affidavit, para. 9(m). The Park Complaint Affidavit notes that "Iraqi official #2"—presumably Mr. Aziz—"refused to authorize any further payments under the agreements" drawn up by Mr. Vincent upon receipt of the first cash payment in Baghdad in February 1996. Park Complaint Affidavit, para. 9(m).

<sup>245</sup> Phoenix International record, Phoenix International invoice to Chevron (undated) (for shipments of contract M/02/02 from October 1997 to December 1997); Heritage Bank credit advice to Phoenix International (Jan. 5, 1998); Phoenix International fax to Chevron (Aug. 20, 1998) (attaching invoice for contract M/04/29); Heritage Bank credit advice to Phoenix International (Aug. 24, 1998); Phoenix International invoice to Chevron (undated) (invoice for part of contract M/04/29); Heritage Bank credit

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

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Mr. Vincent requested oil allocations, and Ambassador Hamdoon recommended the approval of such allocations to the Minister for Foreign Affairs. The Iraq Mission requested that the Foreign Minister relay Mr. Vincent's request to Deputy Prime Minister Aziz and recommend approval on the basis of Mr. Vincent's past and continuing "efforts." In his criminal guilty plea, Mr. Vincent stated, "I received those allocations because of the work I had done on behalf of the Government of Iraq in helping set up the oil for food program."<sup>246</sup>

A review of United Nations contracting and payment records confirms that Mr. Vincent executed contracts for five allocations of oil in the total amount of 9.1 million barrels of oil and that, on behalf of Phoenix International, Mr. Vincent signed contracts for each of these allocations between August 1997 and February 2001. The last of Mr. Vincent's allocations was granted at a time when Iraq's illicit oil surcharge policy was in effect. SOMO records show that Phoenix International was assessed surcharges amounting to \$613,403. However, these records reflect that only \$8,000 of these assessed surcharges was paid on behalf of Phoenix International by a third party.<sup>247</sup>

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advice to Phoenix International (Nov. 17, 1998); Phoenix International letter to Chevron (Feb. 4, 2000) (attaching invoice for contract M/07/65); Heritage Bank credit advice to Phoenix International (Feb. 7, 2000); Phoenix International letter to Chevron (Feb. 21, 2000) (attaching invoice for contract M/07/65); Heritage Bank credit advice to Phoenix International (Feb. 23, 2000); Phoenix International fax to Chevron (Dec. 21, 2000) (attaching invoice for contract M/08/73); Phoenix International letter to Chevron (Oct. 10, 2000) (attaching invoice for contract M/08/73); Phoenix International letter to Chevron (Apr. 6, 2001) (attaching invoice for contract M/09/50); Standard Chartered Bank fax to Phoenix International (Apr. 26, 2001) (acknowledging receipts of funds).

<sup>246</sup> Iraq Mission cable to Ministry for Foreign Affairs (Dec. 26, 1997) (translated from Arabic); Vincent Guilty Plea Transcript, paras. 17-18; Iraq official interview (confirming Mr. Vincent's receipt of oil allocations in return for his assistance in memorandum of understanding negotiations). This request was also relayed to the Minister of Oil, as was the fact that the basis of the recommendation for approval was Mr. Vincent's past and continuing efforts for Iraq. Ministry for Foreign Affairs letter to Minister of Oil (Dec. 27, 1997) (translated from Arabic).

<sup>247</sup> SOMO sales contract M/02/02 (Aug. 9, 1997) (with Phoenix International L.L.C.); SOMO sales contract M/04/29 (June 13, 1998) (with Phoenix International L.L.C.); SOMO sales contract M/07/65 (Dec. 11, 1999) (with Phoenix International L.L.C.); SOMO sales contract M/08/73 (June 26, 2000) (with Phoenix International L.L.C.); SOMO sales contract M/09/50 (Feb. 12, 2001) (with Phoenix International L.L.C.); Ministry of Oil record, Ledger of Outstanding Surcharge Payments due to SOMO (June 16, 2004); Park Complaint Affidavit, para. 9(p); Jordan National Bank record, Bank advice for SOMO account (Mar. 22, 2001) (indicating payment of \$8,000 cash on behalf of Phoenix International). There is some indication that Mr. Vincent declined to pay the surcharge and disclosed to SOMO a letter from the United States government stating that payment of the surcharge would be illegal. Iraq official interview; Phoenix International record, Director of Office of Foreign Assets Control letter to Samir Vincent (Dec. 26, 2000) (advising Mr. Vincent that "U.S. persons are not authorized to make payment of a surcharge of any kind on Iraqi oil").

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

**IV. PAYMENTS FROM IRAQ TO TONGSUN PARK IN 1997 AND THE CONNECTION TO MAURICE STRONG**

According to the Park Complaint Affidavit, after Iraqi Official #2 (who for reasons set forth below is known to be Mr. Aziz) decided to discontinue cash payments, Mr. Park “demanded a meeting with Iraqi Official #1 [who for reasons set forth below is known to be Ambassador Hamdoon] in Manhattan.” The affidavit further states that, in or about late 1996, “a meeting was held in a Manhattan restaurant,” attended by Mr. Park, Mr. Vincent, Ambassador Hamdoon, and “a high-ranking United Nations official” identified as “U.N. Official #2” (who, for reasons set forth below, is known to be Maurice Strong). After Mr. Strong “left the meal early,” Mr. Park informed Ambassador Hamdoon that he “had used the \$5 million guarantee from the Government of Iraq to fund business dealings with U.N. Official #2 [Mr. Strong].” Mr. Park allegedly claimed that “he therefore needed to be paid in full,” in accordance with the payment agreement.<sup>248</sup>

In reliance on an unidentified witness, the Park Complaint Affidavit further states that Mr. Park traveled twice to Baghdad in 1997 or 1998 and that he “received something unspecified of value from Iraqi officials on these trips related to the United Nations Oil-For-Food Program.” It states that he told the unidentified witness that he “later invested \$1 million received on these trips to Iraq in a Canadian company established by the son of U.N. Official #2 [Mr. Strong]” but that “the money was lost because this Canadian company failed soon after [Mr. Park] invested the money in it.”<sup>249</sup>

As noted above, local federal law enforcement authorities have not granted the Committee access to the materials that form the basis for the statements set forth above. Nor has the Committee been granted access to Mr. Vincent. Nevertheless, in view of the complaint’s allegation that Iraq monies were used to pay Mr. Strong and possibly as part of a continued effort by Iraq to wield improper influence over one or more United Nations’ officials, the Committee has conducted further investigation of the statements set forth in the Park Complaint Affidavit.

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<sup>248</sup> Park Complaint Affidavit, para. 9(m). It is believed that Mr. Aziz is “Iraqi official #2” because, as described earlier in this Chapter, he was the other Iraqi official present with Ambassador Hamdoon (who is believed to be “Iraqi Official #1”) at the June 1993 meeting in Geneva referenced in paragraph 9(d) of the Park Complaint Affidavit. The Park Complaint Affidavit also describes a lunch meeting at which Mr. Park, “CW-1,” “Iraqi Official #1,” and “U.N. Official #2” were present. It further describes that Mr. Park told another witness that he had invested money he received from Iraq in a Canadian company “established” by the son of “U.N. Official #2,” which company failed soon after he made the investment. The Committee has identified only one company and set of individuals that fit these facts: Mr. Vincent (“CW-1”), Nizar Hamdoon (“Iraqi Official #1”), Maurice Strong (“U.N. Official #2”), and Cordex Petroleums (the “Canadian company”). Park Complaint Affidavit, paras. 9(m), 10(b); Kenneth Strong interview (June 1, 2005); Maurice Strong interviews (Apr. 18, May 4, and June 17, 2005); Confidential witness interview; Wyatt Dickerson interview (May 27, 2005).

<sup>249</sup> Park Complaint Affidavit, para. 10(b).

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

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**A. MAURICE STRONG’S BACKGROUND AND HIS RELATIONSHIP TO THE UNITED NATIONS**

Maurice Strong, a Canadian national, has an extensive background in the Canadian energy business and the Government of Canada. He has served on the board of directors of several energy companies. He has also had a long association with the United Nations, having served as Secretary-General of the United Nations Conference on the Human Environment from 1970 to 1972, and as the first Executive Director of the United Nations Environment Programme. In 1985 and 1986, Mr. Strong served concurrently as Executive Coordinator of the United Nations Office for Emergency Operations in Africa and as a member of the World Commission on Environment and Development. In 1992, Mr. Strong was Secretary-General of the renowned United Nations Conference on Environment and Development in Rio de Janeiro, Brazil (“Earth Summit”). By early 1996, Mr. Strong was working as a senior advisor to the President of the World Bank.<sup>250</sup>

On Mr. Park’s recommendation and with his coordination, Secretary-General Boutros-Ghali and Mr. Strong met in August 1996 and, despite a history of difficult relations, discussed the possibility of Mr. Strong assisting the Secretary-General in the latter’s bid for reappointment. The Secretary-General viewed Mr. Strong as someone who could lend international respectability to the reappointment effort and who, with Mr. Strong’s claims of close ties to then United States Vice President Al Gore, could perhaps sway the Clinton administration’s position on this issue. In return for Mr. Strong’s support, the Secretary-General proposed a compromise plan where, if reappointed, he would serve for two-years instead of the full five year term and Mr. Strong would serve as his deputy with “the prospect for succeeding him for the remaining three years.” While Mr. Strong claimed to have rejected this offer, that same month, the Secretary-General appointed Mr. Strong to serve as the Senior Advisor to the Secretary-General on reform issues. Among Mr. Strong’s reform proposals from 1996, he advised the Secretary-General to establish the position of Deputy Secretary-General to coordinate, on behalf of the Secretary-General, an accelerated Reform Program and carry out “such other responsibilities as may be assigned by the Secretary-General from time to time.” When the Secretary-General failed to obtain a second term, however, this compromise arrangement was not realized.<sup>251</sup>

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<sup>250</sup> Maurice Strong, *Where on Earth are We Going?* (Texere, 2000), pp. 411, 414-15 (hereinafter “*Where on Earth are We Going?*”); Government of Canada, Department of Foreign Affairs and International Trade, “Biography of Maurice F. Strong,” [http://www.dfait-maeci.gc.ca/departement/skelton/Strong\\_bio-en.asp](http://www.dfait-maeci.gc.ca/departement/skelton/Strong_bio-en.asp); Maurice Strong personnel file, United Nations Office of Human Resources Management; Maurice Strong interviews (Apr. 18 and June 17, 2005). From December 1999 to July 2000, Mr. Strong served on the board of Air Harbour Technologies Ltd, where his co-board members included Secretary-General Kofi Annan’s son, Kojo Annan, and Cotecna Vice President, Michael Wilson. For further discussion on Kojo Annan and Mr. Wilson, see Chapter 6 of Volume III.

<sup>251</sup> Maurice Strong interviews (Apr. 18 and June 17, 2005); Al Gore interview (Aug. 24, 2005); Boutros Boutros-Ghali interview (May 2, 2005); Confidential witness interview; Jean-Claude Aimé interview (May 23, 2005) (stating that the Secretary-General and Mr. Strong had a “personality clash” during the 1992

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

In 1997, with the departure of Secretary-General Boutros-Ghali, Mr. Strong was appointed by Secretary-General Kofi Annan to serve as Under-Secretary-General and Senior Advisor on Reform, a position he held until 1998. From 1998 to 2002, Mr. Strong served as Special Advisor to the Secretary-General for Human Security. From 2003 to 2005, Mr. Strong served as Special Advisor to the Secretary-General and his Personal Envoy to the Korean Peninsula. In July 2005, Mr. Strong's United Nations contract expired, and it was not renewed.<sup>252</sup>

## B. MR. PARK AND MR. STRONG

Mr. Strong first met Mr. Park in Canada in late 1995 or early 1996 through a common acquaintance. Mr. Strong made background inquiries about Mr. Park and was wary of him at first. However, when Mr. Strong moved to Washington, D.C. to work at the World Bank, the two men developed a friendship. Mr. Strong learned in Washington, D.C. that Mr. Park had powerful

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Earth Summit and had a poor relationship ever since and that, in return for helping the Secretary-General with his reappointment, Mr. Strong hoped to secure a very senior position at the United Nations in the Secretary-General's anticipated second term); *Where on Earth are We Going?*, pp. 297-98 (recounting Mr. Strong's discussion with the Secretary-General regarding the compromise proposal); Maurice Strong letter to José Maria Figueres Olsen (Dec. 23, 1996) (thanking the President for his "personal support and assistance in respect of the Secretary-Generalship" and stating that the "only chance for a person outside of Africa [to become Secretary-General] was for a compromise in which Boutros Boutros-Ghali would have received a two-year term, and as his deputy during that period, I would have had a good shot at succeeding him for the remainder of the three-year term"); Maurice Strong letter to Boutros Boutros-Ghali (Aug. 15, 1996) (proposing the appointment of a Deputy Secretary-General); Boutros Boutros-Ghali letter to Maurice Strong (Dec. 20, 1996) (expressing gratitude for Mr. Strong's friendship "during the last, difficult months of my mandate"); Maurice Strong letter to Boutros Boutros-Ghali (Dec. 26, 1996) (expressing that his "greatest regret of the past year" was his "inability to move the U.S. Administration in respect of a compromise that would enable you to continue for at least a portion of the next five-year term").

Committee investigators have spoken to former United States Vice President Al Gore, who stated that he met Maurice Strong during preparations for the 1992 Earth Summit in Rio, which Mr. Strong headed as Secretary-General, and their occasional contact thereafter was focused on mutual environmental concerns. Mr. Gore said that Mr. Strong never lobbied him for the reappointment of Secretary-General Boutros-Ghali. He said they only had one conversation about the position of Secretary-General, which occurred toward the end of Secretary-General Boutros-Ghali's term, when it was clear that the United States would not support Secretary-General Boutros-Ghali's reappointment. The Vice President asked Mr. Strong who among the list of potential candidates would be sensitive to global environmental issues and was surprised when Mr. Strong replied that he himself would be interested in the position. Al Gore interview (Aug. 24, 2005).

<sup>252</sup> *Where on Earth are We Going?*, pp. 411, 414-15; Maurice Strong personnel file, United Nations Office of Human Resources Management; United Nations Secretariat staff list, ST/ADM/R.58 (July 1, 2003); UN News Center, "Daily Press Briefing by the Office of the Spokesman for the Secretary-General" (July 19, 2005), <http://www.un.org/News/briefings/docs/2005/db050719.doc.htm> (noting that Mr. Strong's contract would not be renewed and that Mr. Strong had put himself on suspension in April 2005 as a result of the Committee's inquiry).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

friends and he was the founder and sometime owner of the exclusive Historic George Town Club, which was frequented by influential personalities.<sup>253</sup>

After Mr. Strong moved to New York to work at the United Nations in late 1996, he continued to communicate with Mr. Park, and the United Nations component of their relationship developed.<sup>254</sup>

Mr. Park and Mr. Strong also discussed various investment and business ventures together. Mr. Strong recalled an energy business trip he took to Korea in 1995. By early 1996, he was also in discussions with Mr. Park about investing in a project in Mozambique, but these plans never materialized. In October 1996, Mr. Strong and Mr. Park traveled together in South Korea in connection with more business opportunities in the energy sector, and they participated in meetings set up by Mr. Park.<sup>255</sup>

Among Mr. Strong's business interests was Cordex Petroleum Inc. ("Cordex"), an energy company in Canada that was controlled by him through his family's holding company, Strovest Holdings Inc. By late 1996, Mr. Strong persuaded a friend, Theodore Kheel, to buy approximately \$1 million in shares of Cordex. Mr. Kheel bought the shares without doing independent research on the company. Instead, he purchased the shares based on his friendship with Mr. Strong and because Mr. Strong had personally guaranteed to repurchase Mr. Kheel's investment at the end of one year and, in the meantime, committed to provide an irrevocable letter of credit to Mr. Kheel by April 1, 1997. The letter of credit was never issued and by April 1997, Mr. Kheel asked Mr. Strong to buy back the Cordex shares.<sup>256</sup>

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<sup>253</sup> Maurice Strong interviews (Apr. 18 and 29, 2005); Geoffrey Grenville-Wood interview (Aug. 24, 2005); Wyatt Dickerson (May 27, 2005); Commonwealth Land Title Insurance Company owner's policy for Suter's Tavern, Inc. (July 16, 1990); Purchase and Sale Agreement by and between Suter's Tavern, Inc., as seller, and the Historic George Town Club, Inc., as purchaser (Aug. 15, 2002).

<sup>254</sup> Maurice Strong interviews (Apr. 18-19 and 29, June 17, and Aug. 11, 2005).

<sup>255</sup> Maurice Strong interview (June 17, 2005); Maurice Strong letter to Tongsun Park (Nov. 2, 1996) (discussing Korea trip together); Reid Morden letter to Maurice Strong and Tongsun Park (Oct. 16, 1996) (requesting on behalf of Canadian atomic energy company the support of Mr. Park and Mr. Strong for the sale of "Candu 9" nuclear reactors during their upcoming meetings in Korea with Korean leaders); Reid Morden interview (June 8, 2005); Allan Hawryluk interview (July 28, 2005). The Committee notes that Mr. Morden, who now serves the Committee as its Executive Director, was employed from 1994 to 1998 as President and Chief Executive Officer of Atomic Energy of Canada Limited ("AECL"), a company owned by the Canadian government. In 1996, Mr. Park had a consulting arrangement with AECL, while Mr. Strong was Chairman of Ontario Hydro, a large civilian user of AECL's "Candu 9" reactors. Mr. Hawryluk served as general counsel of AECL. Allan Hawryluk interview (July 28, 2005). Because of Mr. Morden's contact with Mr. Park and Mr. Strong concerning AECL, he has recused himself from any involvement in the investigation, analysis, and drafting of this Chapter of the Report. The trip made by Mr. Park and Mr. Strong to Korea was not related to the Programme.

<sup>256</sup> Maurice Strong interviews (Apr. 18 and 29, 2005); Maurice Strong letter to Theodore Kheel (Nov. 8, 1996) ("Strovest Holdings Inc., our family company, and I own about 20% of Cordex. My friend, Bill



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

Prior to April 1997, Mr. Park expressed a strong interest in Cordex and, by the end of 1996, he had agreed to invest in it. Mr. Park had trouble coming up with the funds for an investment, causing the transaction to linger.<sup>257</sup> Mr. Strong offered to Mr. Park to find another buyer for the shares held by Mr. Kheel, but Mr. Park insisted on proceeding with the sale. Documents collected by the Committee reveal that steps were taken in April 1997 (the month by which Mr. Strong was to provide a letter of credit to Mr. Kheel) to effect the sale of stock from Mr. Kheel to Mr. Park, including a guarantee letter dated April 17, 1997 from Mr. Strong to one of Mr. Park's companies that was to purchase the stock, but this effort failed because Mr. Park was unable to obtain the funds to complete the transaction.<sup>258</sup> As discussed below, Mr. Park was not able to make good on his promised investment until a later trip to Iraq in July 1997.

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Turner, owns about 11%. Together we effectively control the company.”); Theodore Kheel interviews (May 3 and July 5, 2005). The guarantee was memorialized in a letter dated December 11, 1996 addressed to Mr. Kheel and signed by Mr. Strong. Maurice Strong letter to Theodore Kheel (Dec. 11, 1996).

<sup>257</sup> Maurice Strong interviews (Apr. 18 and 29, and June 17, 2005); Confidential witness interview (stating that Mr. Park expressed interest in investing in Cordex in 1997); Kenneth Strong interview (June 1, 2005) (stating that Mr. Park expressed interest in purchasing the Cordex shares in the fall of 1996). There is some inconsistency as to when Mr. Park first decided to invest in Cordex. When first interviewed, Mr. Strong stated that Mr. Park agreed to invest in Cordex in late 1996. In a later interview, Mr. Strong stated that Mr. Park first expressed an interest in investing in Cordex in 1995 or early 1996. Kenneth Strong is Mr. Strong's son who assisted on this Cordex share sale. Maurice Strong indicated that Mr. Kheel had decided to sell his shares because Mr. Kheel was getting older and wanted his investment back. The final paperwork for Mr. Kheel's November 1996 purchase was not transmitted to Mr. Kheel until mid-December 1996. Maurice Strong interviews (Apr. 29 and June 17, 2005); see also Confidential witness interview. Kenneth Strong letter to Theodore Kheel (Dec. 11, 1996). Mr. Park's financial difficulties compelled him to sell the Historic George Town Club with a one-year option to repurchase. Wyatt Dickerson interview (Aug. 26, 2005) (recalling Mr. Park's financial difficulty in 1996 and his sale of the Historic George Town Club); see also Suter's Tavern record, Seller's closing statement by and between Suter's Tavern, Inc., as sellers, and Bluefield Partners, LP, as purchasers (Apr. 26, 1996).

<sup>258</sup> Confidential witness interview; Kenneth Strong letter to Theodore Kheel (unsigned) (Apr. 21, 1997) (expressing disappointment that the sale had not yet occurred); Maurice Strong interview (June 17, 2005). The initial guarantee was executed by Mr. Strong but was not countersigned by Mr. Park's designated company. Kenneth Strong memorandum to Tongsun Park with Guarantee (partially executed) attached (Apr. 21, 1997). A week later, a revised guarantee (with the same terms but addressed to a different company owned by Mr. Park), was prepared. However, this later guarantee was never executed by either party. Maurice Strong letter to Caribbean Marketing Development Corporation Limited (Apr. 25, 1997). The letter appears to have been sent by Kenneth Strong who handled the paperwork for this transaction. While Maurice Strong was personally involved in the transaction through his conversations with Mr. Kheel and Mr. Park, he did not handle the paperwork for this transaction. Maurice Strong interview (June 17, 2005); Kenneth Strong interview (June 1, 2005).

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

**C. MR. PARK'S DIRECT RELATIONSHIP WITH IRAQ AND THE CONNECTION TO MR. STRONG**

In late 1996, Mr. Park, Mr. Vincent and Ambassador Hamdoon met for lunch in a restaurant across the street from the United Nations. During the lunch, Mr. Park, Ambassador Hamdoon, and Mr. Vincent discussed matters pertaining to Iraq. Earlier that day, Mr. Park asked Mr. Strong to stop by for lunch. Mr. Strong did stop by, but could not stay for long. Ambassador Hamdoon took the opportunity to ask Mr. Strong to come to Iraq. The Committee has confirmed that the lunch meeting with Mr. Strong, Mr. Park, Mr. Vincent and Ambassador Hamdoon took place.<sup>259</sup> However, the Committee has not been able to confirm the account set forth in the Park Complaint Affidavit that, once Mr. Strong left the meal, Mr. Park told Ambassador Hamdoon that he had used the guarantee of money from the Iraqi regime to fund business dealings with Mr. Strong.

By 1997, Mr. Park had established an independent relationship with Ambassador Hamdoon that did not involve Mr. Vincent. Iraq Mission telephone records show frequent outgoing calls directly to Mr. Park starting in June 1997. Ambassador Hamdoon encouraged Mr. Park to visit Iraq and made arrangements for him to travel there. In order to receive more money from Iraq, Mr. Park needed to convince the Government of Iraq that his services remained valuable even after his prior United Nations contact, Secretary-General Boutros-Ghali, was gone and the Programme had been launched. This meant, at the least, that Mr. Park had strong incentive to promote his ties to Mr. Strong and to foreign governments willing to do business in Iraq, such as South Korea, to increase his worth in the eyes of the Government of Iraq.<sup>260</sup>

Although Mr. Strong did not have a formal "Iraq portfolio" within his United Nations job description, Iraq made efforts to cultivate Mr. Strong. Ambassador Hamdoon met again with Mr. Strong, as did Mr. Aziz; they both explained to Mr. Strong the detrimental effects that the sanctions were having on the Iraqi people and they invited him to Iraq. Mr. Park also later asked Mr. Strong to accompany him when he later traveled to Iraq in July and the fall of 1997. Mr. Strong declined each of these invitations.<sup>261</sup>

On April 25, 1997, Ambassador Hamdoon met Mr. Strong again at the latter's office in the Secretariat building. Only hours before, Mr. Strong had made a request to United Nations Security to allow Mr. Park into the Secretariat building. Sometime after his meeting with Ambassador Hamdoon, Mr. Strong was invited by the Iraq Mission to meet Mr. Aziz. Because Mr. Strong had been intrigued by Mr. Aziz, Mr. Strong attended the meeting and went alone. Mr. Strong recalled that during the meeting Mr. Aziz explained Iraq's views on sanctions and on

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<sup>259</sup> Confidential witness interview. Mr. Strong has stated that he does not recall the lunch, but that he called Mr. Park recently (before the interview of June 17, 2005) and was told by Mr. Park the restaurant at which the lunch took place. Mr. Strong said he knew the place because he frequently had eaten there. Maurice Strong interview (June 17, 2005).

<sup>260</sup> Confidential witness interview; Iraq Mission telephone records (June 24 to Nov. 7, 1997).

<sup>261</sup> Maurice Strong interview (Apr. 29, 2005); Confidential witness interview.

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

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Kuwait's claims for reparations. Mr. Aziz tried to explain to Mr. Strong why Iraq was being treated unfairly and reiterated the invitation to Mr. Strong to visit Iraq by saying "we are happy to have you come, you are well-known in the United Nations and can see the suffering of our people."<sup>262</sup>

After some consideration of the invitation, Mr. Strong decided not to travel to Iraq. He advised Ambassador Hamdoon and Mr. Aziz that "he had nothing to do with the Iraqi issue" and "that if useful to the United Nations, he would be happy to visit Iraq but that he was not seeking a role on this matter." Mr. Strong added that Mr. Aziz had not discussed the Programme with him and that the Deputy Prime Minister had not offered him "any money, oil allocations or anything else of value." Mr. Strong further stated that, other than their invitation to visit Baghdad, Ambassador Hamdoon and Deputy Prime Minister Aziz made no requests from him to take any action or to lobby anyone for them.<sup>263</sup> The Committee has found no evidence that Mr. Strong was involved in any Iraq-related activity at the United Nations at the request of Iraqi officials.

#### **D. MR. PARK'S TRAVELS TO IRAQ AND THE PAYMENTS TO MR. STRONG**

Mr. Park made two trips to Iraq—one in July and another in the fall of 1997. During each trip, Mr. Aziz gave him large amounts of cash which he in turn converted to checks at a bank in Jordan. Just prior to Mr. Park's first trip, his planned purchase of Cordex shares, which had been dormant since April 1997 due to his lack of funds, was resurrected. On July 16, 1997, Mr. Strong met with Mr. Park in New York. On that same day, Kenneth Strong sent a letter to Mr. Kheel stating that the transaction was finally closing, and asking for the interest cost associated with the

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<sup>262</sup> Maurice Strong calendar (Apr. 25, 1997); Personal assistant to Maurice Strong fax (Apr. 24, 1997) (requesting access for Mr. Park, who was expected to arrive the following day at 12:30 p.m. to the 38<sup>th</sup> floor of the Secretariat); Maurice Strong interviews (Apr. 18 and 29, 2005). This meeting took place on the same day that the nominal purchaser of Cordex stock was changed from Parkington Corporation to Caribbean Marketing Development Corporation. Maurice Strong letter to Caribbean Marketing Development Corporation Limited (Apr. 25, 1997); Nizar Hamdoon calendar (Apr. 25, 1997) (indicating that the meeting was scheduled for 3:30 p.m.); Personal assistant to Maurice Strong fax (Apr. 24, 1997); Maurice Strong interviews (Apr. 29 and June 17, 2005).

<sup>263</sup> Ibid. The Committee has found only one instance in which Mr. Strong had involvement in an Iraq-related issue during the relevant time period. At his own initiative, Mr. Strong suggested potential candidates to succeed Executive Chairman Rolf Ekeus as head of UNSCOM upon Mr. Ekeus's departure. Later, when Richard Butler's name was raised as a possible candidate to succeed Mr. Ekeus, Mr. Strong registered his disapproval with the Secretary-General. Although Secretary-General Kofi Annan indicated that Mr. Strong's suggestion was unsolicited and that Mr. Strong was not generally involved in recommendations for appointments, the Secretary-General noted that he consulted widely in the search for candidates. Maurice Strong interview (Aug. 11, 2005); Kofi Annan interview (July 27, 2005); Maurice Strong letter to Kofi Annan (Apr. 7, 1997) (recommending potential successors to Rolf Ekeus as Special Representative in Iraq). The Committee has found no indication that Mr. Strong's recommendations were the result of any discussions with Iraqi officials.

# **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

## **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

long delayed sale of Cordex shares. Within the next three weeks, as discussed below, Mr. Park would make his first trip to Iraq and would use \$1 million in cash he received from Iraqi officials to complete his purchase of Cordex stock.<sup>264</sup>

#### **1. Mr. Park's First Trip to Iraq and the Purchase of Cordex Shares**

Mr. Park traveled to Iraq via Jordan in July 1997. During this trip, Mr. Park had discussions with Iraqi officials about a proposal whereby a Korean business consortium would provide approximately \$300 million in goods and cash in exchange for oil and other concessions in Iraq. The consortium would also help Iraq reestablish relations with other countries by encouraging countries to open embassies in Iraq in return for oil allocations and humanitarian contracts under the Programme.<sup>265</sup>

During his visit, Mr. Park met separately with Deputy Prime Minister Aziz, Oil Minister Rashid, and Health Minister Medhay Mubarak. Mr. Aziz asked Mr. Park to help Iraq re-establish diplomatic ties with South Korea and to persuade South Korea to re-open its embassy in Baghdad. Mr. Aziz claims that the Iraqi government did not ask Mr. Park to do anything on its behalf; however, Mr. Aziz has acknowledged that he met Mr. Park on one occasion. At the meeting with Oil Minister Rashid, Mr. Park discussed the possibility of an agreement between Iraq and a consortium of Korean companies on oil exploration rights to fields in Iraq. This putative agreement required the consortium to pay an upfront fee of approximately \$100 million in cash and the balance of \$200 million in goods. Mr. Park also attempted to arrange a visit to South Korea for Oil Minister Rashid. During his meeting with the Health Minister, Mr. Park was asked to encourage Korean pharmaceutical companies to sell pharmaceuticals to Iraq and urged to register in the Programme companies affiliated with Mr. Park's family.<sup>266</sup>

During these meetings, Mr. Park was offered additional opportunities to do business under the Programme. According to a confidential witness, Oil Minister Rashid offered Mr. Park oil allocations, but Mr. Park did not pursue the offer. In a recent interview, Mr. Rashid stated that he does not remember ever meeting Mr. Park. However, an American businessman who knew Mr. Park from the United States and who was visiting Baghdad during the same period has confirmed to the Committee that he ran into Mr. Park in the lobby of the Al-Rasheed Hotel in Baghdad. Mr.

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<sup>264</sup> Tongsun Park travel records; Kenneth Strong letter to Theodore Kheel (July 16, 1997); Mr. Strong recalled that Mr. Park mentioned he had a "long-term" interest in Iraq and that he was traveling to Iraq. Maurice Strong interview (Apr. 29, 2005); Maurice Strong calendar (July 16, 1997).

<sup>265</sup> Wyatt Dickerson interview (May 27, 2005) (indicating that Mr. Park traveled twice to Iraq in an automobile from Jordan); Confidential witness interview.

<sup>266</sup> Confidential witness interview; Wyatt Dickerson interview (May 27, 2005) (recalling that Mr. Park mentioned to him that Mr. Park was negotiating some kind of oil deal and that he had to travel to Baghdad to do the deal and went to Iraq twice in 1996 and 1997); Tariq Aziz interview (Aug. 16, 2005); Amer Rashid interview (Aug. 22, 2005).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

Park mentioned that he was in Baghdad together with a Korean oil consortium seeking oil exploration rights. However, these conversations did not lead to any contracts.<sup>267</sup>

At the end of his first visit in July, Mr. Park met again with Mr. Aziz to discuss his progress with the other Ministries. Before he left Baghdad, Mr. Aziz gave Mr. Park \$1 million in cash in a cardboard box, and then he arranged for Mr. Park to be escorted to the Jordanian border. Mr. Aziz has denied any knowledge of payments to Mr. Park. However, as indicated earlier, in the light of the preponderance of evidence corroborating payments to Mr. Park and Mr. Vincent, the Committee does not find Mr. Aziz's denial credible.<sup>268</sup>

Mr. Park left Baghdad for Amman, Jordan with at least \$1 million in cash. He arrived in Amman with the United States currency provided by the Iraqi regime wrapped in papers marked with the name of the Rafidain Bank, the bank used by the Government of Iraq. After his arrival in Amman, Mr. Park received assistance from an expatriate Iraqi citizen, who had been called by an acquaintance to meet and help Mr. Park. Together they arranged to convert Mr. Park's cash into a bank check. The money was in a plastic bag, wrapped in \$10,000 bundles. On July 30, 1997, the Iraqi citizen opened an account at the Housing Bank in Amman and deposited Mr. Park's money into the account for Mr. Park. On the same day when the account was opened, the bank issued a check from the account in the amount of \$988,885. The bank check was made payable to "*Mr. M. Strong*."<sup>269</sup>

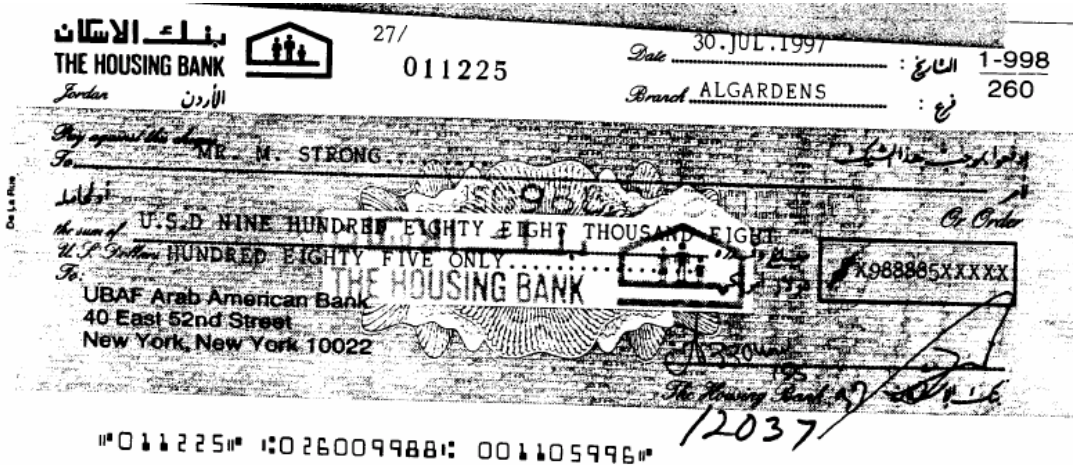
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<sup>267</sup> Confidential witness interview; Amer Rashid interview (Aug. 22, 2005). But see Tariq Aziz interview (Aug. 16, 2005) (claiming he recalls meeting Mr. Park only once and they did not discuss any business during the meeting).

<sup>268</sup> Confidential witness interview.

<sup>269</sup> Confidential witnesses interviews. Accounts differ as to the amount of money Mr. Park received on this visit. One bank representative in Jordan recalled that Mr. Park received up to \$3 million in cash. Housing Bank of Jordan officials interviews (May 5, 9, and 15, 2005); Confidential witness interview; Deutsche Bank record, Theodore Kheel account, copy of check dated July 30, 1997 and endorsement (Aug. 5, 1997) (emphasis added). According to one Housing Bank of Jordan official, Mr. Park told this official that he had obtained the sum of money from some transactions he conducted in Iraq. Housing Bank official interview (May 15, 2005).

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**



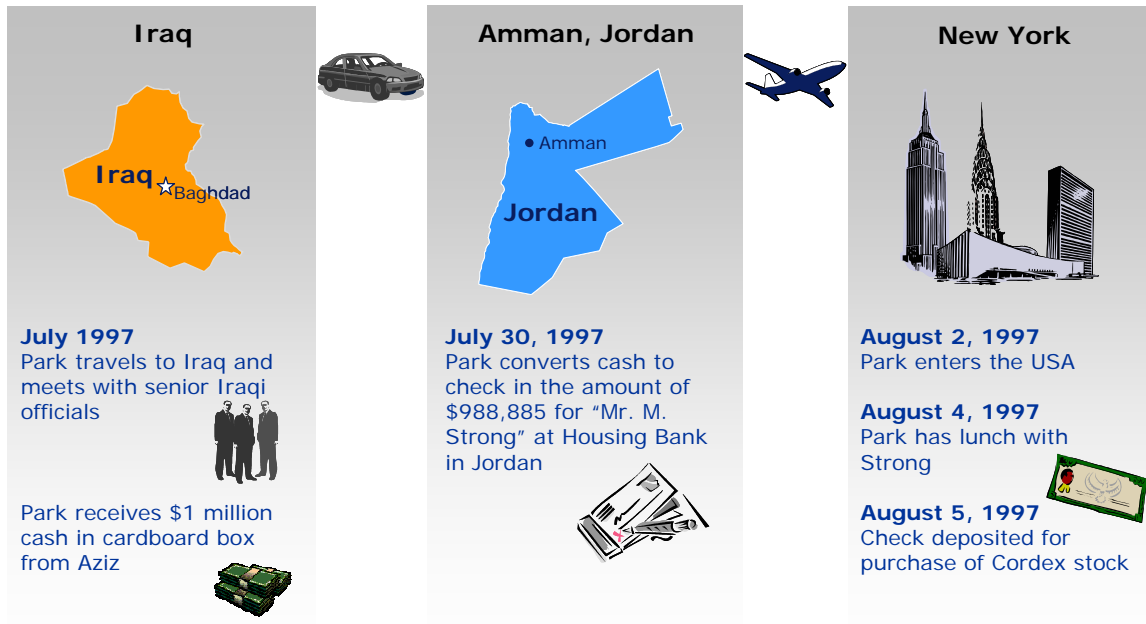
**Figure: Check to “Mr. M. Strong” for \$988,885 from The Housing Bank-Jordan (July 30, 1997).**

It is apparent from the next sequence of events that Mr. Park promptly delivered the check to Mr. Strong in the United States, who in turn delivered it immediately to Mr. Kheel to affect the Cordex sale. After obtaining the check from the Housing Bank in Jordan on Wednesday, July 30, 1997, Mr. Park traveled from Amman to New York, arriving on Saturday, August 2, 1997. On Monday, August 4, 1997, Mr. Park was scheduled to meet Mr. Strong for lunch. On August 5, 1997, the check was deposited by Mr. Kheel who received the check after it was endorsed to him by Maurice Strong, effectively releasing Mr. Strong from his guarantee to Mr. Kheel. Although Mr. Strong stated that he did not recall receiving the check from Mr. Park, when he was recently shown the back of the check, he recognized his signature on the endorsement.<sup>270</sup>

<sup>270</sup> Tongsun Park travel records; Maurice Strong calendar (Aug. 4, 1997); Deutsche Bank record, Theodore Kheel account, copy of check dated July 30, 1997, endorsement and deposit slip (Aug. 5, 1997); Maurice Strong interview (Aug. 11, 2005). On August 6, 1997, the Iraq Mission called Mr. Park at his residence in the Dominican Republic. Iraq Mission telephone records (Aug. 6, 1997).

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

Chart D – Payment from Iraq to Park to Strong in July 1997



**2. Mr. Park’s Second Trip to Iraq and Related Payments**

On his second trip to Iraq, in September 1997, Mr. Park met with Mr. Aziz at the beginning and end of the trip and also met with the Minister of Trade. Mr. Park tried to persuade the Minister of Trade to consider purchasing rice from the United States, as Mr. Park had previously worked with American rice growers. However, the Iraqi Minister of Trade was not very interested in purchasing American rice.<sup>271</sup>

Before Mr. Park left Iraq, Mr. Aziz arranged for a box containing at least \$700,000 in cash to be delivered to Mr. Park’s hotel. Similar to his trip in July 1997, Mr. Park traveled to Amman bringing cash with wrappers bearing stamps from the Rafidain Bank of Baghdad. He deposited the cash in an account in his name at the Housing Bank of Jordan on September 14, 1997 and, on the same day, had it converted to bank and travelers checks, including a \$500,000 check for him to use for the repurchase of the Historic George Town Club (which he had sold in the past year) and a \$30,000 check for Mr. Strong. Soon after his return from Iraq, on September 26, 1997, a call was placed from the Iraq Mission to a telephone number used by Mr. Park.<sup>272</sup>

<sup>271</sup> Confidential witness interview.

<sup>272</sup> Confidential witness interview; Housing Bank of Jordan officials interview (May 5, 9, and June 21, 2005); Housing Bank of Jordan record, Tongsun Park account, opening records (Sept. 14, 1997) (translated from Arabic). A copy of Mr. Park’s passport and his business card (as the chairman of Parkington

# **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

## **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

Records obtained by the Committee indicate that a certified bank check in the amount of \$30,000 was issued to “M. Strong” from that account on September 14, 1997. Mr. Strong could not recall the payment. A source familiar with Mr. Park’s finances indicated that the “purpose of the check was not clear” but that part of it may have gone to Mr. Kheel to cover the interest calculated on the delayed stock transaction (assessed at \$18,328.24 by Kenneth Strong) and possibly for paying Mr. Strong for speaking engagements to which Mr. Park had invited him. A review of Mr. Kheel’s bank statements for the period from September 1997 to December 1997 does not show a \$30,000 deposit.<sup>273</sup>

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Corporation) are included in the Housing Bank of Jordan account opening records. Chevy Chase Bank record, Suter’s Tavern, Inc. account, statement (Oct. 10, 1997) (showing an account opening deposit of \$499,000 on September 23, 1997). Suter’s Tavern, the company that bought Historic George Town club was owned by International Club Operations, which in turn was owned by Parkington Corporation, one of Mr. Park companies. Suter’s Tavern record, Repurchase of 1530, 1532, and 1534 Wisconsin Avenue, NW, Washington, DC by Suter’s Tavern Inc. from Bluefield Partners, LP (including a purchase closing statement dated November 4, 1997 and copy of a check from the same day for an amount of \$453,860.66 to be paid to the order of Commercial Settlements, Inc.); Suter’s Tavern record, United States Corporation Income Tax Return, 1997 (indicating that International Club Operations, Inc. owns one hundred percent of the stock of Suter’s Tavern Inc., and that Parkington Corporation is the sole shareholder of International Club Operations). Apart from the two abovementioned payments, on November 4, 1997, Mr. Park received \$50,500.14 in travelers checks and three other certified checks for amounts of \$35,000, \$30,000, and \$45,000, which were used for varied expenses and for paying Mr. Park’s dues or money he owed to different individuals not connected to the subject of this inquiry. In particular, \$30,000 worth of travelers checks were deposited in the UN Plaza branch of Chase Manhattan Bank endorsed to the name “Fund for Head.” Citicorp record, copies of Visa travelers checks issued at the request of Tongsun Park at Housing Bank of Jordan (Sept. 14, 1997); Housing Bank of Jordan record, Tongsun Park account, statement (Dec. 31, 1997) and debit advices (Sept. 14, 1997) (translated from Arabic); Iraq Mission telephone records (Sept. 26, 1997).

<sup>273</sup> Housing Bank of Jordan record, debit advice (Sept. 14, 1997) (translated from Arabic); Maurice Strong interview (June 17, 2005); Confidential witness interview. For the interest calculation, see Kenneth Strong memorandum to Harold Kim (July 18, 1997); Deutsche Bank record, Theodore Kheel account, statements (Sept. 30 and Oct. 31, 1997); Wyatt Dickerson interview (May 27, 2005); Mary Lee Leary interview (Aug. 19, 2005). Mr. Kim was a friend of Mr. Park.

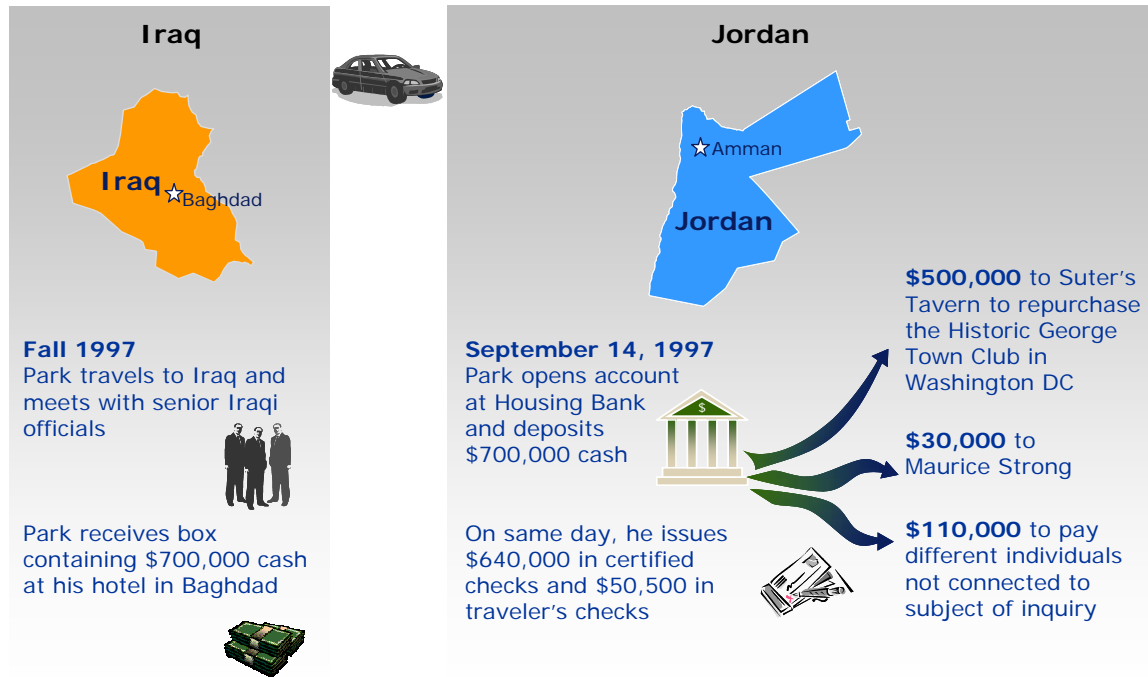


# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

Chart E – Payment from Iraq to Park in September 1997



### 3. Explanation of Mr. Strong and Evaluation by the Committee

Mr. Strong has stated that he did not have any relationship to the Government of Iraq and has emphasized that he declined all invitations to visit Iraq. While there is indication that Iraqi officials tried to establish a relationship with Mr. Strong, the Committee has found no evidence that Mr. Strong was involved in Iraqi affairs, matters relating to the Programme or took any actions at the request of Iraqi officials.<sup>274</sup>

Mr. Strong also points out that he made no personal gain from the Cordex stock sale, as he was simply facilitating a transaction between two third-parties. The Committee notes that Mr. Strong was actively involved in facilitating the transaction which involved a purchase of a significant block of shares in a company that Mr. Strong's holding company controlled. The Committee also notes that Mr. Strong did receive a benefit by being released from his guarantee and from his overdue obligation to provide a letter of credit for the full amount of the stock purchase to Mr. Kheel. Mr. Strong, in a letter from his attorney, has asserted that because he offered Mr. Park a similar guarantee when the latter invested in Cordex, Mr. Strong's obligations under one

<sup>274</sup> Maurice Strong interviews (Apr. 18 and 29, and June 17, 2005); Park Complaint Affidavit, para. 9(m).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

guarantee were effectively replaced by his obligations under another and therefore that he did not receive any benefit from the transaction. However, Mr. Strong did not assume a corresponding obligation to issue a letter of credit to Mr. Park and, when Mr. Park ultimately lost his investment due to the Company's bankruptcy, he never requested to be reimbursed by Mr. Strong nor did Mr. Strong reimburse him.<sup>275</sup>

Mr. Strong has explained that he did not know that the funds paid for the purchase of Cordex shares (\$988,885) were from Iraq. Mr. Strong has stated that Mr. Park did not inform him that he was getting money from Iraq and that he did not make the connection between Mr. Park's trip to Iraq and the money used to effect the transaction. Mr. Strong also stated that if Mr. Park had told him that the funds had been obtained from Iraq, it would have raised "red flags" and he would not have accepted any illegal money from Iraq.<sup>276</sup>

However, there are circumstances that would indicate that Mr. Strong was in a position to know or suspect the source of Mr. Park's funds. Mr. Strong was aware that Mr. Park had a long-term interest in Iraq and that he did business there. Mr. Strong recalled that Mr. Park took a trip to Iraq after Mr. Park had committed to the stock purchase and before the transaction was consummated. In addition, Mr. Strong met with Mr. Park shortly before Mr. Park traveled to Iraq, and again two days after Mr. Park returned from the trip, and delivered the check to Mr. Strong for the purchase of the Cordex shares. The face of the check for \$988,885 demonstrates its provenance from Jordan.<sup>277</sup>

Although many years have passed since this transaction took place, a further consideration is that Mr. Strong provided inconsistent accounts of his receipt of the money from Mr. Park. At first, he suggested that the payment came through a wire transfer from London and that the money had never passed through him or his son. Later, Mr. Strong stated that the payment must have been processed through his son. It was only after he was shown his own endorsement on the back of the check that Mr. Strong acknowledged that he must have handled the check.<sup>278</sup>

Although there is circumstantial evidence that Mr. Strong was in a position to know that the money he received from Mr. Park came from Iraq, the Committee has not found any direct

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<sup>275</sup> Maurice Strong interviews (Apr. 29 and Aug. 11, 2005); John Campion letter to the Committee (Aug. 25, 2005) (stating that "Mr. Strong made no gain in the transaction") (attached as an Annex to this Chapter); Maurice Strong letter to Theodore Kheel (Dec. 11, 1996) (memorializing Mr. Strong's guarantee to Mr. Kheel); Kenneth Strong memorandum to Tongsun Park with guarantee (partially executed) attached (Apr. 21, 1997).

<sup>276</sup> Maurice Strong interview (June 17, 2005).

<sup>277</sup> Maurice Strong interviews (Apr. 29, June 17, and Aug. 11, 2005); Deutsche Bank record, Theodore Kheel account, copy of check dated July 30, 1997 and endorsement; Tongsun Park travel records (indicating Mr. Park's entry to the United States on August 2, 1997); Maurice Strong calendar (July 16 and Aug. 4, 1997).

<sup>278</sup> Maurice Strong interviews (Apr. 29, June 17, and Aug. 11, 2005); Deutsche Bank record, Theodore Kheel account, copy of check endorsement (Aug. 5, 1997).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 2**

#### **NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

evidence that Mr. Strong knew that the money was from Iraq. In addition to the lack of any written record indicating such knowledge, none of the witnesses interviewed by the Committee who were involved in or had knowledge of the transactions has indicated that Mr. Strong possessed any knowledge of the source of the money. In particular, the Committee has been unable to establish whether the source of the money was discussed between Mr. Strong and Mr. Park in their communications leading up to and including their meetings in July and August 1997. Accordingly, the Committee does not conclude on the basis of available evidence that Mr. Strong was actually aware of the origins of Mr. Park's payment.<sup>279</sup>

Finally, the Committee notes that the events and relationships described in this Chapter raise significant issues regarding the risks resulting from failures to identify potential and actual conflicts of interests of United Nations officials. The Committee's recommendations address the need for a more rigorous disclosure process for conflicts of interest.

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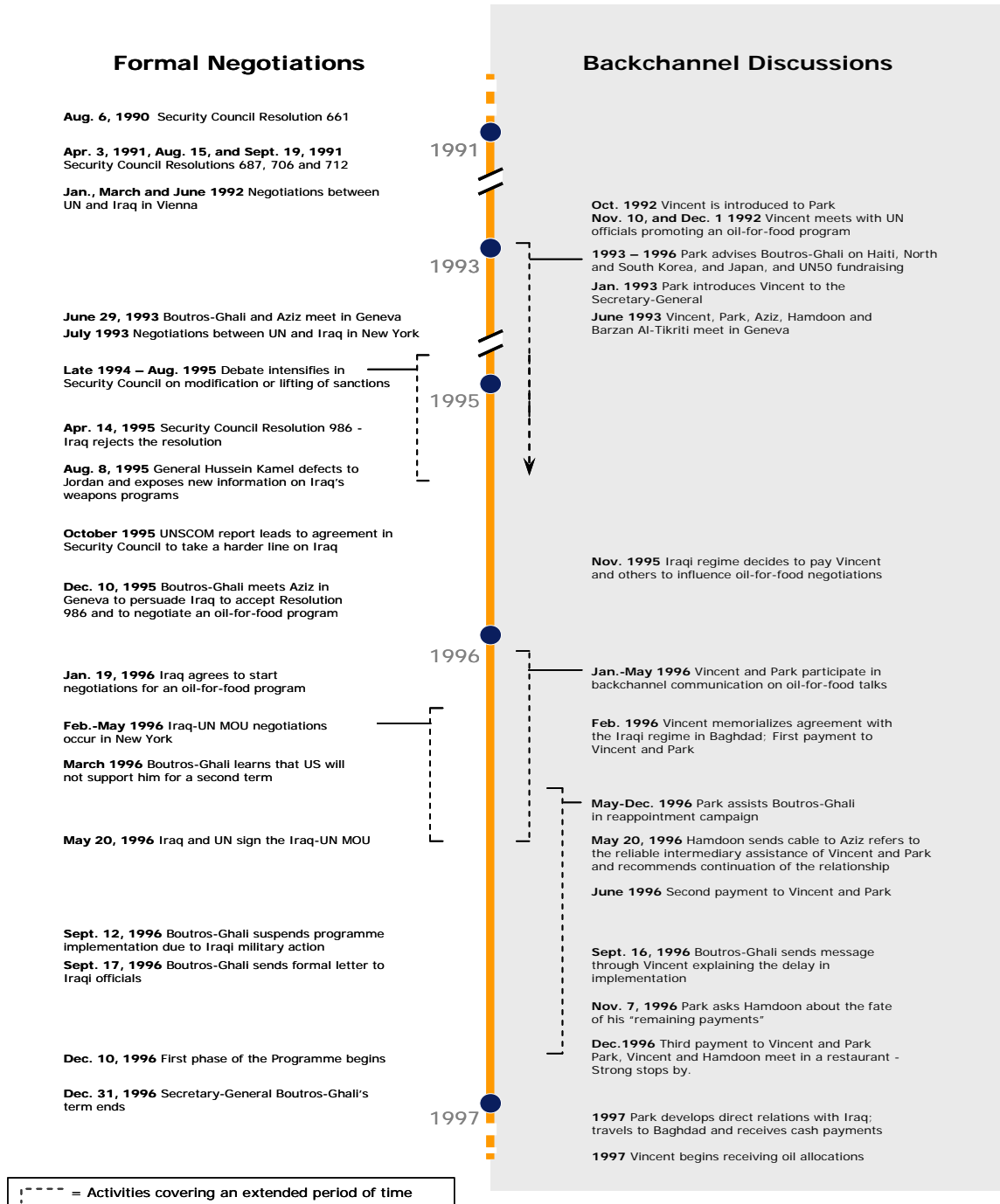
<sup>279</sup> Maurice Strong interviews (Apr. 29, June 17, and Aug. 11, 2005); Confidential witness interview.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 2

### NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

#### Timeline – Negotiation and Establishment of the Oil-for-Food Programme



**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

**V. ANNEX: CORRESPONDENCE FROM BOUTROS BOUTROS-GHALI AND MAURICE STRONG**

**Dr. Boutros Boutros-Ghali**

The Honorable Mr. Paul A. Volcker  
Chairman  
Independent Inquiry Committee into  
The United Nations Oil-For-Food Programme  
825 Third Avenue – Fifteenth Floor  
New York, New York 10022  
**U.S.A**  
Fax No.: 001 212 842 2555

Dear Mr. Volcker,

In response to your letter dated 22 August 2005, I would like to inform you of the following facts:

1. To the best of my recollection I have never met Mr. Vincent, on the other hand, I have met the lobbyist Mr. Park but never discussed with him in any fashion the oil for food problem.
2. I was not responsible for the negotiations of the oil for food from 1991 (before my mandate) until 1995. Those negotiations during that period were undertaken at the level of the Legal Advisor of the U.N.

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

In 1996 I played the role of facilitator in the negotiations which were supervised and directed by the U.S and Great Britain representatives in the U.N.

3. There was never any informal channel of communication between the Iraqi officials and myself.

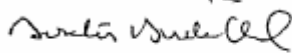
It is quiet obvious that with my ongoing contacts in the Iraqi establishment I never needed an informal channel, needless to say I have in the past negotiated with the Iraqis numerous matters in my different official capacities.

I reiterate that any evidence with regard to the existence of an informal channel of communication between Iraqi and myself through Mr. Park and Mr. Vincent is totally untrue.

4. I confirm that I have never received any money from the Iraqis or that I was aware of any such scheme.

Finally, as previously indicated to your committee, I re-confirm that I have no objection to your Committee's review of my different accounts.

Sincerely yours,

  
Boutros Boutros-Ghali

Cairo 23 August 2005

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

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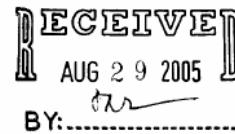


**John A. Campion**  
Direct 416 865 4357  
jcampion@tor.fasken.com

August 25, 2005  
File No: 215842.00004

**VIA FACSIMILE**

Mr. Paul A. Volcker, Chairman  
Independent Inquiry Committee into  
The United Nations Oil-For-Food Programme  
825 Third Avenue, 15<sup>th</sup> Floor  
New York, New York 10022



Dear Mr. Volcker:

**Re: The Honourable Maurice Strong, P.C., C.C., LL.D.**

I have been pleased to represent Mr. Strong in your Committee's investigation of the United Nations Oil-For-Food Programme. Mr. Strong made himself freely available for all inquiries made by your counsel. They were given full access to Mr. Strong's documents at the United Nations, at Harvard University and in his personal files. Mr. Strong was rigorously examined on three occasions over four months, always with the highest professional courtesy and integrity.

Mr. Strong has received your letter of August 22, 2005 and respectfully submits this reply. I ask that this letter form part of your report and request the right to an audience to expand upon the points made herein.

**Oil-For-Food Programme**

At the heart of your Committee's mandate is the Programme cited above. Mr. Strong understands that your mandate must, on occasion, consider facts and events that are peripheral to your central concerns.

In this context, it is important that the Committee make unequivocally clear that Mr. Strong had no role or influence on the Oil-For-Food Programme.

Mr. Strong has stated and hereby declares to your Committee that he was not involved, that he did not seek to be involved or influence the Programme. In support of this request, there is no evidence or inference that Mr. Strong was involved with the Programme or any advocacy in favour of it.

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**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 2**  
**NEGOTIATION AND ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME**

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Mr. Strong held a senior office at the United Nations during the period in question. He has a significant international reputation arising from his involvement with the United Nations, over many years. Particular media reports have at times been partisan and negative about Mr. Strong, on virtually no evidence. It is therefore important to avoid any inaccurate inferences from your findings or report.

The statement requested will diminish the possibility of unfair reporting or inferences being made against Mr. Strong.

**The Cordex Transaction**

Mr. Strong facilitated the sale of shares of Cordex Petroleum, a public company, between a third party vendor and Mr. Tongsun Park, the third party purchaser. Mr. Strong made no gain in the transaction. His position, including the existence of a guarantee to the holder, remained identical before the sale to that he held after the sale. The sale of shares was therefore an arm's length purchase and sale of shares between two third parties. The price of the shares to Mr. Park was the same price at which the third party vendor had purchased his shares.

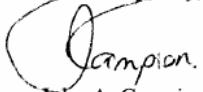
In facilitating the mechanics of the sale of the Cordex shares to Mr. Park, Mr. Strong received a cheque for the value of the shares, drawn upon the Housing Bank of Jordan. The cheque was made payable to Mr. Strong but was immediately endorsed by him to the third party in payment for the shares. The money was therefore transferred directly from the Bank of Jordan to the third party. The Cordex shares were subsequently transferred from the third party to Mr. Park. No monies went to Mr. Strong.

It is important to set out the exact details of the transaction to make it abundantly clear that the purchase and sale had no connection with the Oil-For-Food Programme and that Mr. Strong made no personal gain by the transaction. In addition to the facts contained in your letter of August 22, 2005, such statements would be an accurate reflection of the transaction.

**Conclusion**

On behalf of Mr. Strong, I would like to thank the Committee for the courtesy extended to him and to me in the conduct of this investigation and look forward to appearing before you to make my submissions and answer any questions that you may have.

Yours very truly,

  
John A. Champion

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# **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

## **VOLUME II - CHAPTER 3**

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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## **I. INTRODUCTION AND SUMMARY**

Among the most potent challenges to the Programme's integrity were Iraq's efforts to manipulate transactions with companies in order to extract payments outside the escrow account. For oil sales transactions, this meant a per-barrel "surcharge" imposed by Iraq beginning in late 2000. For humanitarian goods and oil-spare-parts transactions, this meant various forms of "kickbacks"—usually labeled as some kind of after-sales-service fee or an inland transport fee—that were imposed by Iraq as a formal policy beginning as early as June 1999. In whatever form they took, the result of these demands for side payments was the same: less money for the Programme's humanitarian purposes and more money for the unrestricted use of the Iraqi regime.

A focus of this Report on the United Nations' administration of the Programme is the degree to which Iraq's efforts to manipulate Programme transactions was known to the United Nations and what the United Nations did in response. This Chapter discusses the Security Council and its 661 Committee.<sup>280</sup> Later chapters in Volume III of this Report evaluate the knowledge of and responses by officials at OIP and the United Nations Secretariat to Iraq's efforts to corrupt the Programme in this manner.

This Chapter addresses two questions:

1. To what degree were the Security Council and its 661 Committee aware of Iraq's efforts to extract surcharges and kickbacks outside of the Programme?
2. What steps did the Security Council and its 661 Committee take to respond to reports and other information reflecting Iraq's effort to extract illegal payments from transactions under the Programme?

Part II of this Chapter reviews oil surcharges, and Part III reviews humanitarian kickbacks—as these issues arose before the Security Council and its 661 Committee. Although Iraq's schemes of manipulation varied over time, several common themes emerge:

- The awareness of Security Council members as early as 1998 of the likelihood that Iraq sought to extract side payments in connection with Programme transactions and confirmation of this Iraqi policy by late 2000;
- The constraints of the consensus rule of decision-making on the effectiveness of the Security Council and 661 Committee in their responses to reports of oil surcharges; and

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<sup>280</sup> Throughout this Report, unless otherwise apparent within a particular sentence, references simply to "the Committee" are to the "Independent Inquiry Committee," as distinct from references to the "661 Committee."

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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- The general inattention of the Security Council and 661 Committee to reports indicating the payments of humanitarian kickbacks—from which Iraq ultimately derived far more in revenues than from oil surcharges.

*Part II – Response to Oil Surcharges:* Although Iraq did not initiate its surcharge policy until the fall of 2000, warning signs emerged before then of Iraq’s potential to manipulate oil transactions under the Programme. The first was the 661 Committee’s failure to ensure a full complement of qualified oil overseers to assist in monitoring billions of dollars in transactions under the Programme. The 661 Committee’s rules provided for the services of at least four overseers. But three of the four overseers resigned during the first few years of the Programme, and a political dispute between the United States and China prevented the 661 Committee from agreeing on any replacements. As a result, the overseers were continually short-staffed and, for more than a year (from mid-1999 to mid-2000), a single Russian overseer was the Programme’s only overseer and point of contact with Iraq’s State Oil Marketing Organization (“SOMO”) for setting the price of Iraqi oil. Ultimately, two more overseers were appointed, but this did not occur until August 2000, after the Security Council decided to resolve its differences by allowing the Secretary-General to select replacement overseers.

In the meantime, during the first years of the Programme, the character of entities purchasing Iraqi oil shifted from established oil businesses to unknown “middlemen” companies. It did not have to be this way. Well before sanctions were imposed, SOMO had a policy of selling only to end-users, and SOMO’s standard contract forbade oil buyers from reselling Iraqi oil. But the 661 Committee declined to require enforcement of the no-resale provision as a condition for its approval of Iraqi oil contracts.

In November 1998, media reports surfaced about Iraq underpricing its oil, warning that the new class of middlemen oil buyers could use their profit margin from the resale of underpriced oil to make illegal payments to Iraq. This is just what happened later in the Programme. Nevertheless, the media reports did not prompt an inquiry by the 661 Committee.

In late 2000, Iraq initiated its oil surcharge policy. This development was reported widely in the media and confirmed to the 661 Committee by its overseers based on their industry contacts. The oil overseers briefed the Security Council on the dominant role of middlemen buyers, as well as the unprecedented gap between what end-users were paying for Iraqi oil and what the middlemen buyers were paying for oil under the Programme. The 661 Committee agreed to have the oil overseers send a warning to oil buyers, but it could not agree on any other remedial steps. Russia—the country with by far the largest number of oil buyers under the Programme—asserted that there was a lack of evidence that Iraq actually was imposing surcharges. As a result, the 661 Committee could not reach consensus on a United States proposal that would have restricted the group of oil buyers to established and creditworthy companies. The Security Council declined to act on draft resolutions sponsored by the United Kingdom and France to tighten buyer registration requirements. Nor would the 661 Committee or Security Council agree to other pricing reform proposals designed to reduce the potential for middlemen buyers to earn large profits from which surcharges could be paid.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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In October 2001, the United Kingdom and the United States—acting over the objection of Russia and China—imposed “retroactive pricing.” In contrast to the past practice of approving oil pricing in advance of any oil lifting, retroactive pricing entailed withholding approval of the pricing mechanism until after the oil had been lifted—at which time the true fair market value of the oil at the time of actual lifting could be determined. Retroactive pricing made it less profitable for buyers to pay surcharges, but Iraq continued to demand surcharge payments from companies buying oil under the Programme. Iraq’s gains from surcharges decreased, because fewer companies chose to lift oil after the advent of retroactive pricing.

Even after the advent of retroactive pricing, the 661 Committee continued to debate alternative reform proposals, but could not reach consensus. In August 2002, Russia—which acknowledged during the 661 Committee meeting that Iraq was imposing surcharges—stated that Iraq was prepared to discontinue its surcharge policy if the United Kingdom and the United States would end retroactive pricing and if the 661 Committee would approve a cash component for the oil industry (i.e., to allow cash to be paid to Iraq from the escrow account for local oil industry costs). In the following month, Iraq decided to discontinue the surcharge policy in the midst of declining oil sales. Ultimately, apart from the imposition of retroactive pricing by the United Kingdom and the United States, the 661 Committee did not redress Iraq’s illegal surcharge policy.

*Part III – Response to Humanitarian Contract Kickbacks:* In comparison to the issues of oil surcharges and smuggling, the 661 Committee devoted only minimal attention to humanitarian kickbacks under the Programme. Media reports about kickbacks surfaced as early as 1997, and in November 1999, the United States and the United Kingdom publicly expressed concerns about the Iraqi regime’s exploitation of the Programme to obtain payments from goods suppliers outside the escrow account.

However, it was not until the first half of 2001 that the 661 Committee addressed humanitarian kickbacks; even then, discussion was limited to a few formal and informal meetings. In March 2001, the United States introduced a proposal, with United Kingdom support, that included steps to curtail kickbacks. However, the 661 Committee never seriously considered the merits of these or any other proposals to redress the payment of kickbacks. The following month, the United Kingdom sent a letter to OIP identifying fifteen humanitarian contract applications with payment and service clauses that might mask kickbacks, but all except one of these applications were approved. In 2001 and 2002, OIP submitted to the 661 Committee at least seventy customs reports that identified pricing concerns. Notwithstanding these customs reports, which arguably indicated at least the possibility of humanitarian kickbacks, it appears that 661 Committee members placed a pricing-related hold on only one of these applications.

The 661 Committee did not resume consideration of humanitarian kickbacks until the fall of 2003, in conjunction with the prioritizing and amending of Programme contracts as part of the transition to the Coalition Provisional Authority (“CPA”). Although official records offer only limited insight into the 661 Committee’s silence on kickbacks between mid-2001 and fall of 2003, several themes have emerged from interviews of government officials, including: (1) lack of specific proof; (2) absence of company complaints; (3) focus of member states on the competing priorities of meeting Iraq’s humanitarian needs while preventing Iraq from acquiring

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 3**  
**THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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potential dual-use items; (4) reliance on OIP to address pricing; and (5) disagreement on the appropriateness of investigation. In the end, however, there was little serious effort by the Security Council and 661 Committee to investigate allegations of humanitarian kickbacks or to take remedial steps to curb Iraq's ability to derive illegal income outside the sanctions regime.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

## II. RESPONSE TO OIL SURCHARGES

The response of the Security Council and its 661 Committee to Iraq's oil surcharge policy is best understood in light of events occurring both *before* and *after* Iraq initiated its policy in late 2000. Section A of this Part reviews early warnings to the 661 Committee concerning Iraq's potential to exploit the Programme, in conjunction with the structural weakening of the 661 Committee's ability to exercise oversight of the Programme caused by its failure to fill vacant overseer positions and its failure to address the infusion of middlemen buyers into the Iraqi market. Section B reviews the response of the Security Council and the 661 Committee to initial reports that Iraq had initiated an oil surcharge policy. Section C describes the 661 Committee's inability during 2001 to agree on proposed reforms designed to screen the qualification of buyers under the Programme or to agree on shortening the pricing approval period for Iraqi oil. Section D discusses how the United Kingdom and the United States—in the absence of Security Council consensus on buyer-qualification requirements or pricing reform—instituted “retroactive pricing” by withholding approval of the oil pricing mechanisms until after the oil was lifted from Iraq. Last, Section E discusses the end of the Iraqi surcharge policy in the midst of continuing disagreement among Security Council members about how to respond.

### A. THE EARLY PROBLEMS AND WARNINGS

Iraq did not initiate its formal oil surcharge policy until late 2000—about three years after the start of the Programme.<sup>281</sup> But, as discussed below, the Programme had long been vulnerable to this kind of exploitation, in no small part because of the 661 Committee's inattention to its oversight powers. First, the 661 Committee failed to ensure an adequate number of oil overseers to monitor Iraq's oil transactions. Second, it failed to require or ensure that Iraq sell its oil to established end-users rather than to various middlemen companies. By November 1998, the prevalence of unknown middlemen buyers provoked public—and prophetic—reports that Iraq could one day exploit the Programme by extracting illegal side payments from oil buyers.

#### 1. Failure to Fill Oil Overseer Vacancies

The 661 Committee's rules provided for it to select “at least four independent experts in international oil trade” to act as overseers of oil transactions. Based at United Nations headquarters in New York, the overseers were to assist the 661 Committee with its obligation to ensure that Iraq sold oil only at fair market value and to examine contracts in order to ensure that the contracts complied with the Programme and did “not contain any attempts at fraud or deception.”<sup>282</sup>

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<sup>281</sup> SOMO Summary Report, p. 4.

<sup>282</sup> 661 Committee Procedures, paras. 1, 9 (providing that the oil overseers were to “assess” pricing mechanisms proposed by SOMO and “in particular whether they reflect fair market value and will provide analysis and recommendations to the Committee” and to “ensure that all contracts” comply with Resolution

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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Under the rules, SOMO submitted oil pricing mechanisms for review by the 661 Committee. Once approved, these mechanisms set the official selling price (“OSP”) for the respective oil markets.<sup>283</sup> The oil overseers regularly spoke with SOMO representatives by telephone to discuss the appropriate pricing mechanism (i.e., a pricing formula dependent on the oil’s destination, market conditions, and other factors) to be included in oil contracts under the Programme. The overseers usually conducted their own pricing analyses beforehand in order to determine the fairness of the proposed pricing mechanism. They based their analyses on pricing data available through oil trading magazines, such as *Platts Oilgram News* and *Middle East Economic Survey*, as well as on information gathered from personal contacts in the oil industry.<sup>284</sup>

For the first several years of the Programme, the pricing mechanism generally was proposed and approved on a monthly basis for the following month. This was subject to SOMO proposing changes during a month as market conditions might warrant. However, SOMO occasionally proposed fifteen-day pricing formulas and frequently sought revisions to existing pricing formulas, which was permissible if recommended by the oil overseers and approved by the 661 Committee. The objective was to ensure that the pricing mechanism would be sufficiently price-competitive to attract buyers yet high enough to maximize revenues for the escrow account.<sup>285</sup>

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986 and “do not contain any attempt at fraud or deception”); S/RES/986, paras. 1(a), 6 (Apr. 14, 1995) (indicating that oil was to be sold “at fair market value” and that 661 Committee was to have “assistance of independent inspection agents” to “verify that the purchase price of the petroleum and petroleum products is reasonable in the light of prevailing market conditions”).

<sup>283</sup> 661 Committee Procedures, paras. 4-5; Oil overseers briefing paper, p. 6 (Mar. 21, 2002) (attached to OIP notes of informal 661 Committee meeting (Mar. 21, 2002)). The reason the 661 Committee reviewed a “pricing mechanism” rather than a “price” was because pricing was linked to variable, exogenously determined factors, including the benchmark spot price for other forms of crude oil at the destination of the oil. For the United States, the benchmark was “West Texas Intermediate”; for Europe, it was “Dated Brent”; and for the Far East market it was averaged “Oman and Dubai.” The pricing mechanism included a “discount factor” to take into account the quality of and demand for Iraqi crude oil (sulfur content, API gravity, availability of competing crude oil, etc.), as well as the transport destination of the oil (United States, Far East, and European markets). See, e.g., SOMO sales contract M/01/09, sec. I, art. 4 (Dec. 12, 1996); SOMO sales contract M/01/23, sec. I, art. 4 (Dec. 19, 1996); SOMO letter to 661 Committee Chairman (Feb. 14, 1997) (proposing pricing mechanisms); SOMO letter to 661 Committee Chairman (Dec. 14, 2001) (proposing pricing mechanisms); Alexandre Kramar interview (Nov. 18, 2004).

<sup>284</sup> Maurice Lorenz interview (Sept. 15, 2004); Bernard Cullet interview (Nov. 10, 2004); Morten Buur-Jensen interview (Sept. 9, 2004). Mr. Lorenz, Mr. Cullet, and Mr. Buur-Jensen all served as oil overseers under the Programme.

<sup>285</sup> 661 Committee procedures, paras. 5-6; Morten Buur-Jensen interview (Aug. 12, 2005); SOMO fax to 661 Committee Chairman (Mar. 22, 2001) (containing a fifteen-day pricing proposal by SOMO); SOMO fax to 661 Committee Chairman (Apr. 25, 2001) (same); OIP notes of informal 661 Committee meeting, p. 1 (Aug. 30, 2001) (same); Saddam Z. Hassan fax to 661 Committee Chairman (Feb. 21, 2001) (example of a revision to the existing pricing mechanism); Oil overseers letter to 661 Committee Chairman (Feb. 20, 2001) (signed by Mr. Buur-Jensen and Mr. Kramar and characterizing the objective of the pricing mechanism).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

Furthermore, the Programme's rules required member states to nominate and forward to the 661 Committee the oil buyers "authorized to communicate with the oil overseers." In practice, this registration procedure was a mere formality. Few, if any, companies were scrutinized by the member states nominating them. The oil overseers merely ensured that a proposed buyer was listed as an approved oil purchaser. The 661 Committee Procedures contained no further criteria for the United Nations to use in assessing whether a company should qualify to buy oil under the Programme.<sup>286</sup>

At the outset of the Programme in the summer of 1996, the 661 Committee filled the oil overseer positions with individuals from four different countries: Bernard Cullet of France, Alexandre Kramar of Russia, Maurice Lorenz of the United States, and Arnstein Wigestrang of Norway.<sup>287</sup> However, Mr. Wigestrang soon resigned his position in January 1997, and eighteen months later, in June 1998, Mr. Lorenz resigned for health reasons.<sup>288</sup>

The 661 Committee did not fill these two vacancies because the United States and China differed over who would be appointed as replacements. The Committee had agreed at the outset of the Programme that a Chinese overseer would be appointed if there were a need for a fifth overseer position. China interpreted this to require appointment of a Chinese overseer replacement for the first vacancy among overseers, while the United States—in hopes of appointing its own proposed candidate—responded that the agreement gave priority to China only if a fifth overseer position was needed.<sup>289</sup> The United States also did not trust a combination of Russian, French, and Chinese oil overseers.<sup>290</sup> Faced with this disagreement between China and the United States, the 661 Committee could not resolve this impasse because of its consensus decision-making requirement (this requirement is discussed in Chapter 1 of this Volume).<sup>291</sup>

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<sup>286</sup> 661 Committee Procedures, para. 2; see, e.g., United Kingdom official #6 interview (Dec. 7, 2004); United Kingdom official #4 interview (Dec. 6, 2004); Russia officials #3, 6-7 interview (Feb. 28, 2005); China officials #1-2, 4-5 interview (Jan. 19, 2005); France official #4 interview (Dec. 2, 2004).

<sup>287</sup> 661 Committee Procedures, para. 1; United Nations Press Release, "Iraq Sanctions Committee Selects 'Overseers'" (Aug. 9, 1996). Paragraph 1 of the 661 Committee's rules further provided that "[t]he number of the overseers will be reviewed depending on the volume of transactions to be processed." 661 Committee Procedures, para. 1. However, despite increases in the volume of oil sold under the Programme, there never were more than three oil overseers after January 1997.

<sup>288</sup> Arnstein Wigestrang note to Joseph Stephanides (Jan. 16, 1997); Stephani Scheer letter to Denis Beissel (Aug. 25, 2000); Maurice Lorenz interview (Sept. 15, 2004).

<sup>289</sup> Benon Sevan letter to 661 Committee Chairman (June 5, 1998); China Mission letter to Jingzhang Wan (June 10, 1998); Stephani Scheer letter to Netherlands Mission (June 16, 1999); Stephani Scheer letter to Dennis Beissel (Aug. 25, 2000); Portugal official #1 interview (Sept. 23, 2004); Russia officials #6-7 interview (Nov. 16, 2004); United States official #13 interview (Feb. 11, 2005).

<sup>290</sup> United States official #3 interview (Dec. 13, 2004); United Kingdom official #4 interview (Dec. 6, 2004); France official #3 interview (Dec. 2, 2004); Netherlands official #2 interview (Mar. 10, 2005).

<sup>291</sup> United Kingdom official #4 interview (Dec. 6, 2004); Netherlands official #2 interview (Mar. 10, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

In the meantime, the need for overseers increased when the Security Council decided in February 1998 to more than double the amount of oil Iraq was allowed to sell under the Programme.<sup>292</sup> Moreover, practical problems emerged for the overseers' ability to approve contracts because the assent of two overseers was required to approve an oil contract, and an oil overseer was not allowed to act on a contract from a company of the overseer's home country.<sup>293</sup> The two remaining overseers were from Russia and France, and Russian and French companies had the largest shares of contracts under the Programme—jointly accounting for more than one-third of the total oil sales.<sup>294</sup> When the overseers were disqualified from approving these contracts, the full 661 Committee was required to approve the contract under a no-objection procedure.<sup>295</sup>

The situation grew worse in June 1999 when the French overseer (Mr. Cullet) resigned and the entire overseer workload shifted to the one Russian overseer (Mr. Kramar).<sup>296</sup> The 661 Committee now had to approve all contracts.<sup>297</sup> Mr. Kramar, an economist by training, was the overseer with the least prior experience in international crude oil marketing; his background was in financial and market analysis with a Russian insurer of petroleum cargoes. Despite complaints from the 661 Committee Chairman, OIP Executive Director Benon Sevan, and the Secretary-General, the 661 Committee remained stalemated over the choice of any replacement oil overseers.<sup>298</sup>

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<sup>292</sup> S/RES/1153, para. 2 (Feb. 20, 1998) (increasing authorized oil sales from \$2 billion per 180-day phase to \$5.26 billion for upcoming phase).

<sup>293</sup> 661 Committee Procedures, para. 8.

<sup>294</sup> TaR (Dec. 1996 to Mar. 2003).

<sup>295</sup> Stephani Scheer letter to Denis Beissel (Aug. 25, 2000); Alexandre Kramar interview (July 25, 2005); see also Bernard Cullet interview (Aug. 26, 2005) (not recalling the recusal procedure). The overseers continued to review these contracts and make recommendations thereon to the 661 Committee. See Oil overseers letter to 661 Committee Chairman, S/AC.25/1999/OIL/COMM.07 (Mar. 9, 1999) (signed by Mr. Cullet and Mr. Kramar); Oil overseers letter to 661 Committee Chairman, S/AC.25/1999/OIL/COMM.5 (Feb. 23, 1999) (same); Oil overseers letter to 661 Committee Chairman, S/AC.25/1998/OIL/COMM.161 (Dec. 4, 1998) (same); Oil overseers letter to 661 Committee Chairman, S/AC.25/1998/OIL/COMM.124 (Aug. 4, 1998) (same).

<sup>296</sup> France Permanent Representative letter to Benon Sevan (June 4, 1999) (announcing the resignation of Mr. Cullet); Alexandre Kramar interviews (Nov. 18, 2004 and July 25, 2005).

<sup>297</sup> Stephani Scheer interview (Sept. 15, 2004); Stephani Scheer letter to Denis Beissel (Aug. 25, 2000); United Kingdom official #4 interview (Dec. 4, 2004); Alexandre Kramar interview (Nov. 18, 2004). Mr. Kramar referred to this period as a "tough time." Formally, he could not work with the contracts because he was the only oil overseer. Russia officials #3, 6-7 interview (Nov. 16, 2004).

<sup>298</sup> Alexandre Kramar interview (Nov. 18, 2004); Maurice Lorenz interview (Sept. 15, 2004); Arnstein Wigestrang interview (Jan. 31, 2005); Russia Mission letter to 661 Committee Chairman (June 28, 1996) (attaching Alexandre Kramar's curriculum vitae); DPA notes of Security Council consultations (Aug. 26, 1999) (noting the Chairman's comments that overseer vacancies were "unacceptable"); Netherlands official #2 interview (Mar. 10, 2005); Netherlands official #6 interview (Mar. 31, 2005); "Report of the Secretary-General pursuant to paragraph 5 of Security Council resolution 1281 (1999)," S/2000/520, paras. 6-7 (June



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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Another year of impasse elapsed before the Security Council finally decided to vest the Secretary-General with the authority to select two more overseers. The members of the 661 Committee then agreed that the overseers should be selected on technical merit and should not come from a P-5 country. On August 10, 2000, the Secretary-General announced the appointment of two more overseers with extensive experience in the oil industry: Michel Tellings of the Netherlands and Morten Buur-Jensen of Denmark.<sup>299</sup> There remained just three overseers through the end of the Programme.

## **2. Failure to Enforce Oil Sales Contract Requirements and the Emergence of Middlemen Oil Buyers**

Under the Programme, the Government of Iraq, through SOMO, could enter into sales contracts with oil purchasers of its own choosing. Although the United Nations was not party to SOMO sales contracts, each contract was subject to the 661 Committee's approval—in certain instances as delegated to the oil overseers—based on criteria enumerated in Resolution 986, the Iraq-UN MOU, and the 661 Committee Procedures.<sup>300</sup>

Practical problems emerged in relation to the SOMO sales contract. Several provisions could not be reconciled with the relevant provisions of Resolutions 661 and 986, the Iraq-UN MOU, and the 661 Committee Procedures. The 661 Committee largely ignored or failed to act on commercial dilemmas involving three provisions in SOMO's sales contract: (1) settlement of demurrage; (2) payment of port fees; and, most significantly, (3) sale of oil to end-users.<sup>301</sup>

### **a. Demurrage**

Seagoing oil vessels that are loaded after the contractually agreed lay time can incur costs—referred to as “demurrage”—that average tens of thousands of dollars per day. The SOMO sales contract stipulated that SOMO pay such fees for delays within its control. The demurrage clause posed a practical concern involving how the Government of Iraq would be able to pay such fees without controlling the funds necessary to do so. At the Programme's outset in December 1996, the United Nations Office of Legal Affairs (“OLA”) determined that the payment of demurrage

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1, 2000); OIP, “Briefing by Benon V. Sevan, Executive Director of the Iraq Programme, of the Security Council at its informal consultations held on 7 February 2000,” <http://www.un.org/Depts/oip/background/latest/bvs000207.html>.

<sup>299</sup> S/RES/1302, para. 7 (June 8, 2000); Stephani Scheer letter to Denis Beissel (Aug. 25, 2000); OIP notes of informal 661 Committee meeting, p. 1 (June 28, 2000); Wang Yinfan letter to Kofi Annan (June 30, 2000); Kofi Annan letter to the President of the Security Council (Aug. 10, 2000).

<sup>300</sup> See S/RES/986, para. 1 (Apr. 14, 1995); Iraq-UN MOU, Annex II, para. 1; 661 Committee Procedures, paras. 4, 9.

<sup>301</sup> SOMO Standard Sales Contract, sec. II, art. 7 (demurrage); SOMO Standard Sales Contract, sec. II, art. 8 (taxes and duties); SOMO Standard Sales Contract, sec. II, art. 10 (assignment).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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claims from the escrow account might be permissible with the 661 Committee's approval. OLA's legal opinion was circulated to the 661 Committee for further discussion.<sup>302</sup>

However, the 661 Committee did not formally discuss the matter until February 2002, when examining a request from SOMO to use escrow funds to reimburse a Belarusian company for demurrage exceeding \$546,000. The United Kingdom and the United States asserted that the Government of Iraq should use its own funds to pay demurrage—without charging the Programme. France stated that any alternative funding sources were illegal and that “perhaps a surcharge was the best solution after all,” thereby raising the concern that a lack of appropriate funding for demurrage might entice the Government of Iraq to maintain its illegal surcharge policy.<sup>303</sup>

The 661 Committee ultimately requested further clarification from OIP on the alternative sources of legal funding available to the Government of Iraq, and the 661 Committee decided to write a letter to the Belarus Mission, indicating that the matter would be taken under consideration. However, the 661 Committee never again discussed the demurrage issue.<sup>304</sup> The 661 Committee's inaction effectively left this matter to SOMO and its customers to resolve.

#### **b. Port Fees**

Another provision of the SOMO sales contract that proved problematic was the requirement that buyers should bear alone the port dues and fees charged on vessels at the port of loading. Direct payment of so-called “port fees” to the Government of Iraq—outside the escrow account—appeared to violate Resolution 661 as a prohibited direct payment to Iraq. This matter was subject to another OLA legal opinion. In November 1997 and June 1998, OLA opined with little explanation that the payment of port charges to the Iraqi regime would not contravene the

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<sup>302</sup> Gunnar Knudsen letter to Stephani Scheer (Oct. 2, 2000); SOMO sales contract M/01/23, sec. II, art. 7 (Dec. 19, 1996); SOMO sales contract M/07/51, sec. II, art. 7 (Dec. 18, 1999); Eva Millas Russo memorandum to Suzanne Bishopric (Sept. 20, 1996); Bruce Rashkow memorandum to Joseph Stephanides (Dec. 18, 1996) (attaching OLA's comments regarding demurrage); Joseph Stephanides memorandum to 661 Committee Chairman (Dec. 20, 1996) (forwarding OLA's comments regarding demurrage); 661 Committee Chairman note to 661 Committee (Dec. 20, 1996) (forwarding OLA's comments); Germany official #1 interview (Feb. 11, 2005).

<sup>303</sup> Provisional Record of 661 Committee meeting, S/AC.25/SR.231, pp. 7-9 (Feb. 8, 2002); Belarus Mission letter to 661 Committee Chairman (Jan. 8, 2002) (with attached letter from Belmetalenergo discussing demurrage fees incurred during execution of SOMO sales contract M/08/41); SOMO letter to the oil overseers (Aug. 27, 2001).

<sup>304</sup> Provisional Record of 661 Committee meeting, S/AC.25/SR.231, p. 9 (Feb. 8, 2002); Morten Buur-Jensen interview (Aug. 12, 2005).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

#### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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sanctions regime as long as these fees did not “exceed what is customary in such circumstances.”<sup>305</sup>

The matter was examined further in June 2000 in response to a letter to the United Nations from an oil tanker association that complained that port fees at the Mina al-Bakr loading terminal had “increased dramatically” and that such direct payments to Iraq could be illegal.<sup>306</sup> In response, OLA issued another legal opinion in which it concluded that any payment for port fees was permissible provided it was paid in the form of Iraqi dinars. But, as the tanker association pointed out in a follow-up letter, a requirement to pay port fees in Iraqi dinars—a non-convertible currency—would require tanker owners to break sanctions by engaging first in a prohibited transaction with the Government of Iraq to purchase Iraqi dinars prior to using the dinars to pay the port fees. The tanker association pointed out that its members were therefore presented with an “unacceptable” choice: refuse to pay the port fee (and not lift oil) or pay the port fee and break sanctions.<sup>307</sup>

The 661 Committee learned of the oil tankers’ dilemma but did nothing in response. In particular, it took no action on a United Kingdom proposal to allow for the payment of port fees through the escrow account in order to ensure that the port fees were controlled in size and that Iraq did not receive direct and unregulated payments of money. In declining to take action, the 661 Committee effectively acquiesced to the occurrence of illegal transactions with Iraq in violation of the sanctions regime.<sup>308</sup>

Recently, the Independent Inquiry Committee questioned OLA as to the basis for its view that port charges and other forms of costs within Iraq (such as inland transport for the delivery of humanitarian goods) could be paid permissibly by a contractor directly to Iraq and outside the

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<sup>305</sup> See, e.g., SOMO sales contract M/01/23, sec. II, art. 8 (Dec. 19, 1996); SOMO sales contract M/07/51, sec. II, art. 8 (Dec. 18, 1999); Hans Corell letters to 661 Committee Chairman (Nov. 7, 1997 and June 12, 1998).

<sup>306</sup> INTERTANKO letter to United Nations (May 30, 2000); INTERTANKO, “General Information,” <http://www.intertanko.com/about>. In July 2000, OIP received a similar request for advice on port fees from the Baltic & International Maritime Council (“BIMCO”), a private association representing thousands of vessel owners and the majority of the world’s merchant fleet. BIMCO letter to Benon Sevan (July 14, 2000).

<sup>307</sup> Ralph Zacklin letter to Alexandre Kramar (June 13, 2000); INTERTANKO letters to OIP (Oct. 2 and Oct. 12, 2000); Gunnar Knudsen interview (June 15, 2004) (author of letters from INTERTANKO stating that he received “[n]o advice, no guidance, and no help” in response to the concerns he raised with the United Nations).

<sup>308</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.205, p. 7 (Oct. 2, 2000); OIP notes of informal 661 Committee meeting, pp. 2-3 (Oct. 13, 2000); Provisional record of 661 Committee meeting, S/AC.25/SR.209, pp. 5-6 (Dec. 13, 2000); Provisional record of 661 Committee meeting, S/AC.25/SR.215, p. 10 (Mar. 19, 2001); OIP notes of informal 661 Committee meeting, p. 2 (Apr. 11, 2001) (attaching the United Kingdom proposal on port fees); Russia officials #3, 6-7 interview (Feb. 28, 2005) (noting that issue was unresolved); Morten Buur-Jensen interview (Aug. 12, 2005) (same).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

United Nations escrow account. In a response letter to the Committee, OLA did not cite a basis for this conclusion. Instead, it contended that its “opinions were not questioned by the 661 Committee” and that “the absence of objections by the [661] Committee must be taken as its acknowledgement that the Legal Counsel’s advice reflected and was consistent with the relevant Security Council resolutions.”<sup>309</sup>

#### c. The End-User Requirement and the Emergence of Middlemen Oil Buyers

Well before the onset of sanctions, it had been Iraq’s practice to sell its oil directly to “end-user” buyers—that is, to companies that possessed refinery facilities to process the oil.<sup>310</sup> This practice was memorialized in the standard SOMO sales contract, which prohibited a buyer from reselling Iraqi oil. The contract stated in relevant part:

It is expressly understood that BUYER will process crude oil sold under this contract in its own processing facilities or under processing arrangements with other refiners for BUYER’s own account for which SELLER’s prior approval must be obtained. BUYER also undertakes that under no circumstances shall BUYER resell or exchange the said crude oil in its original form or blend it with any other crude oil or crude oil derivatives for purposes of resale or exchange.<sup>311</sup>

An end-user requirement offered some obvious benefits for the Programme. First, it could help ensure that the full value of the oil sold was captured for the benefit of the escrow account. The involvement of an oil trader or other intermediary in a sale transaction implicitly meant that a portion of the seller’s potential gain from the transaction would be diverted to the trader or middleman. Second, an end-user sale requirement would have promoted the transparency and integrity of transactions under the Programme. This is not only because of a shorter transactional trail of oil from pipeline to refinery, but also because end-users are ordinarily well-established businesses with assets (e.g., refineries) that can be more readily held accountable for irregularities in the transaction process.<sup>312</sup>

The SOMO standard sales contract, with its end-user requirement, had been circulated among those involved in the negotiation of the Iraq-UN MOU in the spring of 1996, including Arnstein Wigestrang—an oil expert who would later be appointed an oil overseer.<sup>313</sup> When interviewed by

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<sup>309</sup> Committee letter to OLA (July 19, 2005); OLA letter to the Committee (Aug. 12, 2005).

<sup>310</sup> Arnstein Wigestrang interview (Nov. 30, 2004); Walid Khadduri interview (Dec. 10, 2004). Mr. Khadduri served as Editor-in-Chief of the *Middle East Economic Survey*, a leading oil trade news journal during the Programme.

<sup>311</sup> SOMO Standard Sales Contract, sec. II, art. 10; see, e.g., SOMO sales contract M/01/23, sec. II, art. 10 (Dec. 19, 1996); SOMO sales contract M/07/51, sec. II, art. 10 (Dec. 18, 1999).

<sup>312</sup> Morten Buur-Jensen interview (Sept. 28, 2004); Arnstein Wigestrang interview (Nov. 30, 2004).

<sup>313</sup> Hans Corell memo to Arve Johnsen, Arnstein Wigestrang, and Werner Meiner (Apr. 9, 1996); Arnstein Wigestrang memo to Hans Corell (Apr. 12, 1996); OLA letter to the Committee (Aug. 12, 2005);

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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the Committee, Mr. Wigestrang recalled that the United Nations focused mainly on ensuring that oil was sold at a fair market price and that payments went into the escrow account. According to Mr. Wigestrang, the end-user requirement was relatively less important to negotiators for the United Nations, as the United Nations did not care who bought the oil so long as measures were in place to assure that the oil would be sold at a fair market price.<sup>314</sup>

Accordingly, neither the Security Council nor the 661 Committee decided to condition the approval of oil sales on SOMO's end-user requirement. The 661 Committee's rules required the oil overseers to examine SOMO's oil sales contract for various provisions (e.g., use of a fair-market-value pricing mechanism approved by the 661 Committee and payment by way of a letter of credit to the escrow account). But the rules stood silent on an end-user requirement.<sup>315</sup>

When interviewed, Jing Zhang Wan, who served as Secretary to the 661 Committee from 1993 until November 2003, noted that the end-user requirement "was overlooked by the [661] Committee" and that countries lacked specific rules outlining which type of companies could be placed on the list of approved oil purchasers that would be allowed to purchase oil from the Government of Iraq. In addition, he observed that the oil overseers had no independent authority to enforce the end-user provision of the contract and that the 661 Committee's rules contained no further criteria as to the type of companies that would be allowed to purchase oil under the Programme.<sup>316</sup>

Indeed, when the end-user issue later surfaced before the 661 Committee, it opted—apparently without discussion—against requiring Iraq to sell to end-users. Italy inquired of the 661 Committee in August 1996 if oil bought under the Programme could be resold. After circulating the letter to the full 661 Committee and after the 661 Committee solicited the Secretariat to draft a response, the 661 Committee Chairman wrote back to the Italian ambassador to advise simply that "Resolution 986 (1995) does not prohibit the resale of the Iraqi oil." The Chairman's letter made no further comment on this issue or mention of the standard SOMO end-user contract provision.<sup>317</sup>

When interviewed, a 661 Committee Chairman could not recall ever having seen the standard SOMO sales contract or read the letter that he sent to the Italian ambassador. The 661 Committee

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Alexandre Kramar interview (Nov. 18, 2004); Iraq official interviews; Arnstein Wigestrang interviews (Nov. 30, 2004; Jan. 31 and Apr. 28, 2005).

<sup>314</sup> Arnstein Wigestrang interview (Apr. 28, 2005); OLA letter to the Committee (Aug. 12, 2005) (confirming that there was no provision in the 661 Committee Procedures for the oil overseers to require any additional assurance by a contractor of its compliance with the contractual provisions).

<sup>315</sup> 661 Committee Procedures, para. 9.

<sup>316</sup> Jing Zhang Wan interview (Jan. 18, 2005).

<sup>317</sup> Italy Permanent Representative letter to 661 Committee Chairman (Aug. 1, 1996); 661 Committee Chairman letter to Italy Permanent Representative (Sept. 23, 1996); Provisional record of 661 Committee meeting, S/AC.25/SR.142, p. 4 (Aug. 8, 1996).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

Chairman realized that there was some risk of oil being resold and noticed that “on initial reading, [his] answer was very brief and should have included more specific details.”<sup>318</sup>

For its part, SOMO continued throughout the Programme to include the end-user requirement among other boilerplate provisions of its oil contracts.<sup>319</sup> But the provision was effectively a dead letter. It was neither enforced by SOMO nor required as a pre-condition for contract approval by the oil overseers. In the meantime, during the first years of the Programme, the purchasers of Iraqi oil shifted from end-user companies to lesser known entities that, in turn, traded the oil to other companies.<sup>320</sup> As discussed in Chapter 1 of this Volume, this shift in the types of buyers entering the market for Iraqi oil would greatly facilitate Iraq’s later ability to extract secret surcharge payments from oil buyers under the Programme.

When interviewed, two of the overseers who served in the early years of the Programme (Mr. Cullet and Mr. Wigestrang) stated that they did not attempt to determine whether or not buyers resold their oil under the Programme. A third overseer who served early in the Programme, Mr. Lorenz, advised that he was not familiar with the end-user requirement of the SOMO contract. He “felt embarrassed” that the oil overseers had not paid attention to this clause before. He noted that he certainly would not have objected to this clause being enforced because he considered the involvement of oil traders to be useless and a potential source for corruption of the Programme.<sup>321</sup>

### 3. Prophetic Press Reports

Potential corruption of the Programme surfaced in mid-November 1998 with the publication of an article in *Platts Oilgram News*—one of the world’s leading oil industry publications. The article stemmed from a review of the approved Iraqi oil prices, which reflected that Iraqi oil was underpriced and therefore allowed for the possibility of kickback payments to the Iraqi regime. Prior to publishing this article, the author had confirmed his suspicions that pricing was too low with Mr. Lorenz, who recently had retired as an overseer; Mr. Lorenz told the author that, in November 1998, oil sold by Iraq under the Programme was below fair market price. When interviewed by the Committee, Mr. Lorenz stated that, several months before the publication of

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<sup>318</sup> Germany official #2 interview (Nov. 19, 2004).

<sup>319</sup> Teklay Afeworki interview (Aug. 19, 2005) (stating that SOMO routinely included the general terms and conditions in its contracts and these terms and conditions were applicable to all oil sales under the Programme).

<sup>320</sup> Michel Tellings interview (Oct. 14, 2004); France official #6 interview (Mar. 22, 2005); Company representatives interview (Feb. 14, 2005); “Iraq - Who’s Who,” *Energy Compass*, May 21, 1999; Iraq official interviews.

<sup>321</sup> Arnstein Wigestrang interview (Jan. 31, 2005); Bernard Cullet interview (Nov. 10, 2004); Maurice Lorenz interview (Sept. 15, 2004).

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 3**  
**THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

the *Platts* article, he had raised this concern with the two remaining overseers and the United States Mission.<sup>322</sup>

The *Platts* article warned that “lowball” pricing, in conjunction with the entry into the market of large numbers of unknown middlemen buyers, could encourage kickbacks to the Iraqi regime because of the large margin for a buyer’s profit. Excerpts of the article are reproduced below:

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<sup>322</sup> James Norman, “Petrodollars,” *Platts Oilgram News*, Nov. 17, 1998, p. 1; Maurice Lorenz interview (Sept. 15, 2004); James Norman interview (Sept. 27, 2004). Mr. Lorenz was convinced that in the initial stages of the Programme, SOMO was setting prices at fair market value and under no pressure from Saddam Hussein to create discounts to allow for surcharges. Consistent with Mr. Lorenz’s statement that he previously had raised his pricing concerns, United Nations records reflect that on July 16, 1998, the United States placed a temporary “hold” on the overseers’ proposed oil pricing mechanism for August pending reconsideration on July 24. 661 Committee Secretariat letter to 661 Committee (July 16, 1998). Mr. Lorenz’s phone records show that Mr. Lorenz placed a call to the United States Mission on July 21, 1998. Maurice Lorenz fax to the Committee (Oct. 22, 2004) (attaching AT&T telephone records for month of July 1998); Maurice Lorenz letter to United States Mission (Nov. 17, 1998). On the other hand, oil overseer Alexandre Kramar has denied that Mr. Lorenz contacted him after Mr. Lorenz left his employment with the United Nations. Alexandre Kramar interview (Nov. 18, 2004).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 3

#### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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# PetroDollars

While sabres rattle over Iraq's rebuff of UN arms inspections, a nagging question persists: How does Saddam Hussein keep funding his huge army and adding new weapons?

In part, it could be through lucrative kickbacks and money laundering wittingly or unwittingly built in to the UN's little-watched Iraq oil pricing regime.

Ever since the UN let Iraq resume selling crude in 1995 under its "oil for food" program, Iraq has consistently proposed prices far BELOW the market. UN overseers have had to repeatedly prod Iraq to bring its prices UP. Why?

The answer is that funds from those sales, which have risen from less than 300,000 b/d at the end of 1996 to more than 2-mil b/d, do not go directly to Iraq. They first go to the UN to buy food, and now oilfield spare parts.

But the discount between Iraq's approved formula price and its market value, which has ranged above \$0.60/bbl and seldom below \$0.20/bbl, itself becomes a kind of black market currency.

By underpricing his oil, Saddam can create upwards of \$1-mil a day at times in phantom funds to either pay past debt, buy new arms, or simply lining his own pockets.

How does the scam work? By controlling which obscure trading companies win the right to buy that oil, Iraq can direct the flow of these discounts. That would explain why major western refiners have been bumped off the Iraqi buyer list and replaced by more and more unknown names. Increasingly, Iraq's customers are trading companies with no use for the crude except to quickly resell it.

Gone are Shell, BP, Exxon and Chevron. Instead, Iraq is selling to a dozen Russian trading houses and has recently added half a dozen Chinese firms. Whether or not these firms actually are conduits for arms payments or kickbacks, sources say the system is clearly rigged to launder money. They even say a fairly well-established pricing structure has emerged for buying one's way onto Iraq's approved list: Less for old friends like the French and Russians, more for other Westerners.

Whether the rumored black money goes for more arms buying or mere Iraqi greed is hard to tell. But clearly, until they were thwarted by Saddam (and, oddly, the US State Department last summer), UN arms inspectors like Scott Ritter found no shortage of weapons sites to inspect.

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Other big sellers like Saudi Arabia, who deal with a stable slate of end-use buyers, compensate for such swings by adjusting the next month's formula to take back windfalls. Not the UN: It has left a generous built-in profit each month, with periodic orgies of profit-making for Iraq's shadowy customers.

...

Until his retirement last summer, former Exxon trader Maurice Lortz was the US man on the UN Iraq pricing team and a frequent critic of Iraq's lowball formulas. Also on the team is a Russian insurance veteran and a former E&P official of France's Elf Aquitaine. Lortz was the only oil trader.

Figure: James Norman, "Petrodollars," *Platts Oilgram News*, Nov. 17, 1998, p. 1 (excerpts).



## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 3

#### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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The *Platts* warning was picked up in two major mass media sources. On November 30, 1998, *Time* magazine reported that “according to a recent report in *Platts Oilgram* the Iraqi leader may be involved in another ingenious scheme to fill the regime’s coffers: selling oil under the U.N. program to Russian and Chinese middlemen at artificially low prices and then siphoning off kickbacks from the dealers when the crude is resold on the world market.” A month later, a *Financial Times* article also mentioned the possibility of Iraqi authorities “offering bigger than usual discounts to some Russian and Chinese oil buyers as part of a kickback scheme.”<sup>323</sup>

These reports had little effect at the United Nations. Mr. Lorenz sent the *Platts* article to the United States Mission. A United States diplomat subsequently met with Mr. Sevan and gave him this article, which led to the diplomat urging Mr. Sevan to break the deadlock among 661 Committee members about hiring a replacement overseer for the post vacated by Mr. Lorenz.<sup>324</sup>

Mr. Sevan’s Chief of Office forwarded the *Platts* article to the two remaining overseers, with a request for an immediate response. Mr. Cullet, however, did not respond and, when interviewed by the Committee, stated that he did not recall ever seeing the article. Mr. Kramar responded in a one-page memo denouncing the article as based on “groundless allegations, provocative suggestions and factual ‘mistakes.’” He added: “Apparently the author, who as I was told is known for his articles of such kind, does not [possess] neither understanding of the process nor real information about it.”<sup>325</sup>

The Committee interviewed Mr. Kramar about the *Platts* article and specifically about the basis for his statement that he “was told” that the article’s author previously had published “articles of such kind” and that the author did not have “real information” about the process. Mr. Kramar replied that he had learned this information from David Chalmers, an American oilman who was a principal of Bayoil of Texas and who frequently corresponded to urge the overseers to agree to lower oil prices. According to Mr. Kramar, Mr. Chalmers had told him that the article’s author

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<sup>323</sup> Adam Zagorin, “Our Man in Baghdad Saddam’s demise could actually hurt his oil-producing neighbors,” *Time International*, Nov. 30, 1998; Robert Corzine and Paul Solman, “The Iraqi crisis - Doubt cast on oil-for-food programme,” *Financial Times*, Dec. 18, 1998, p. 3.

<sup>324</sup> Maurice Lorenz interview (Sept. 15, 2004); Maurice Lorenz letter to United States Mission (Nov. 17, 1998); United States official #12 interview (Nov. 4, 2004). In Mr. Lorenz’s note accompanying his fax of the article to the United States, he stated that he did not agree that the pricing differential was as large as stated in the article, but that it otherwise was similar to reports he had heard previously.

<sup>325</sup> Stephani Scheer note to the oil overseers (Nov. 19, 1998); Bernard Cullet interview (Nov. 10, 2004); Alexandre Kramar memorandum to Stephani Scheer (Nov. 20, 1998). In a later interview, the United States official stated that she was not certain whether she had met with Mr. Sevan and given him the *Platts Oilgram News* article. United States official #12 interview (Feb. 11, 2005). It is clear from the documents, however, that the article ended up in some manner with Mr. Sevan’s office.

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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previously had written a false article alleging Bayoil's involvement in arms trade. Mr. Chalmers added that, if that were true, he already would have been in jail.<sup>326</sup>

Ironically, Mr. Chalmers was indeed arrested several months after the Committee's interview of Mr. Kramar upon his indictment in the United States for participating in a scheme to pay illegal oil surcharges to Iraq resulting from oil transactions by Bayoil under the Programme.<sup>327</sup> The charges remain pending against Mr. Chalmers, and the activities of Bayoil will be the subject of a later Committee report.

In any event, after Mr. Kramar's refutation of the *Platts* article, the issue went no further within the United Nations. Curiously, there was no effort made to contact Mr. Lorenz to discuss the concerns he had voiced in the article. Nor is there any indication that the United States or OIP forwarded the article to all other members of the 661 Committee or that the article otherwise surfaced before the 661 Committee.<sup>328</sup>

## **B. THE 661 COMMITTEE'S INITIAL DISCOVERY OF AND RESPONSE TO IRAQ'S SURCHARGE POLICY**

About two years later, in the fall of 2000, Iraq initiated its policy of requiring all oil purchasers to pay a surcharge to Iraq outside the United Nations escrow account (as described in Chapter 1 of this Volume of the Report). Iraq first tried to get United Nations approval for these payments. It advised the Secretary-General on November 6, 2000 that, in order to finance its oil infrastructure, it would require oil buyers to make a side payment to an Iraqi-controlled account of 1.5 euros per barrel. The Secretary-General forwarded Iraq's letter to the 661 Committee Chairman.<sup>329</sup> On November 17, 2000, the 661 Committee met informally to discuss this development. Although the 661 Committee took no formal action, the United States, joined by France and the United

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<sup>326</sup> Alexandre Kramar memorandum to Stephani Scheer (Nov. 20, 1998); Alexandre Kramar interview (Nov. 18, 2004). The prior article by Mr. Norman is: "Oilman, trader, banker, spy," *Forbes*, Jan. 30, 1995. For examples of Mr. Chalmers's letters to the oil overseers, see David Chalmers letter to the oil overseers (July 6, 1998); David Chalmers letter to the oil overseers (Jan. 22, 1998); David Chalmers fax to the oil overseers (June 18, 1999).

<sup>327</sup> See *United States v. David Chalmers, Jr., et al.*, S1 05 Cr. 59 (S.D.N.Y. Apr. 14, 2005) (criminal indictment).

<sup>328</sup> Stephani Scheer interview (Apr. 25, 2005); Maurice Lorenz interview (Sept. 15, 2004); United States official #12 interview (Nov. 4, 2004) (indicating that the United States did not recall whether the *Platts* article was forwarded to other 661 Committee members); United Kingdom official #4 interview (Dec. 6, 2004) (not recalling having seen the article); Portugal official #1 interview (Sept. 23, 2004) (same); Portugal official #2 interview (Sept. 22, 2004) (same).

<sup>329</sup> Amer Rashid letter to Kofi Annan (Nov. 5, 2000); Notes to Kofi Annan of meeting of Mr. Riza with the Permanent Representative of Iraq (Nov. 6, 2000); Kofi Annan letter to 661 Committee Chairman (Nov. 7, 2000).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

Kingdom, took the position that payments to an account outside United Nations control would be unacceptable.<sup>330</sup>

Faced with this rejection of its request for payment of a surcharge from the Programme, Iraq resorted to a covert surcharge policy. The media soon reported that Iraq was advising its oil purchasers to pay a surcharge of fifty cents per barrel of oil outside the United Nations escrow account and that Iraq was pressing the United Nations to allow it to sell oil at a lower price in order to allow its customers a greater profit margin from which to pay the surcharge upon reselling the oil.<sup>331</sup>

At around this time, the overseers also detected a change in what previously had been a professional and cordial relationship with SOMO. Mr. Tellings recalled that, during a visit to Iraq in mid-November 2000, he was approached by Iraq's Oil Minister Amer Rashid to ask for his assistance on oil pricing. Mr. Rashid proposed that Mr. Tellings have dinner with a senior official of SOMO to discuss how he could be of assistance, and he added that "we don't forget our friends." Mr. Tellings believed that a bribe was being proposed, and he declined the dinner invitation.<sup>332</sup>

Mr. Kramar recalled Mr. Tellings advising him of this illicit approach on his return from Iraq. Mr. Kramar stated that, although SOMO later denied that the episode had taken place, the incident brought about a "completely new situation which changed the oil overseers' mood of work with SOMO." He stated that the oil overseers began to examine premiums more closely while verifying what the pricing mechanisms should be through their contacts in the market.<sup>333</sup>

Just as Iraq initiated its surcharge policy, the overseers advised the 661 Committee on November 27, 2000 that SOMO's proposed pricing mechanism for the month of December was too low. The 661 Committee accepted the oil overseers' recommendations to reject SOMO's proposal.<sup>334</sup> As the calendar turned to December, there still was no agreement on a pricing mechanism, and oil

<sup>330</sup> OIP notes of informal 661 Committee meeting, p. 1 (Nov. 17, 2000).

<sup>331</sup> "SOMO's customers in turmoil over new premium," *Middle East Economic Survey*, Nov. 20, 2000, p. A12; Ross McCracken, "Risk of buying Iraqi oil souring some lifters," *Platts Oilgram News*, Nov. 21, 2000, p. 1; Axel Busch and Antoine Half, "Baghdad gets serious in bid for 50 cents under-the-table," *Energy Intelligence Briefing*, Nov. 21, 2000; "Iraqi oil prices too low, will be rejected, diplomats say," *Reuters News*, Nov. 22, 2000.

<sup>332</sup> Michel Tellings interview (Oct. 14, 2004); Stephani Scheer note to Benon Sevan (Oct. 23, 2000) (containing travel authorization for Mr. Tellings's trip to Bahrain and planned itinerary for Mr. Tellings's mission to Iraq). Mr. Tellings remembered sending a confidential fax about the incident to Mr. Sevan from Baghdad, but this fax has not been located in United Nations records. Mr. Tellings also stated that he further discussed the incident with Mr. Buur-Jensen, and Mr. Buur-Jensen confirmed having this conversation with Mr. Tellings. Morten Buur-Jensen interview (Aug. 12, 2005).

<sup>333</sup> Alexandre Kramar interview (Nov. 18, 2004).

<sup>334</sup> Oil overseers letter to 661 Committee Chairman (Nov. 22, 2000) (signed by Mr. Buur-Jensen and Mr. Kramar); 661 Committee Chairman letter to the oil overseers (Nov. 27, 2000).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

exports were halted.<sup>335</sup> On December 8, 2000, the 661 Committee accepted a new recommendation of the oil overseers for a December pricing mechanism.<sup>336</sup>

On December 13, 2000, all three overseers advised the 661 Committee of information they had received substantiating the existence of Iraq's surcharge policy. Mr. Tellings remarked that some buyers had confirmed the surcharge requests and had put their reports in writing. Mr. Buur-Jensen said that he did not have "letters indicating precisely how much of a surcharge was being asked," but that "sufficient information had been received in various forms from those in the process of purchasing oil to enable him to state that surcharges were in fact being requested." Mr. Kramar advised that based on reports of other buyers it "appeared to be true that [one company] had refused to pay a surcharge" and that "[o]ther vessels currently waiting to load had also been requested to pay a surcharge but so far none had done so."<sup>337</sup>

The United States proposed that the 661 Committee issue a communication to all buyers indicating that payments outside the escrow account were not allowed. But Russia questioned this proposal because "there was no official confirmation of the surcharges, and further interruption in sales could cause losses to the oil-for-food-programme, the Iraqi people and the companies in the oil market." The United Kingdom countered that it would be "naive" to expect the Government of Iraq to acknowledge that it had made surcharge requests and that the 661 Committee therefore would be "negligent" if it did not communicate its position to the oil overseers and buyers of Iraqi oil. The United States argued that the 661 Committee "owe[d]" it to the buyers to explain its position that "surcharges should not be paid into any accounts but those administered by the United Nations."<sup>338</sup>

On the following day, the 661 Committee met informally to discuss again the United States proposal to issue a written warning about surcharges to all buyers of Iraqi oil. Russia continued

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<sup>335</sup> OIP notes of formal 661 Committee meeting (Dec. 13, 2000) (attaching a briefing paper from the oil overseers); "Two hundred and ninth report of the overseers to the Security Council Committee established by Resolution 661 (1990) concerning the situation between Iraq and Kuwait," S/AC.25/2000/OIL/COMM.209 (Dec. 11, 2000); OIP, "Implementation of Oil-for-Food: A Chronology," <http://www.un.org/Depts/oip/background/chron.html> (noting suspension of exports from December 1-12, 2000).


<sup>336</sup> 661 Committee Chairman letter to the oil overseers (Dec. 8, 2000); Oil overseers letter to 661 Committee Chairman (Dec. 7, 2000) (signed by Mr. Buur-Jensen, Mr. Kramar, and Mr. Tellings). Because of the marked disruptions caused by this controversy, the oil overseers agreed to a discounted price for December pricing mechanisms in order to regain the confidence of end-users in Iraq as a "reliable supply source." *Ibid.*

<sup>337</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.209, pp. 3, 5 (Dec. 13, 2000).

<sup>338</sup> *Ibid.*, pp. 2-4.

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 3**  
**THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

to object to sending a notice, but apparently relented the next day, because the overseers sent a formal notice to buyers advising that they could not pay surcharges outside the escrow account.<sup>339</sup>

<b>UNITED NATIONS</b>  <b>NATIONS UNIES</b>	
SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT	
S/AC.25/2000/OIL/1330/ FAX.	15 December 2000
<b>TO: BUYERS OF IRAQI                  CRUDE OIL</b>	<b>FROM: THE OIL OVERSEERS                  UNDER SECURITY COUNCIL                  RESOLUTION 986 (1995)</b>
<b>FAX NO.:</b>	<b>FAX NO.:</b> (212) 963-1628
<b>ATTENTION:</b>	<b>REF.:</b> OIL-FOR-FOOD ARRANGEMENT
TOTAL NUMBER OF TRANSMITTED PAGES INCLUDING THIS PAGE : 1	

Dear Sirs,

Following consultation with the 661 Committee, the UN Oil Overseers wish to advise Buyers of the following:

- 1) The sanctions committee has not approved a surcharge of any kind on Iraqi Oil.
- 2) Payments for purchasing Iraqi crude oil cannot be made to a non-UN account.
- 3) Therefore, buyers of Iraqi oil shall not pay any kind of surcharge to Iraq.

**Figure: Oil overseers fax to the buyers of Iraqi crude oil (Dec. 15, 2000) (excerpt).**

Despite this warning notice, media reports in late December 2000 suggested that Iraq was still requesting surcharges, but had reduced its demands to thirty cents per barrel.<sup>340</sup> One article, from December 2000, suggested that an “overwhelming majority” of oil companies had refused to pay the thirty to fifty-cent surcharge, but that “one European trading firm had agreed to pay the surcharge” and that it remained to be seen whether the company would be able to “pass on this

<sup>339</sup> OIP informal meeting notes of 661 Committee meetings, p. 1 (Dec. 14, 2000); “Report of the Secretary-General pursuant to paragraph 5 of resolution 1330 (2000),” S/2001/186, para. 11 (Mar. 2, 2001); Oil overseers fax to the buyers of Iraqi crude oil (Dec. 15, 2000).

<sup>340</sup> “Iraq tells lifters it seeks surcharge on exports,” *Reuters News*, Dec. 20, 2001; “Confrontation over surcharges cuts Iraqi December exports,” *Middle East Economic Survey*, Dec. 25, 2000.

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

cost to end-users.” Another article from early January 2001 reported that five companies had “bowed to Baghdad’s demands for a forty cent per barrel surcharge.”<sup>341</sup>

In early January 2001, one of the oil overseers advised the 661 Committee that Iraq exported lower than normal levels of oil in December because of cancellation of loadings and delays due to Iraq’s surcharge demands. He stated that such information had been confirmed to him not only by SOMO’s contract holders but also by end-users who repeatedly had voiced their concerns about the legality of indirectly contributing to surcharge payments.<sup>342</sup> Meanwhile, media reports observed that Iraq awarded oil contracts to “little known” and “obscure” oil firms “based in countries such as Belarus and Liechtenstein.”<sup>343</sup>

On February 6, 2001, the United States formally requested—in light of continuing media reports of surcharges—that the oil overseers produce a report addressing the issue of an Iraqi oil surcharge policy. In response, the three overseers jointly wrote to the 661 Committee, explaining that “[b]y far the largest part of Iraqi crude oil is nowadays sold via middlemen and traders rather than directly to end-users (refiners).” They observed that end-users of Iraqi oil were now “confronted” with offers from middlemen to purchase Iraqi crude oil at a “substantial premium” (i.e., sales margin) of “between 20 and 70 cents a barrel” over the official selling price established by the 661 Committee. They added that “[i]n an essentially risk-free environment these premia should be considered as excessive” and that export levels were “negatively affected under those conditions” with a loss of revenue for the Programme.<sup>344</sup>

On February 20, 2001, the overseers again wrote to the 661 Committee to elaborate on the points they made in their initial letter report. Specifically, they noted that among Iraq’s oil purchasers “there are very few companies that can be classified as end-users of crude oil,” and that “contract holders seem to be intermediaries who are not known in the petroleum industry” and “are very small in size and seem to have limited credit facilities.” Iraqi oil sales under the Programme had “gradually evolved from a situation in which SOMO, by and large,” was “directly selling to end-users,” then was “selling via traders to end-users,” and “now . . . [was] selling via intermediaries

<sup>341</sup> “Confrontation over surcharges cuts Iraqi December exports,” *Middle East Economic Survey*, Dec. 25, 2000; Carly Fieldsn, “Energy. Iraqi oil exports set to resume . . . ,” *Lloyd’s List International*, Jan. 5, 2001.

<sup>342</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.211, p. 8 (Jan. 8, 2001); see also Oil overseers note to the 661 Committee, “Oil exports from Iraq-current situation” (Jan. 10, 2001) (noting reluctance of end-users to pay high premiums above official selling price because of the perceived risk that these premiums, or at least part thereof, might be used, directly or indirectly, for payments other than to the United Nations Iraq escrow account); Selina Williams, “Oil majors refuse Iraqi oil, fear legal issues on 40C fee,” *Dow Jones Energy Service*, Jan. 8, 2001; Jonathan Leff, “Oil majors avoid Iraqi oil for fear of surcharge,” *Reuters News*, Jan. 9, 2001.

<sup>343</sup> “Iraq grants obscure firms new oil sales contracts,” *Reuters News*, Jan. 4, 2001; “Oil and gas Iraq,” *Petroleum Intelligence Weekly*, Jan. 15, 2001.

<sup>344</sup> United States Mission letter to 661 Committee (Feb. 6, 2001); Oil overseers letter to 661 Committee Chairman (Feb. 13, 2001) (signed by Mr. Tellings, Mr. Morten Buur-Jensen, and Mr. Kramar).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

#### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

to traders who on-sell to end-users.” According to the overseers, the result was that there were now “two companies in the contractual chain between SOMO and the end-user, both of which naturally want to make a profit.”<sup>345</sup>

With respect to whether Iraq was receiving surcharges, the overseers noted that “end-users can consistently only buy Iraqi crude oil at a premium of 20–50 cents per barrel” over the official selling price. Whether this premium was used to pay surcharges was stated to be “unknown to the Oil Overseers,” and SOMO “categorically denied the allegations.” But the overseers noted that “direct contacts with traders and end-users in the oil industry confirm in broad terms what has been written in the professional press on this matter.”<sup>346</sup>

The overseers further noted that the current pricing conditions had led to a dramatic decrease in oil sales revenue for the Programme. Since the beginning of December 2000, Iraq had foregone “at least 100 millions barrels of export volume,” resulting in approximately \$2.2 billion in lost revenue for the Programme.<sup>347</sup>

At a formal session on February 26, 2001, the overseers again briefed the 661 Committee. Mr. Buur-Jensen once more stated that SOMO denied the receipt of surcharges, but he added that “information received from the oil industry and the professional press would seem to confirm it.” He stated that “[t]he low export levels in December and January were attributable to excessive premiums that had discouraged purchasers.”<sup>348</sup>

Mr. Kramar estimated a revenue shortfall of \$2.5 to \$3 billion and observed that “the number of new companies, not all of which inspired confidence, had recently been rising at an astonishing rate.” He suggested that the 661 Committee “should advise Governments to set stricter standards for inclusion in the register of companies.” Mr. Buur-Jensen suggested that buyers should be required to show assets of about \$100 million and proof of trading experience in oil or other goods. Mr. Buur-Jensen also proposed that potential oil purchasers be asked to pay a registration fee into the escrow account to deter intermediaries lacking the necessary financial guarantees and know-how.<sup>349</sup>

Mr. Buur-Jensen also vividly described for the 661 Committee the character of the current market for Iraqi oil. Many buyers of Iraqi oil “were small companies with no financial standing, many of which had no equipment beyond a fax machine and a telephone.” He added that “[i]t might well

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<sup>345</sup> Oil overseers letter to 661 Committee Chairman (Feb. 20, 2001) (signed by Mr. Buur-Jensen and Mr. Kramar).

<sup>346</sup> Ibid.

<sup>347</sup> Ibid.

<sup>348</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.213, p. 3 (Feb. 26, 2001). Even though one of the overseers, Michel Tellings, was not present at the meeting, the report was a joint effort of all three oil overseers. Stephani Scheer memorandum to the 661 Committee (Feb. 20, 2001).

<sup>349</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.213, pp. 4-5 (Feb. 26, 2001).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

be asked how intermediaries with such limited resources could purchase oil,” and he explained that “their procedure was the following: after a brief visit to Baghdad, they contacted a number of trading companies to which they proposed to sell oil if the companies in question agreed to their price (the official sales price plus the premium), issued them a letter of credit, chartered a ship and paid them.” Accordingly, “it was the trading companies and, in some cases, the end-users who financed the operation.”<sup>350</sup>

When Mr. Kramar suggested that the surcharges may be only selectively requested, the French representative observed that, in fact, a “reliable source” had informed him that all of Iraq’s customers were subject to a surcharge. Indeed, France’s “interests section” office in Baghdad had spoken with a French trader who explained how the system of purchasing oil under the surcharge regime worked; how the surcharges were levied; and how the trader paid the surcharges. According to this source, the surcharges ranged from somewhere between ten and twenty-five cents per barrel and varied depending on where the oil was to be sold. After further discussion of the issue by the 661 Committee with the overseers, the Chairman concluded that the matter would continue to be considered in informal consultations.<sup>351</sup>

At the February 26 meeting, neither Russia nor any other members of the 661 Committee expressed doubt about whether Iraq was requiring oil buyers to pay surcharges. The course of future discussion therefore turned to what remedial steps the 661 Committee should take. But, as detailed below, the 661 Committee could not reach consensus on how to proceed.

## C. FAILED EFFORTS TO ADDRESS OIL SURCHARGES

In order to redress surcharges, the 661 Committee considered both adopting buyer screening requirements and reducing the period for pricing oil. Ultimately, however, the 661 Committee failed to implement either of the measures.

### 1. Buyer Screening Requirements

The first step considered was to screen the qualifications of companies entering into oil contracts with Iraq. On March 10, 2001, Mr. Sevan sent a letter to the oil overseers, stating that:

With the current developments and media reports concerning oil exports from Iraq under the Programme, I should like to request you to review immediately the criteria used in registering oil importing companies with this Office. It is

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<sup>350</sup> Ibid., p. 4.

<sup>351</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.213, p. 4 (Feb. 26, 2001); France official #6 interview (Mar. 22, 2005); Provisional record of 661 Committee meeting, S/AC.25/SR.213, p. 7 (Feb. 26, 2001).



## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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essential that we tighten up our procedures and requirements in order to ensure that we register only bona fide companies.<sup>352</sup>

The oil overseers responded that they were not authorized under the 661 Committee's rules to restrict the criteria for registration of oil purchasing companies; under the 661 Committee's rules, it was left to the member states to determine which companies could participate in the Programme. These criteria, wrote the oil overseers, "appea[r] to vary from country to country," and "[w]hereas India for instance has only submitted companies that have their own refineries, other countries may use any criteria they choose."<sup>353</sup>

In the course of this investigation, many member states have been asked about the screening procedures they used to determine the eligibility of a company to purchase oil under the Programme. Although general screening procedures varied from country to country, the responses have not disclosed any significant changes to national registration requirements in light of the concerns raised about the participation of lesser known and less reputable companies in the Programme.<sup>354</sup>

When interviewed by the Committee, a French official stressed that nothing prevented member states from individually re-registering and removing untrustworthy companies.<sup>355</sup> He suspected that many companies registered as approved oil purchasers in fact were front companies. The French official referred to a list of approved oil purchasers that contained 735 companies from seventy-seven countries. He stressed that, out of the total number of approved oil purchasers, 100 companies had been registered by the United Kingdom, many of which simply bore names of unknown individuals. The official further remembered raising this issue with the United Kingdom and suggesting that it withdraw such companies from the list. However, the French official recalled that the United Kingdom official indicated that internal regulations prevented the United Kingdom from doing so. Similarly, when interviewed by the Committee, a United Kingdom official stated that its Department of Trade and Industry had advised the mission that, once a British oil company's name was placed on the approved United Nations list, the company

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<sup>352</sup> Benon Sevan note to the oil overseers (Mar. 10, 2001).

<sup>353</sup> Oil overseers note to Benon Sevan (Mar. 21, 2001) (signed by Mr. Buur-Jensen, Mr. Kramar and Mr. Tellings) (citing 661 Committee Procedures, para. 2).

<sup>354</sup> United Kingdom official #6 interview (Dec. 6, 2004); United Kingdom official #4 interview (Dec. 6, 2004); United Kingdom official #7 interview (Jan. 12, 2005); Russia officials #3, 6-7 interviews (Feb. 28 and Mar. 1, 2005); China officials #1-2, 4-5 interview (Jan. 19, 2005); France official #4 interview (Dec. 2, 2004).

<sup>355</sup> France official #2 interview (Dec. 3, 2004). The 661 Committee records reveal that France, for example, removed Ibex SA from the list of registered purchasers in 2001, pending the outcome of the French authorities' investigation of Ibex in connection with a reported case of smuggling. France Mission letter to 661 Committee Chairman (Nov. 9, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.226, p. 4 (Nov. 8, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.227, p. 7 (Dec. 3, 2001). The Committee will address these transactions involving Ibex and other entities in a future report.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

could not be removed from the list without a showing of some wrongdoing (such as evidence of a sanctions violation).<sup>356</sup>

On March 16, 2001, the 661 Committee met informally and discussed a proposal made by the United States and supported by the United Kingdom to redress surcharges, including: (1) renewed warnings to buyers; (2) re-registration of buyers with qualification criteria including proven creditworthiness and experience; (3) payment by buyers of a non-refundable fee to the escrow account; (4) new warnings to end-users and refiners not to buy surcharge-tainted oil; and (5) increased publicity by OIP and member states of the prohibition against surcharge payments. According to OIP's notes of this meeting, France, China, and Russia objected to the United States proposal. France and China suggested that the measures were too focused on buyers rather than end-users. France further suggested that "all of the proposed measures were in blatant contradiction to the agreed procedures of the [661] Committee in that the latter did not envisage the Committee's interference in the process by which Iraqi oil was traded."<sup>357</sup>

Toward the conclusion of the meeting, Russia also objected and expressed renewed doubt that Iraq actually was imposing surcharges. It indicated "strong concerns over the procedures as a whole, claiming that the [661] Committee was attempting to address a violation of sanctions for which it had no evidence."<sup>358</sup> Russian-registered companies purchased by far the largest amount of oil under the Programme, including through state-owned companies, but Russia did not state that it had made any inquiries of its companies to determine if Iraq had asked them to pay illegal surcharges.<sup>359</sup>

At the 661 Committee's next meeting on the surcharge issue, the United States circulated a copy of a letter sent by the United States government to twenty-three United States companies that had purchased oil from Iraq that year, urging them to "take all necessary steps to ensure that any Iraqi-origin crude you acquire has not been tainted by the payment to Iraq of an illegal surcharge." The United States then pressed for "feedback" from other members on its proposal from the meeting of March 16. France replied that it could support the "spirit of the proposal," but only if it were "part of a comprehensive approach to Iraq and the oil-for-food programme, in which such issues as the impact of sanctions on third states and applications on hold were also reviewed." Russia replied that it had not yet received a response from its capital on the proposal.<sup>360</sup> The United States proposal does not appear to have been discussed again.<sup>361</sup>

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<sup>356</sup> France official #2 interview (Dec. 3, 2004); United Kingdom official #7 interview (July 14, 2005).

<sup>357</sup> OIP notes of informal 661 Committee meeting, p. 1 (Mar. 16, 2001) (attaching the United States proposal of March 14, 2001).

<sup>358</sup> *Ibid.*, p. 2.

<sup>359</sup> TaR (Dec. 1996 to Mar. 2003); Russia officials #6-7 interview (Nov. 16, 2004); Russia officials #3, 6-7 interview (Feb. 28 and Mar. 1, 2005); Russia officials #1-2, 4 interview (Oct. 13, 2004).

<sup>360</sup> OIP notes of informal 661 Committee meeting, p. 1 (Apr. 11, 2001) (attaching a letter from the United States Department of State).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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Later in the spring of 2001, the United Kingdom and France offered proposals in the Security Council to have the Secretary-General develop screening criteria for the qualification of oil buyers under the Programme. These proposals, which were included within the Security Council's broader debate of "smart sanctions" reform, did not advance to a vote in the Security Council.<sup>362</sup> Ultimately, neither the Security Council nor the 661 Committee took any steps to require screening of oil buyers under the Programme.

## **2. Reduction in the Pricing Period**

After it became clear that neither the Security Council nor the 661 Committee could agree on action to restrict the types of companies that purchased oil from Iraq, the United Kingdom and the United States took steps to restrict Iraq's ability to exploit the pricing regime. As noted above, SOMO and the oil overseers generally agreed at the end of a calendar month on a pricing formula to govern for the next calendar month. If market prices increased during the next month, this left the potential for significant premiums to be earned by middlemen buyers and potentially to be paid as surcharges to Iraq. On the other hand, if market prices declined during the following month, this cut into the middlemen's potential premium. However, the oil overseers observed that SOMO frequently requested downward pricing revisions, yet significantly refrained from requesting upward revisions when market prices increased. For example, from December 2000 to July 2001, SOMO requested nineteen downward adjustments, compared to only three upward requests.<sup>363</sup>

To redress this issue, in August 2001, the United Kingdom decided to approve pricing mechanisms for an advance period of only ten days. Russia and China objected to this ten-day approval policy. The United Kingdom replied that it was acting in order to make the official selling price more responsive to actual market conditions. On behalf of the oil overseers, Mr. Buur-Jensen said that shorter time frames reduced the likelihood of excessive premiums but increased market instability because lifters could not conduct long-term planning. Mr. Buur-

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<sup>361</sup> See, e.g., "Summary of the main issues of the informal meetings of the Security Council Committee established by resolution 661 (1990), from April 2001 to August 2001" (undated); United Kingdom official #7 interview (Jan. 12, 2005); United States official #13 interview (Feb. 11, 2005); Norway official #6 interview (Dec. 9, 2004).

<sup>362</sup> Draft Security Council resolutions, United Kingdom (May 22 and 24, 2001); Draft Security Council resolution, France (June 11, 2001); Benon Sevan note to the Louise Fréchette (May 17, 2001) (describing United States and United Kingdom proposed sanctions reforms, including that "all oil sales should be through authorized brokers under transparent manner in order to prevent 'surcharges' and/or 'kickbacks'").

<sup>363</sup> OIP notes of formal 661 Committee meetings, p. 1 (Sept. 6, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.222, p. 2 (Sept. 6, 2001); Oil overseers letter to 661 Committee (July 31, 2001); Michel Tellings interview (Oct. 14, 2004). The oil overseers also had voiced their concern about this matter to SOMO indicating that "there seems to be a stronger propensity for SOMO to request an interim downward revision of the OSP in comparison with a request for an upward revision when market conditions might justify this. This has led to a further increase in the chance of SOMO's customers making excessive trading profits." Oil overseers letter to SOMO (July 13, 2001).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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Jensen added that the oil overseers had proposed shortening the time frame of pricing mechanisms, but that SOMO had rejected their proposal.<sup>364</sup>

France and Norway supported more frequent adjustments to the oil pricing mechanisms, but France questioned whether a ten-day period was too short. The United Kingdom and the United States soon agreed on a fifteen-day approach, but the 661 Committee could not reach consensus on this issue during August and September 2001.<sup>365</sup>

Similarly, no consensus could be reached over a proposal supported by France, the United Kingdom, and the United States that the oil overseers should make a weekly report on the amount of the premium between the official selling price of Iraqi oil and the prices at which Iraqi oil was being sold to end-users. The oil overseers stated that the amount of this premium could be derived from publicly available data and that the premiums for the current phase of the Programme were between thirty to forty cents per barrel.<sup>366</sup>

In particular, Russia expressed reservations over both the fifteen-day pricing proposal and the proposal to request the oil overseers to report on premium levels. Russia asserted that the 661 Committee's role was to ensure fair market value of pricing mechanisms, but that the oil overseers "had no authority to monitor the profits of the oil companies." Furthermore, Russia stated that the 661 Committee did not have the authority to constrict the profits of companies buying Iraqi oil because the "sanctions were not against companies, but against Iraq." The United Kingdom maintained that any excess profits belonged in the escrow account.<sup>367</sup>

In light of the 661 Committee's deadlock about both the length of pricing periods and whether the overseers should be permitted to report on the size of market premiums, the Chairman decided to elevate these issues to the Security Council on September 13, 2001. During that meeting, Russia contended that the 661 Committee was violating its procedures and that it was the 661

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<sup>364</sup> United Kingdom letter to Acting 661 Committee Chairman (Aug. 2, 2001); United Kingdom Mission letter to Acting 661 Committee Chairman (Aug. 10, 2001); OIP notes of informal 661 Committee meeting, pp. 1-2 (Aug. 14, 2001); Oil overseers letter to SOMO (July 13, 2001); Saddam Z. Hassan letter to the oil overseers (Aug. 13, 2001).

<sup>365</sup> OIP notes of informal 661 Committee meeting, pp. 1-2 (Aug. 14, 2001); OIP notes of informal 661 Committee meeting, pp. 1, 3 (Aug. 27, 2001); OIP notes of informal 661 Committee meeting, pp. 1-3 (Aug. 30, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.222, pp. 3-4 (Sept. 6, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.223, pp. 6-7 (Sept. 10, 2001); "US proposes 15-day reviews of Iraq oil price," *Reuters*, Aug. 22, 2001; "US offers 15-day compromise to end UN stalemate on pricing Iraqi oil," *Agence France Presse*, Aug. 22, 2001.

<sup>366</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.222, pp. 2-4 (Sept. 6, 2001); OIP notes of informal 661 Committee meetings, pp. 1, 4 (Aug. 27, 2001).

<sup>367</sup> OIP notes of informal 661 Committee meetings, p. 1 (Aug. 27, 2001); OIP notes of informal 661 Committee meetings, p. 2 (Aug. 30, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.222, pp. 2-4 (Sept. 6, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.223, pp. 6-7 (Sept. 10, 2001).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

Committee's duty either to approve or disapprove pricing proposals made by SOMO. China concurred and opined that the positions taken by the United Kingdom and the United States were "tantamount to holding September pricing hostage." After the United Kingdom and the United States stated their reasons for supporting a shorter pricing period, the members of the Security Council accepted the United Kingdom suggestion that the Security Council hear the oil overseers' views at a future meeting.<sup>368</sup>

On September 24, 2001, the three overseers briefed the Security Council on several topics, including: (1) the concept of fair market value; (2) the fact that most Iraqi contract holders were middlemen; (3) the level of premiums; (4) the reasons for excessive premiums; and (5) ways to reduce them. A briefing paper discussed by the oil overseers at the Security Council meeting explained that "practically all" Iraqi oil was sold to "contractholders" which "do not get involved in shipping, financing or any other risk bearing activity." The briefing paper warned that it was "very difficult to see what role [the contract holders] fulfill" and that "[t]his is rather unprecedented in the oil industry and only exists in this shape and form in the case of Iraq."<sup>369</sup>

The briefing paper further stressed the extent of risk-free profit accruing to these contract holders, which was correspondingly lost to the Programme's escrow account. The premiums rarely had gone below thirty cents per barrel since December 2000—far more than what the overseers believed to be an appropriate "profit level which averages not more than five US cents per barrel" or approximately "\$75,000 on an average cargo of Iraqi oil." The overseers added that "these contractholders would find it very difficult to find alternative oils on which they could make guaranteed profits of even one cent per barrel."<sup>370</sup>

During this Security Council meeting, the United Kingdom and the United States voiced continued support for the fifteen-day pricing period, and France also supported a shorter pricing period, but Russia would not agree. Russia stated that it "would be willing to continue discussions in the coming days, but that it would not be appropriate to take a decision that morning." Accordingly, the Security Council took no decision on the shortened pricing period. However, the Council did agree that the overseers could make weekly reports regarding the size of the market premium. The oil overseers reported a market premium of approximately forty cents per barrel above the official selling price during the last full week of September 2001.<sup>371</sup>

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<sup>368</sup> OIP notes of Security Council consultations, pp. 1-3 (Sept. 13, 2001); DPA notes of Security Council consultations, p. 7 (Sept. 13, 2001).

<sup>369</sup> DPA notes of Security Council consultations, pp. 1-4 (Sept. 24, 2001); OIP notes of Security Council consultations, pp. 1-4 (Sept. 24, 2001) (attaching an undated briefing paper prepared by the oil overseers).

<sup>370</sup> Oil overseer briefing paper, p. 2 (undated) (attached to OIP notes of Security Council consultations (Sept. 24, 2001)).

<sup>371</sup> OIP notes of Security Council consultations, pp. 2, 4 (Sept. 24, 2001); DPA notes of Security Council consultations, pp. 1-2, 4 (Sept. 24, 2001); Stephani Scheer note to the oil overseers (Sept. 28, 2001); "Two hundred and fifty first report of the overseers to the Security Council Committee established by Resolution

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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The French representative expressed regret over the 661 Committee's recent deadlock on several issues. He therefore suggested replacing the 661 Committee's consensus-vote rule with a majority-vote rule. This suggestion drew no further comment or discussion.<sup>372</sup>

#### **D. THE ADVENT OF RETROACTIVE PRICING**

Following the inability of the Security Council to agree on a shortened pricing period, the United Kingdom and the United States—at the suggestion of one of the oil overseers—decided against advance approval of an oil pricing mechanism. Without blocking the sale of oil, they simply placed a temporary hold on approval of a pricing mechanism until the end of the month for which their approval had been sought, at which point it could be determined if the pricing mechanism proposed by SOMO corresponded to actual historic market value. This after-the-fact approval or rejection of a pricing mechanism, which started in October 2001, became known as “retroactive pricing,” and it shifted the balance of advantage in the pricing debate among Security Council members for the remainder of the Programme.<sup>373</sup>

Russia and China protested retroactive pricing during informal consultations of the Security Council on October 11, 2001. France considered the “new approach” adopted by the United States and the United Kingdom a “good basis” but urged the Security Council to continue discussions on the fifteen-day pricing proposal.<sup>374</sup> SOMO protested that retroactive pricing put its contract holders in “a state of uncertainty towards future payment for their cargoes,” leading to the “withdrawal and or delay of some confirmed tankers which has caused disruption in our lifting programmes.”<sup>375</sup>

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661 (1990) concerning the situation between Iraq and Kuwait,” S/AC.25/2001/OIL/COMM.251 (Oct. 1, 2001).

<sup>372</sup> OIP notes of Security Council consultations, p. 2 (Sept. 24, 2001); DPA notes of Security Council consultations, p. 3 (Sept. 24, 2001).

<sup>373</sup> United States official #10 and United Kingdom official #7 interview (Sept. 8, 2004); Russia officials #1-2, 4 interview (Oct. 13, 2004); France official #2 interview (Dec. 3, 2004); United Kingdom official #7 interview (Jan. 12, 2005); United Kingdom official #6 interview (Dec. 7, 2004); Norway official #6 interview (Dec. 9, 2004); Michel Tellings interview (Oct. 14, 2004); Morten Buur-Jensen interview (Sept. 9, 2004); “Report of the Secretary-General pursuant to paragraph 5 of resolution 1360 (2001),” S/2001/1089, para. 10 (Nov. 19, 2001); 661 Committee Chairman letter to the President of the Security Council (Dec. 31, 2001) (containing Annex “Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait on the implementation of the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of resolution 986 (1995)”; Oil overseers letter to 661 Committee Chairman (Feb. 7, 2002).

<sup>374</sup> OIP notes of Security Council consultations, p. 1 (Oct. 11, 2001); DPA notes of Security Council consultations, p. 1 (Oct. 11, 2001).

<sup>375</sup> SOMO fax to 661 Committee, p. 1 (Oct. 20, 2001).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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Retroactive pricing remained in effect for the rest of the Programme (until 2003).<sup>376</sup> Iraq continued to protest the new pricing regime, and debate continued in both the 661 Committee and the Security Council about the effectiveness of retroactive pricing in reducing oil premiums and the degree to which retroactive pricing was responsible for a sharp decrease in Iraqi oil sales beginning in December 2001.<sup>377</sup>

During an informal 661 Committee meeting in March 2002, the oil overseers stressed that since December 2000 contract holders had insisted on unusually high premiums without any financial risk, because the contract holders were not obliged to lift their oil if third-party buyers were not willing to offer them high premiums. This became particularly clear when retroactive pricing was introduced. If contract holders could not maintain premiums at thirty to forty-five cents per barrel, they would not lift their oil, thereby causing a substantial reduction in oil exports and losses to the escrow account.<sup>378</sup>

The following chart reflects the fluctuating volume of Iraq oil exports during the last two years of the Programme, including a general decline in oil exports in late 2001, which continued through much of 2002:

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<sup>376</sup> Benon Sevan letter to 661 Committee Chairman (Jan. 15, 2003). Specifically, the United States and/or the United Kingdom placed holds on oil intended for the United States and European markets, but not generally the Far East market. In May 2002, the United Kingdom and the United States widened the scope of retroactive pricing to include the Far East market by placing holds on pricing mechanisms for the Far East for the period of May 8-31, 2002. United Kingdom Mission letter to 661 Committee Chairman (May 8, 2002); United States Mission fax to 661 Committee Chairman (May 9, 2002); Axel Busch and John van Schaik, "UN Extends Sanctions on Iraq—Smuggling Goes On," *Energy Intelligence Briefing*, May 14, 2002.

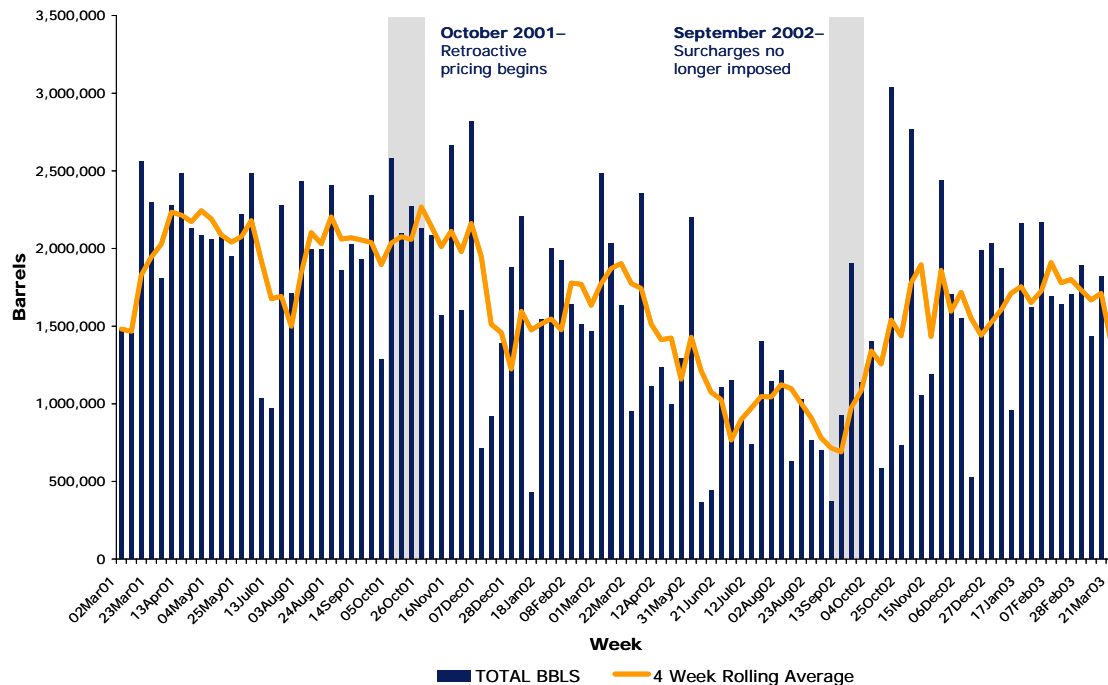
<sup>377</sup> SOMO letter to 661 Committee (Jan. 8, 2002); DPA notes of Security Council consultations, p. 3 (Nov. 26, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.230, p. 10 (Feb. 1, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.231, pp. 2-7 (Feb. 8, 2002); OIP notes of Security Council consultations, pp. 1-2 (Feb. 26, 2002); DPA notes of Security Council consultations, p. 4 (Feb. 26, 2002); OIP notes of informal 661 Committee meeting, pp. 1-3 (Feb. 28, 2002); OIP notes of informal 661 Committee meeting, pp. 1-3 (June 10, 2002); OIP notes of informal 661 Committee meeting, p. 3 (Aug. 7, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.237, pp. 2-12 (Aug. 19, 2002); OIP notes of informal 661 Committee meeting, pp. 1-2 (Sept. 3, 2002); OIP notes of Security Council consultations, pp. 1-3 (Sept. 25, 2002); DPA notes of Security Council consultations, pp. 1-3 (Sept. 25, 2002); OIP notes of informal 661 Committee meeting, pp. 1-2 (Oct. 2, 2002); "Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait on the implementation of the arrangements in paragraph 1, 2, 6, 8, 9 and 10 of resolution 986 (1995)," S/2002/1261, para. 3 (Nov. 18, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.243, pp. 6-7 (Dec. 11, 2002); OIP notes of informal 661 Committee meeting, p. 1 (Jan. 17, 2003) (attaching Benon Sevan letter to 661 Committee Chairman, S/AC.25/2003/COMM.19 (Jan. 15, 2003)); "Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait on the implementation of the arrangements in paragraph 1, 2, 6, 8, 9 and 10 of resolution 986 (1995)," S/2003/331, para. 3 (Feb. 2, 2003).

<sup>378</sup> Oil overseers briefing paper, p. 1 (Mar. 21, 2002) (attached to OIP notes of informal 661 Committee meeting (Mar. 21, 2002)).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

Chart A – Total Average Daily BBLs by Week (All Regions)<sup>379</sup>

The fact that SOMO’s contract holders were not necessarily lifting the contractually agreed volumes of oil had been raised in June 2001 by the oil overseers with OLA. However, according to Mr. Tellings, OLA advised the oil overseers that “you can’t change what SOMO and its contract holders are doing.”<sup>380</sup>

The oil overseers periodically briefed the 661 Committee on the status of oil sales, including the continued-but-reduced premiums that persisted even after the imposition of retroactive pricing.<sup>381</sup>

<sup>379</sup> TaR (Mar. 2, 2001 to Mar. 21, 2003). In Chart A above, average daily barrels (Average Daily BBLs) are calculated as total barrels loaded in a week divided by seven.

<sup>380</sup> Oil overseers letter to Vladimir Golitsyn (June 21, 2001) (including a handwritten contemporaneous note stating that OLA had replied orally); Michel Tellings interview (Apr. 5, 2005); see also OLA letter to the Committee (Aug. 12, 2005) (stating that OLA did not provide a “formal written reply” to oil overseers’ letter).

<sup>381</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.231, pp. 1-3, 6-7 (Feb. 8, 2002); OIP notes of informal 661 Committee meeting, p. 2 (Feb. 28, 2002) (combination of surcharges and retroactive pricing will result in reduced oil export levels); OIP notes of informal 661 Committee meeting, p. 2 (Mar. 21, 2002) (attaching briefing paper from the oil overseers dated Mar. 14, 2005) (discussing options available to reduce excessive premiums and eliminate surcharges, including re-registration of oil purchasers



## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 3

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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In general, Russia and China blamed the decrease in oil sales under the Programme on the uncertainty created by the retroactive pricing regime, and Russia continued to insist that there was no evidence that Iraq was requiring companies to pay oil surcharges.<sup>382</sup>

On the other side of the debate, the United Kingdom and the United States adhered to retroactive pricing, contending that the decrease in oil sales was prompted by Iraq's unwillingness to abandon its surcharge policy, which rendered trade in Iraqi oil less profitable under a fair market retroactive pricing regime.<sup>383</sup> Taking a middle position, France expressed continuing concerns about the decrease in Iraqi exports and advocated consideration of its proposal that included, among other factors, a fifteen-day pricing period.<sup>384</sup>

At one point, the United Kingdom proposed a "green list" system to allow buyers who were pre-qualified as established companies to be free from retroactive pricing and to impose a "mandatory lifting" requirement—that is, to require companies that entered into contracts to follow through on their contracts even if market conditions became unfavorable. Companies failing to lift the contractually agreed volumes of oil would be removed from the "green list" and could no longer qualify for proactive pricing. However, this proposal was never adopted. Among many concerns expressed by several P-5 members, China considered the United Kingdom proposal too strict,

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and mandatory lifting); OIP notes of informal 661 Committee meeting, p. 1 (June 10, 2002); OIP notes of informal 661 Committee meeting, pp. 2-3 (June 26, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.237, pp. 8-9 (Aug. 19, 2002).

<sup>382</sup> DPA notes of Security Council consultations, p. 1 (Oct. 11, 2001); OIP notes of Security Council consultations, p. 1 (Oct. 11, 2001); DPA notes of Security Council consultations, p. 3 (Nov. 26, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.231, p. 4 (Feb. 8, 2002); OIP notes of Security Council consultations, p. 2 (Feb. 26, 2002); DPA notes of Security Council consultations, p. 4 (Feb. 26, 2002); DPA notes of Security Council consultations, p. 2 (May 29, 2002); DPA notes of Security Council consultations, pp. 3-4 (June 24, 2002); OIP notes of informal 661 Committee meeting, p. 3 (Aug. 7, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.237, pp. 2-3, 6 (Aug. 19, 2002); OIP notes of informal 661 Committee meeting, pp. 1-2 (June 10, 2002); OIP notes of informal 661 Committee meeting, p. 2 (Sept. 3, 2002); OIP notes of Security Council consultations, pp. 1-2 (Sept. 25, 2002); DPA notes of Security Council consultations, p. 2 (Sept. 25, 2002).

<sup>383</sup> OIP notes of Security Council consultations, p. 1 (Oct. 11, 2001); OIP notes of informal 661 Committee meeting, pp. 1-2 (Mar. 21, 2002); DPA notes of Security Council consultations, pp. 2-3 (May 29, 2002); OIP notes of informal 661 Committee meeting, pp. 1-2 (June 10, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.237, p. 5 (Aug. 19, 2002); DPA notes of Security Council consultations, p. 2 (Sept. 25, 2002).

<sup>384</sup> OIP notes of Security Council consultations, p. 1 (Oct. 11, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.231, pp. 5-6 (Feb. 8, 2002); DPA notes of Security Council consultations, p. 4 (Feb. 26, 2002); OIP notes of informal 661 Committee meeting, p. 1 (Feb. 28, 2002); OIP notes of informal 661 Committee meeting, p. 2 (Mar. 21, 2002); OIP notes of informal 661 Committee meeting, p. 2 (June 10, 2002); OIP notes of informal 661 Committee meeting, pp. 1-3 (June 26, 2002) (attaching French proposal of June 21, 2002).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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citing an old Chinese proverb: “Man who is too critical has not friends; If river is too clean there is no fish.”<sup>385</sup>

## **E. THE END OF OIL SURCHARGES**

In August 2002—nearly a year after the advent of retroactive pricing—Russia presented a proposal to reconsider retroactive pricing and, in doing so, acknowledged that Iraq, in fact, had an oil surcharge policy. Its representative stated that surcharges “had been imposed because Iraq’s need to offset the cost of maintaining its oil industry had been ignored for many years.” He stated that:

The current situation, which had been confirmed to the Russian Federation in contacts with Iraqi representatives in Baghdad, was that Iraq would be prepared to abolish surcharges immediately if the Committee was finally able to solve two key problems affecting the humanitarian programme: ending retroactive pricing, and approving the cash component for the oil industry.

Russia therefore proposed to accept the Iraqi conditions so that “[t]he surcharges so often discussed would disappear, and Iraqi oil could be extracted and exported under normal conditions.”<sup>386</sup>

Despite these admissions by Russia before the 661 Committee, the Government of Russia has continued to this day to question whether Iraq had an oil surcharge policy. Russian Foreign Ministry officials steadfastly have maintained during the course of repeated interviews with the Committee that there is a lack of evidence that Iraq imposed oil surcharges.<sup>387</sup>

In the meantime, press articles suggesting that the Government of Iraq had retreated on its surcharge demands already had appeared by mid-August 2002. The oil overseers’ weekly report, presented to the 661 Committee on September 3, 2002, correspondingly suggested reducing premiums to normal levels of about five cents per barrel. Following Iraq’s turnabout on its surcharge policy, its oil exports steadily increased over the next several months.<sup>388</sup>

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<sup>385</sup> OIP notes of informal 661 Committee meeting, p. 2 (June 26, 2002); United Kingdom Mission fax to Security Council Iraq experts (July 9, 2002) (attaching United Kingdom draft proposal); OIP notes of informal 661 Committee meeting, pp. 1-2 (July 11, 2002).

<sup>386</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.237, p. 3 (Aug. 19, 2002).

<sup>387</sup> Russia officials #6-7 interview (Nov. 16, 2004); Russia officials #1-2, 4 interview (Oct. 13, 2004); Russia officials #3, 6-7 interviews (Feb. 28 and Mar. 1, 2005).

<sup>388</sup> Edith Lederer, “Iraq says it will drop surcharge,” *Associated Press*, Aug. 14, 2002; “SOMO lifts surcharge on some Iraqi oil sales,” *Middle East Economic Survey*, Aug. 19, 2002; Simon Wardell, “Iraq-Government to list firms exempt from surcharge,” *WMRC Daily Analysis*, Aug. 27, 2002; “UN wants Iraqi kickback proof before changing the price system,” *Energy Compass*, Aug. 30, 2002; “US firm buys surcharge-free Iraq oil via 3rd party,” *Reuters News*, Sept. 2, 2002; “Iraq appears to be phasing out crude

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 3**  
**THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

Accordingly, Iraq's oil surcharge policy ultimately ended after nearly two years of operation. Although the former Iraqi regime and the companies that agreed to pay these surcharges bear primary responsibility, it is clear that the Security Council and 661 Committee acquiesced to the evolution of "middlemen" market conditions that were fertile ground for the success of the surcharge scheme. Once the surcharge scheme took root, the Security Council and the 661 Committee were unable—for lack of consensus—to mount an effective response.

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surcharges," *Platts Commodity News*, Sept. 16, 2002; "Iraq drops surcharge but exports still constrained by retroactive pricing," *Middle East Economic Survey*, Sept. 23, 2002; "Two hundred and ninety ninth report of the overseers to the Security Council Committee established by Resolution 661 (1990) concerning the situation between Iraq and Kuwait," S/AC.25/2002/OIL/COMM.299 (Sept. 3, 2002); SOMO Summary Report, p. 5 (stating that starting September 2002, surcharges were no longer imposed); Oil exports increased from 371,000 barrels for the week ending September 6, 2002, to a high of 3 million barrels for the week ending October 18, 2002. TaR (Sept. 2, 2002 to Oct. 18, 2002).

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 3**  
**THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

### **III. RESPONSE TO HUMANITARIAN CONTRACT KICKBACKS**

Unlike with oil surcharges and smuggling, the 661 Committee rarely discussed allegations of humanitarian kickbacks or mechanisms for addressing such concerns. Rather, debate regarding humanitarian applications usually focused on the tension between rapidly approving contracts in order to alleviate human suffering in Iraq and ensuring that Iraq neither obtain materials that might enable it to develop weapons of mass destruction nor otherwise divert goods for military use. Such exchanges inevitably involved the United Kingdom and the United States defending their use of contract holds, and other 661 Committee members—particularly France, Russia, and China—criticizing these holds and their toll on the Iraqi people.<sup>389</sup>

Section A of this Part addresses the respective responsibilities of the 661 Committee and the Secretariat in reviewing humanitarian applications under the Programme, and it discusses the approaches of certain member states to reviewing the contracts. Section B presents the earliest allegations of humanitarian kickbacks, including 1997 and 1999 press reports and a United States statement before the Security Council in March 2000. It then reviews the 661 Committee's renewed interest in kickbacks in early 2001, when various members made public statements about them. Section C analyzes the limited efforts within the 661 Committee to address humanitarian kickbacks. It first considers a United States non-paper containing proposals to curtail kickbacks (which received scant attention) and then reviews a United Kingdom letter to OIP about particular contracts that might involve kickbacks. Section D analyzes humanitarian contracts that OIP identified as possibly being overpriced and, therefore, potentially indicative of kickbacks. It appears that only on one occasion did a 661 Committee member place on hold one of these contracts for pricing concerns. It then reviews various 661 Committee and OIP dynamics that help to account for the absence of pricing-related holds on these contracts. Section E synthesizes and evaluates explanations offered by witnesses for the 661 Committee's inaction regarding humanitarian kickbacks. Section F concludes this Part by addressing the recalibration of goods contracts at the Programme's end, during which time 661 Committee members acknowledged the prevalence of kickbacks and the need to eliminate them from the remaining contracts.

#### **A. CONTRACT REVIEW PROCESSES**

##### **1. Responsibilities of the 661 Committee and the Secretariat**

As discussed earlier in this Report, the procedures governing the 661 Committee's and the Secretariat's review of humanitarian applications varied over the course of the Programme. A brief summary below provides important context for this Part's discussion of humanitarian kickbacks.

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<sup>389</sup> See, e.g., Provisional record of 661 Committee meeting, S/AC.25/SR.159, pp. 11-16 (July 17, 1997); Provisional record of 661 Committee meeting, S/AC.25/SR.189, pp. 10-12 (Aug. 24, 1999); Provisional record of 661 Committee meeting, S/AC.25/SR.230, pp. 5-8 (Feb. 1, 2002).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

An early draft of the 661 Committee Procedures included a United States proposal that the 661 Committee select and the Secretary-General appoint “humanitarian contract examiners.” In addition to those responsibilities eventually assigned to the Secretariat under the 661 Committee Procedures, the draft proposal would have tasked contract examiners with “assess[ing] whether the pricing and other terms for such exports [were] consistent *with world prices and market trends*” as well as “whether they appear[ed] to contain *any attempt at fraud or deception*.” A note to the Chairman of the Iraq Steering Committee from one of his assistants stated that the United States was “insist[ing] . . . on a mechanism that would allow the [661 Committee] to verify the ‘fairness’ of the price agreed for the purchases” because it was “afraid that Iraq might engage in fraudulent contracts involving illicit payments.” In light of meeting minutes of the Iraq Steering Committee, which indicate that “[t]here ha[d] been surprise but not much opposition by the other [661 Committee] members” to the United States proposal, it is unclear precisely why it was not included in the 661 Committee Procedures.<sup>390</sup>

Ultimately, the 661 Committee Procedures tasked the Secretariat with the narrower responsibilities of examining: (1) “the details of price and value”; (2) “whether the items to be exported are on the [categorized list of humanitarian supplies]”; and (3) the “availability of funds . . . for the contract.” Experts within the Secretariat included this information in the customs reports that they forwarded to the 661 Committee. The 661 Committee members initially retained the ultimate responsibility for approving all applications under the 661 Committee’s no-objection procedure, whereby a contract was approved unless a member state placed a hold or block on it by a certain date.<sup>391</sup>

In late 1999, under pressure to expedite the processing of humanitarian applications and reduce the number of contract holds, the Security Council adopted Resolution 1284, which created a fast track procedure. This authorized OIP—without the 661 Committee’s involvement—to approve contracts, including certain humanitarian items such as food and medicine, which appeared on a pre-approved “green list” of goods for which no dual use was foreseeable. OIP merely notified the 661 Committee of these approvals. Nonetheless, when OIP had a specific concern (for example, excessive price), it sometimes submitted an application to the 661 Committee for approval, even though it included only items that OIP was authorized to approve.<sup>392</sup>

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<sup>390</sup> Draft 661 Committee Procedures, para. 23bis (June 1996) (emphasis added); Wolfgang Weisbrod-Weber note to Chinmaya Gharekhan (June 4, 1996) (summarizing for the Chairman of the Iraq Steering Committee the United States proposal); Iraq Steering Committee meeting notes (June 4, 1996) (noting, however, that practical and legal objections had been raised regarding the United States proposal and also that the proposal ran “counter to Iraqi wishes for as little bureaucracy as possible” and might “even provide a pre-text for the Iraqis to re-open the negotiations”).

<sup>391</sup> 661 Committee Procedures, paras. 33-34; Darko Mocibob interview (Sept. 20, 2004).

<sup>392</sup> S/RES/1284, paras. 17, 25 (Dec. 17, 1999); Darko Mocibob interviews (Sept. 20, 2004 and Aug. 16, 2005). Resolution 1284 directed the 661 Committee “to approve, on the basis of proposals from the Secretary-General, lists of humanitarian items” and established that “supplies of these [humanitarian] items will not be submitted for approval of [the 661 Committee], except for items subject to” Resolution 1051.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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In May 2002, the Security Council adopted Resolution 1409, which again changed the rules for processing humanitarian contracts under the Programme and further reduced the 661 Committee's responsibility relative to OIP's purview. Specifically, the Security Council adopted a Goods Review List ("GRL"), which expressly identified items of potential military significance that required the 661 Committee's approval. Under this system, OIP—with technical support from the United Nations Monitoring, Verification and Inspection Commission ("UNMOVIC") and the IAEA—was authorized to approve contracts for items that were not on the GRL. This was essentially the inverse of the "green list" under Resolution 1284, which had permitted OIP to approve contracts containing only preordained humanitarian items.<sup>393</sup>

## 2. Member State Review

661 Committee members reviewed humanitarian applications under the Programme to varying degrees. By far, the United States and the United Kingdom devoted the most extensive resources to reviewing these applications. This is reflected in the distribution of contract holds: approximately ninety percent imposed by the United States and ten percent imposed by the United Kingdom.<sup>394</sup> Occasionally, another member state would institute a contract hold, but many 661 Committee members never instituted any holds.<sup>395</sup> Member states relied largely on the

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S/RES/1284, para. 17 (Dec. 17, 1999); see also S/RES/1051 (Mar. 27, 1996) (approving a monitoring mechanism for Iraqi imports and exports).

<sup>393</sup> S/RES/1409, paras. 2-3 and accompanying procedures (May 14, 2002); Darko Mocibob interview (Sept. 20, 2004). The revised procedures adopted as part of Resolution 1409 provided: "The United Nations Secretariat will report to the 661 Committee at the end of each phase on the status of all applications submitted during this period . . . . The Secretariat will provide to members of the 661 Committee at their request copies of applications approved by OIP, UNMOVIC and IAEA, within three working days after their approval, *for information purposes only.*" S/RES/1409, procedure 17 (May 14, 2002) (emphasis added). Because these notifications were "for information purposes only," 661 Committee members could not block an already approved contract, but nevertheless could disapprove in principle to prevent such a contract from being approved in the future. Darko Mocibob interview (Aug. 16, 2005). In addition, Resolution 1409 directed OIP to recirculate under GRL procedures those contracts previously on hold for reasons other than that the goods appeared on the 1051-list of dual-use items. S/RES/1409, procedure 18 (May 14, 2002); see also Darko Mocibob interview (Aug. 16, 2005) (noting that many contracts were released from hold after adoption of the GRL). The relevant procedures further provided that items in a goods application deemed technically complete by OIP, which UNMOVIC and/or IAEA determined were not on the GRL, would "be considered approved for sale or supply to Iraq." S/RES/1409, procedures 2-3, 9 (May 14, 2002).

<sup>394</sup> Netherlands official #8 interview (Sept. 1, 2004); Felicity Johnston interview (June 10, 2005) (commenting that it was well known that only two members of the 661 Committee, the United States and the United Kingdom, actually reviewed and placed on hold humanitarian applications); Darko Mocibob interview (Sept. 20, 2004) (noting the extent of holds placed by the United States and the United Kingdom); United States officials #1, 10 and United Kingdom official #7 interview (Aug. 24, 2004) (estimating the distribution of holds).

<sup>395</sup> See, e.g., France official #7 interview (Aug. 26, 2005) (stating that 661 Committee members other than the United Kingdom and the United States rarely placed contracts on hold and that France believed holds

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

United States and the United Kingdom to identify dual-use items and to impose holds. As noted by Jean-David Levitte, France's former Permanent Representative to the United Nations, "[t]he complete contracts were only circulated to the U.S. and Britain, which had expressly asked to see them and would have been in the best position to have known if anything improper was going on." Nevertheless, numerous members viewed the United States and United Kingdom holds policies as too inflexible, and members often disagreed on the motivations that prompted these holds.<sup>396</sup>

For purposes of this Part, it is unnecessary to consider all the review procedures adopted over time by the various 661 Committee members. However, as an illustration (given its considerable role in reviewing the contracts), it is worth noting briefly those procedures adopted by the United States. Upon receipt, the United States Mission sent all applications to Washington for interagency review. This involved the examination of all applications by various governmental organs, including the State Department, Defense Department, Energy Department, and intelligence agencies. The United States Mission ultimately received instructions from Washington and then notified OIP of its holds or blocks. In addition, the United States often corresponded with the supplying company—usually through its respective mission—in an attempt to obtain further information.<sup>397</sup>

Over time, pressure mounted for the United States to explain the basis for its holds. The enduring priority of its review, as explained by one United States official, was to ensure that no dual-use goods were approved, including any specifically banned items or other parts that could assist Iraq in developing weapons of mass destruction. Another United States official acknowledged that the United States' conception of dual use was broader than other member states, but stated that this was consistent with its interest in maintaining the integrity of the sanctions regime. The United States also placed holds on contracts for reasons other than dual use, including concerns about

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negatively affected the Programme's implementation and provided an incentive for smuggling); Netherlands official #2 interview (Mar. 10, 2005) (noting that the Netherlands never placed any contract on hold); Norway official #2 interview (Dec. 9, 2004) (noting that Norway never placed any contract on hold); Syria officials #2-3 interview (Feb. 11, 2005) (noting that Syria never placed any contract on hold).

<sup>396</sup> Jean-David Levitte, "First 'Freedom Fries,' Now Oil-for-Food Lies: Give France a Break," *Los Angeles Times*, Apr. 7, 2004, p. B13; Darko Mocibob interview (Aug. 16, 2005) (stating that, after Resolutions 1284 and 1409, only the United Kingdom and the United States received full copies of all documents relating to each contract application); see, e.g., Netherlands official #8 interview (Sept. 1, 2004) (suggesting that the United States instituted holds for purposes of "regime change" and exhibited exaggerated dual-use suspicions); Netherlands official #6 interview (Mar. 31, 2005); Portugal official #2 interview (Sept. 22, 2004) (stating that United States and United Kingdom holds were restrictive (not arbitrary) and that these members were not motivated by malice, but rather by the fact that they alone had the resources in place to screen these contracts).

<sup>397</sup> United States official #3 interview (Dec. 13, 2004); United States official #13 interview (Feb. 11, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

Iraqi front companies, which were shared with other members of the 661 Committee, and the need for additional time to review lengthy documentation.<sup>398</sup>

Like the United States, the United Kingdom extensively reviewed the humanitarian applications under the Programme. The United Kingdom review procedures encompassed Her Majesty's Customs and Excise ("HMCE"), the Export Control Department of the Department of Trade and Industry, the Ministry of Defense, and other agencies. Most United Kingdom holds related to concerns regarding weapons of mass destruction or how contracts were structured. A United Kingdom official stated that pricing was one of the issues examined and that, if a contract was found to have higher pricing than normal or an after-sales-service commission was suggested, the United Kingdom often placed a hold on it. However, in determining whether to place holds on specific contracts, the United Kingdom generally balanced concerns over weapons of mass destruction with the possible humanitarian impact of instituting particular holds.<sup>399</sup>

When Germany and Japan were members of the 661 Committee, they also reviewed closely the humanitarian applications. In addition to those member states thoroughly reviewing all applications, some member states closely reviewed applications prior to submitting them through their respective permanent missions. For example, a Swedish official told the Committee that applications submitted through its mission first were reviewed and cleared by Sweden's National Board of Trade (to acquire an export license), then the European Union Legal Secretariat, and, finally, by the mission itself. The purpose of these procedures was to "secur[e] respect for the . . . sanctions against Iraq." In addition, a French official stated that authorities in France carefully selected the French companies wishing to supply goods under the Programme and that the United Nations Secretariat functioned as a second "filter" to ensure that contract prices were not inflated. Similarly, Russian officials explained that several ministries, including the Ministry of Agriculture, complied with federal legislation and ministerial decrees in determining which Russian companies could participate in the Programme. However, officials from the Russian Ministry of Agriculture explained that the Ministry only reviewed a particular contract's financial provisions if one of the contracting parties communicated a concern about the contract's implementation.<sup>400</sup>

<sup>398</sup> United States official #7 interview (Nov. 4, 2004); United States official #3 interview (Dec. 13, 2004); United States official #13 interview (Feb. 11, 2005); United States official #10 interview (Feb. 10, 2005); United States official #12 interviews (Nov. 4, 2004 and Feb. 11, 2005); United States officials #1, 10 and United Kingdom official #7 interview (Aug. 24, 2004).

<sup>399</sup> United Kingdom official #2 interview (Dec. 6, 2004); United Kingdom official #4 interview (Dec. 6, 2004); United Kingdom official #7 interviews (Jan. 12 and July 15, 2005).

<sup>400</sup> Germany official #4 interview (Nov. 18, 2004) (regarding German review); Syria officials #2-3 interview (Feb. 11, 2005) (regarding review of contracts by the Government of Japan); Sweden Mission letter to the Committee (June 30, 2005); France official #7 interview (Aug. 26, 2005); Russia officials #1-2, 4 interview (Oct. 13, 2004); Russia officials #8-9, 10, 12 interview (Nov. 18, 2004). Russian officials further stated that the Russian Ministry of Agriculture rejected twenty to thirty percent of applications for participation in the Programme and that, closer to the Programme's end, the Ministry revoked four companies' authorizations because they had not participated in the Programme. *Ibid.*



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

## B. RESPONSE TO EARLY ALLEGATIONS OF KICKBACKS

### 1. Early Media Reports

Although less prominent than for oil surcharges, media reports of improprieties regarding humanitarian contracts under the Programme surfaced as early as November 1997 and then more broadly in August and November 1999. Some of these reports identified concerns expressed by particular member states. However, this investigation has not located any evidence—documentary or testimonial—suggesting that, during this time period (from 1997 to 1999), the 661 Committee ever discussed allegations of humanitarian kickbacks.

In late November 1997, *Al-Hayat*, an Arabic newspaper based in London, reported that agents of Saddam Hussein had approached companies that were seeking to sell humanitarian goods through the Programme and demanded kickbacks ranging up to ten percent for facilitating such contracts. *Al-Hayat* suggested that this kickback scheme accounted for delays in Iraq's purchasing \$300 million in medicine and medical equipment. Based on extensive interviews of company representatives approached in Jordan by these Iraqi agents, *Al-Hayat* further reported that the agents demonstrated a detailed knowledge of the firms' applications—even though submitted previously only to Iraq's Ministry of Health. As detailed in the *Associated Press*, *Al-Hayat* reported that some firms agreed to pay these commissions, but only if they first obtained the necessary import permits from Iraq. *Al-Hayat* indicated that, because of this insistence on upfront payment, no agreements resulted.<sup>401</sup>

Almost two years later, in August 1999, allegations resurfaced in the press regarding humanitarian kickbacks. A *New York Times* article reported, without any elaboration, that “monitors in Iraq say, brokers designated by Iraq to handle contracts appear to be paying

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<sup>401</sup> Camran Quorah Daghy, “They Trade with Children’s Lives,” *Al-Hayat*, Nov. 28, 1997, p. 17 (translated from Arabic); see also “Saddam agents reportedly seek commissions for medicine deals,” *Associated Press Worldstream*, Nov. 28, 1997 (covering the *Al-Hayat* report); Waiel Faleh, “France moves to defuse tensions over Iraq,” *The Scotsman*, Nov. 29, 1997 (same). In October 1998, *Al-Hayat* published its interview of an Iraqi defector, Abbas Al-Janabi, who identified himself as a former private secretary to Uday Hussein. Mr. Al-Janabi stated that Uday Hussein benefited from the continuation of sanctions and was profiting from the Programme because he controlled the importation of certain humanitarian goods, of which he would distribute a small portion to obtain media coverage but then would sell the rest. Ismail Zayer, “Uday Saddam Hussein’s Personal Secretary Speaks to Al-Hayat after Seeking Refuge in the West,” *Al-Hayat*, Oct. 20, 1998, p. 8 (translated from Arabic) (second of a three-part series); see also “Saddam’s son raking in millions from UN embargo: defector,” *Agence France Presse*, Oct. 20, 1998 (covering the *Al-Hayat* interview); John Daniszewski, “Defector Says Sanctions Help Hussein’s Sons; Iraq: Dictator’s Heir Apparent has Pocketed Hundreds of Millions Through Smuggling, a Former Aide—Now in Hiding—Alleges,” *Los Angeles Times*, Oct. 21, 1998, p. A4 (same); Iraq News, “Interview of Defector (Abbas Al Janabi) with Al Hayat,” <http://www.fas.org/news/iraq/1998/10/981029-in.htm> (Oct. 29, 1998) (providing translated excerpts of the *Al-Hayat* interview).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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kickbacks.” This article stated also that Mr. Sevan had informed the Security Council of his advice to Iraq: “[G]et rid of middlemen and buy directly from reputable companies abroad.”<sup>402</sup>

Member states, specifically the United States and the United Kingdom, communicated similar concerns to the media—though the 661 Committee did not discuss humanitarian kickbacks at that time. A. Peter Burleigh, the Deputy Permanent Representative of the United States to the United Nations, informed journalists—as reported by *Reuters* and covered in the *Baltimore Sun*—that the United States had placed holds on particular humanitarian contracts because of “problems with some companies which engage in what [the United States] consider[s] to be *illegal trading activities* with the government of Iraq – *percentages paid to government of Iraq officials*, for example.” Mr. Burleigh indicated that he was unable to specify the extent or value of such alleged kickbacks, but he asserted that the United States would not “approve contracts from those companies which are involved in corrupt practices that benefit (Iraqi President) Saddam Hussein and his immediate circle.” Similarly, a report in *Platts Oilgram News* noted that both the United Kingdom and the United States had “charged not only that Baghdad has failed to distribute fully what already has been delivered under the program, but that Iraqi officials are involved in kickback schemes related to the distribution of the needed commodities.”<sup>403</sup>

A United States official told the Committee that, by November 1999, it was “fairly well known” that Iraqi authorities were attempting to abuse the Programme by obtaining funds outside the escrow account. However, another United States official explained that the United States’ knowledge of kickbacks, at this point in time, was the same as it was throughout the life of the Programme: there was anecdotal evidence, and information occasionally surfaced through intelligence channels, but there was very little documentation or global knowledge of the functioning or prevalence of kickbacks. This official explained that Mr. Burleigh did not provide details on the humanitarian kickback scheme because he had none to offer. Moreover, since complicit companies were not going to volunteer information on the kickbacks that they had paid, there was little that could be done.<sup>404</sup>

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<sup>402</sup> Barbara Crossette, “High Oil Prices May Bring Windfall for Iraq,” *New York Times*, Aug. 10, 1999, p. A3. Mr. Sevan’s talking points from the informal Security Council consultations of July 22, 1999 reflect his advice that Iraq “contract . . . with reliable suppliers and avoid excessive dependence on brokers.” Mr. Sevan further added that “[i]t is essential to find ways and means to ensure that supplies and equipment provided by contractors are in compliance with their contractual commitments . . . .” Benon Sevan briefing at informal Security Council consultations, pp. 4-5 (July 22, 1999).

<sup>403</sup> Anthony Goodman, “U.S. says some Iraqis get ‘oil-for-food’ kickbacks,” *Reuters News*, Nov. 17, 1999 (emphasis added); “UN Backs Short Extension of Iraqi Sales,” *Platts Oilgram News*, Nov. 22, 1999, p. 1; see also “UN Council to back short extension of Iraq program,” *Reuters News*, Nov. 18, 1999 (reporting some of Mr. Burleigh’s comments); “U.S. alleges Iraqi officials get kickbacks from aid,” *Baltimore Sun*, Nov. 18, 1999, p. 38A (same) (emphasis added).

<sup>404</sup> United States official #3 interview (Dec. 13, 2004); United States official #6 interview (June 27, 2005). In November 1999, a Japanese company reported to Japanese officials that the Iraqi regime—stemming from a directive originating in Vice President Ramadan’s office—was seeking ten percent kickbacks in relation to humanitarian goods purchases under the Programme. Japanese officials learned that two

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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## 2. Security Council and 661 Committee Meetings in 2000

In 2000, Iraq's practice of extracting humanitarian kickbacks from goods suppliers was first mentioned at a Security Council meeting and at a formal meeting of the 661 Committee. On March 24, 2000, the United States raised numerous concerns in the Security Council about the Government of Iraq's conduct relating to humanitarian aspects of the Programme. Specifically, the United States asserted:

The warehousing of supplies, the wilful neglect of specific humanitarian sectors, such as the food basket, the under-ordering of medicines and nutritional supplements, the siphoning off of goods to agents of the regime, the illegal re-exportation of humanitarian supplies, *the establishment of front companies, the payment of kickbacks to manipulate and gain from oil-for-food contracts*—these and other practices are well documented. Such abuses ebb and flow at the whim of Iraq's leadership.<sup>405</sup>

Although the United States noted its view that these practices were “well documented,” no evidence suggests that humanitarian kickbacks had been discussed at any previous meeting of the Security Council or its 661 Committee. Moreover, at this particular meeting, no member state other than the United States addressed the issue of kickbacks.<sup>406</sup>

On December 13, 2000, in a formal meeting, the 661 Committee first addressed—though quite briefly—the issue of humanitarian kickbacks. The United Kingdom reported that it had heard that the Government of Iraq “asked businesses to pay an import tax amounting to 3 per cent of the value of the contract, ostensibly to pay for storage and distribution costs, as a precondition to granting them the contract.” Ms. Scheer of OIP indicated that she was unfamiliar with the alleged distribution and storage fees. However, she agreed to request additional information from OIP in Baghdad.<sup>407</sup>

Although not discussed at this 661 Committee meeting, France had learned in November 2000 that the Iraqi Minister of Trade, Mehdi Saleh, openly had requested at a Baghdad trade fair that companies selling humanitarian goods to Iraq under the Programme—including French participants and reportedly exhibitors from other countries—pay ten percent kickbacks to Iraqi

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Japanese companies had rejected these demands, but the companies were unaware whether any company had consented. Japan Mission letter to the Committee (Aug. 31, 2005).

<sup>405</sup> Provisional record of Security Council meeting, S/PV.4120, p. 8 (Mar. 24, 2000) (emphasis added). At this meeting, the United States addressed also the reasons for its various contract holds. It noted that it had placed holds on Programme contracts involving “companies that have operated or are operating in violation of sanctions.” This included certain Iraqi front companies, “operating illegally, which funnel[ed] oil-for-food programme revenues directly to the highest levels of the Iraqi regime.” Ibid., p. 12.

<sup>406</sup> Provisional record of Security Council meeting, S/PV.4120, pp. 2-25 (Mar. 24, 2000).

<sup>407</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.209, pp. 5-6 (Dec. 13, 2000).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

bank accounts in Jordan, the United Arab Emirates, and other countries. French officials advised Mr. Mehdi that this would violate United Nations resolutions—and therefore was illegal—and warned French exhibitors against this Iraqi request. Around this same time, though not a member of the 661 Committee, Japan learned from a United Nations official that goods contracts under the Programme recently had been priced about twelve to twenty percent higher than in past years and that Iraqi authorities were demanding humanitarian kickbacks of ten percent, which could be accomplished by methods such as charging an extra ten percent for transportation costs. Furthermore, Japanese officials learned that Iraqi authorities had asked an exporter to sell its goods to a company based in Dubai, which in turn would enter into a contract with Iraq involving an additional kickback of ten percent.<sup>408</sup>

### 3. Increased 661 Committee and Media Attention in Early 2001

Records obtained from SOMO—after the war in Iraq—indicate that in August 2000, the Iraqi Vice President instructed that prices should be inflated on goods contracts in order to maximize side payments from suppliers. Several times in early 2001, OIP notified its customs experts to be on the alert for over-pricing (a telltale sign that a kickback may follow) and instances involving direct payments to Iraq outside the escrow account.<sup>409</sup> Coinciding with these developments, from early 2001 through the spring, the 661 Committee considered the issue of humanitarian kickbacks, and there was additional media coverage.

#### a. 661 Committee Meetings

In early 2001, the 661 Committee paid increased attention to the issue of humanitarian kickbacks, and certain members acknowledged such allegations. At a formal meeting on January 18, 2001, the 661 Committee specifically considered the matter of determining Iraq's rights and remedies when suppliers did not meet their contractual obligations (i.e., commercial protection). In this context, the United Kingdom suggested that the 661 Committee consider allegations that Iraq was “deduct[ing] a 10 per cent commission on contracts.” France suggested that the absence of commercial protection could spur problems such as humanitarian kickbacks. The United States in turn “expressed surprise” that France would suggest that difficulties with commercial protection might justify humanitarian kickbacks. Moreover, the United States echoed earlier warnings of Mr. Sevan that Iraq's reliance on “dishonest intermediaries . . . had an impact on the quality of the goods arriving in the country.” The United States invited OIP, during informal meetings, to brief the 661 Committee on the issue of humanitarian kickbacks. France clarified

<sup>408</sup> France Mission letter to the Committee (Sept. 1, 2005); Japan Mission letter to the Committee (Aug. 31, 2005). In addition, Japan learned that Iraq was requesting that contractors ship their goods to Umm Qasr, a port that the Government of Iraq controlled, which charged port fees exceeding by about seven to ten percent those charged in the Jordanian port of Aqaba. *Ibid.*

<sup>409</sup> Taha Yassin Ramadan memorandum to Iraqi ministries (Aug. 3, 2000) (translated from Arabic); see also Susan Sachs, “Hussein's Regime Skimmed Billions from Aid Program,” *New York Times*, Feb. 29, 2004, p. A1 (reporting on the Iraqi memorandum); Farid Zarif memorandum to Benon Sevan (Mar. 15, 2001).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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that it had not indicated that kickbacks “were acceptable,” but rather “that the Committee’s inability to take decisions could lead the Iraqi Government to resort to questionable practices.”<sup>410</sup>

At an informal meeting of the 661 Committee on February 1, 2001, the United States asked OIP what information it possessed regarding allegations that Iraq had been demanding a ten percent kickback for awarding contracts to particular humanitarian goods suppliers. Farid Zarif, Chief of OIP’s Contracts Processing Section, answered that OIP had not received “formal complaints from any permanent mission.”<sup>411</sup>

On February 13, 2001, at another informal meeting, the United Kingdom invited OIP to draft and circulate a paper addressing whether Iraq in fact was seeking humanitarian kickbacks from firms supplying humanitarian goods through the Programme. Ms. Scheer agreed “that OIP would look into providing what very little information existed on the ‘commission question.’” The United States added that it soon would recommend that the 661 Committee adopt several proposals, including a number addressing the alleged humanitarian kickbacks. These measures included: (1) sending letters asking the missions to instruct suppliers not to pay any humanitarian kickbacks; (2) noting this prohibition in the 661 Committee’s approval letters; and (3) issuing a related press release.<sup>412</sup>

At a formal 661 Committee meeting on March 1, 2001, the United Kingdom requested an update on the report previously requested from OIP regarding the estimated ten to twenty-five percent commissions that Iraq allegedly had been seeking from humanitarian goods suppliers. The United Kingdom inquired also whether OIP had received any formal complaints about such commissions. Mr. Zarif noted that OIP corresponded with suppliers only through the missions, and he stated—as he did at the informal meeting of February 1, 2001—that OIP had not received any “formal, official reports of such commissions.” The United Kingdom expressed disappointment, noting that it thought OIP had agreed to report to the 661 Committee based on informal communications (similar to the oil overseers). The United States concurred that it had expected a written report from OIP. Russia countered that it thought OIP already had provided the 661 Committee with what it had and that OIP “did not have the capacity to investigate the allegations, nor did it have any other sources of information which would allow it to prepare an in-depth report.” France added that OIP already had indicated “that any report would be ‘thin’” and that informal sources had to be protected. Russia asserted that OIP should assess “how realistic the possibilities were that it could produce such a report.”<sup>413</sup>

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<sup>410</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.212, pp. 7-8 (Jan. 18, 2001).

<sup>411</sup> OIP notes of informal 661 Committee meeting, pp. 1-2 (Feb. 1, 2001). Despite this representation, as discussed in the Chapter on OIP’s management of the Programme, OIP previously had received complaints of humanitarian kickbacks, including in writing. See, e.g., J. Christer Elfverson memorandum to Benon Sevan (Dec. 5, 2000); Benon Sevan memorandum to J. Christer Elfverson (Dec. 11, 2000).

<sup>412</sup> OIP notes of informal 661 Committee meeting, p. 2 (Feb. 13, 2001).

<sup>413</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.214, pp. 8-9 (Mar. 1, 2001).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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#### b. Press Coverage and Public Comments

After relative media silence on humanitarian kickbacks (since November 1999), the issue again attracted some public attention in February 2001. At this time, *Reuters* reported that Baghdad had begun demanding “a 10-percent fee on all humanitarian goods contracts . . . [as] part of an accelerated effort by Iraq to erode . . . sanctions.”<sup>414</sup>

About a month later, on March 7, 2001, the *New York Times* reported on allegations of Iraq extracting humanitarian kickbacks, a contention which Iraq’s ambassador to the United Nations flatly rejected and which some diplomats attempted to address within the 661 Committee. This article identified three methods through which Iraq allegedly manipulated its purchase of goods through the Programme in order to obtain cash outside the escrow account. The first involved incorporating “supplemental charges . . . often in side letters that are not part of a transaction’s formal records.” This method included imposing “bogus additional charges like ‘inland transportation.’” Under the second scheme, suppliers would sell goods to Iraq at “discounted prices . . . [though] recorded as having been sold at prevailing world prices—with the difference paid to the Iraqi leadership.” The third involved “foreigners pledg[ing] to pay a higher price, to hide kickbacks that may be deposited abroad for Iraq.” However, the *New York Times* article noted the virtual absence of written proof.<sup>415</sup>

Public statements about humanitarian kickbacks varied at this time. Ole Peter Kolby of Norway, then the Chairman of the 661 Committee, told CNN:

Governments have been approached by their own companies and told there has been a request for a surcharge. . . .

When companies negotiate with their Iraqi counterparts, then there is a request for a surcharge. This is what I heard. . . . When they approach their governments it’s either to seek clarification whether this is legal, or what they’re going to do about it. . . .

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<sup>414</sup> Bernie Woodall, “U.S. wants U.N. to look into Iraqi oil kickbacks,” *Reuters News*, Feb. 9, 2001.

<sup>415</sup> Barbara Crossette, “Iraq is Running Payoff Racket, U.N. Aides Say,” *New York Times*, Mar. 7, 2001, p. A1; see also Edith M. Lederer, “U.N. chief: Drop in Iraqi oil exports could hurt humanitarian aid,” *Associated Press Worldstream*, Mar. 7, 2001 (discussing the *New York Times* report); Ben Barber, “Powell insists U.N. inspectors must resume checks in Iraq,” *Washington Times*, Mar. 8, 2001, p. A1 (same); “UN Seeks Way to End Iraqi Oil Kickbacks,” *The Oil Daily*, Mar. 14, 2001 (“Baghdad’s latest ruse, according to diplomats, is to demand that 10% of the value of all contracts carried out under the oil-for-food program be paid to it directly, under the guise of ‘after-sale services’ or ‘logistics expenses.’”).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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It's quite clear that this is not allowed. This is in violation of the regime, of the sanctions rules, Security Council resolutions, to make surcharges and then make payments.<sup>416</sup>

Nonetheless, Mr. Kolby commented that he was unaware of any "hard evidence."<sup>417</sup>

James B. Cunningham, Acting Permanent Representative of the United States to the United Nations, indicated that "Washington was 'not surprised'" by these reports, which had long circulated. He explained that companies had approached the United States indicating that Iraq had requested humanitarian kickbacks. However, Mr. Cunningham conceded that actual hard evidence was limited.<sup>418</sup> He further indicated that the United States was looking for "people engaged in these activities" in order "to try to correct the situation."<sup>419</sup>

In response to the United States' claims, Mohammed Al-Douri, Iraq's ambassador to the United Nations, retorted: "I think they have none, and they will not have evidence, simply because these allegations are not true."<sup>420</sup> Sergey Lavrov, Permanent Representative of Russia to the United Nations, "said 'we all keep hearing rumors, but we have no proof.'"<sup>421</sup> Similarly, Fred Eckhard, United Nations spokesperson, stated that "officials had heard such reports [of humanitarian kickbacks] but could not substantiate them."<sup>422</sup> Accordingly, the Secretary-General's recent report on the Programme had not addressed the issue of humanitarian kickbacks (though it had

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<sup>416</sup> Ronni Berke, "Iraq seeking kickbacks from oil-for-food program, diplomats say," *CNN*, Mar. 7, 2001, <http://www.cnn.com/2001/WORLD/meast/03/07/un.iraq>.

<sup>417</sup> Edith M. Lederer, "Iraq reported to demand illegal kickbacks on humanitarian goods," *Associated Press*, Mar. 7, 2001.

<sup>418</sup> William M. Reilly, "U.S.: No surprise report Iraqis seek payoffs," *United Press International*, Mar. 7, 2001; United States Mission to the United Nations, "Transcript of Remarks by Ambassador James B. Cunningham, Acting U.S. Permanent Representative to the United Nations, on the Oil-for-Food Program, at the Security Council Stake-Out, March 8, 2001," [http://www.un.int/usa/01\\_034.htm](http://www.un.int/usa/01_034.htm).

<sup>419</sup> Ronni Berke, "Iraq seeking kickbacks from oil-for-food program, diplomats say," *CNN*, Mar. 7, 2001, <http://www.cnn.com/2001/WORLD/meast/03/07/un.iraq>.

<sup>420</sup> Edith M. Lederer, "Iraq reported to demand illegal kickbacks on humanitarian goods," *Associated Press*, Mar. 7, 2001; see also Bernie Woodall, "U.N. panel stalled on Iraq oil surcharge," *Reuters News*, Apr. 12, 2001 (noting that Iraq denied that companies were paying humanitarian kickbacks).

<sup>421</sup> Associated Press, "Iraq is Demanding Illegal Payoffs on Humanitarian Goods, U.N. Says—'No Hard Evidence' That Firms Are Paying Surcharges to Iraqi Government," *Wall Street Journal Europe*, Mar. 8, 2001, p. 2.

<sup>422</sup> William M. Reilly, "U.S.: No surprise report Iraqis seek payoffs," *United Press International*, Mar. 7, 2001.

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

addressed oil surcharges).<sup>423</sup> Mr. Eckhard added, moreover, that the United Nations lacked “the means to investigate, which only member governments could do.”<sup>424</sup>

## **C. EFFORTS BY THE UNITED STATES AND THE UNITED KINGDOM TO ADDRESS KICKBACKS**

Shortly after these public statements, as discussed below, the United States circulated a non-paper that highlighted proposals to curtail humanitarian kickbacks. The 661 Committee briefly considered these proposals, but ultimately did not implement any of them. Around this time, the United Kingdom sent a letter to OIP that identified irregularities in fifteen humanitarian applications that might suggest the payment of kickbacks to the Iraqi regime. The United Kingdom sent similar letters to the respective missions, noting the relevant contract numbers and advising that the missions investigate and then report their findings to OIP.

### **1. United States Proposal to the 661 Committee**

In March 2001, the United States introduced a draft non-paper, with United Kingdom support, containing four interrelated proposals for combating kickbacks. First, the United States proposed that the 661 Committee send a letter to member states asking them to notify their respective companies “doing business” under the Programme that, among other things, kickbacks to the Iraqi regime were prohibited and violators would not receive future contracts. Second, the United States proposed that future Programme approval letters expressly indicate that humanitarian kickbacks are prohibited and that member states possess affirmative obligations to enforce the sanctions regime. Third, the United States proposed a press release detailing the 661 Committee’s actions in regard to humanitarian kickbacks. Last, the United States suggested that OIP explain in its Programme briefings to member states that humanitarian kickbacks are prohibited and also that OIP’s website similarly underscore this prohibition.<sup>425</sup>

On March 16, 2001, the 661 Committee convened informally to address both oil surcharges and humanitarian kickbacks. However, OIP’s notes from this meeting reflect only cursory discussion regarding the United States proposals relating to the humanitarian purchases. The chairperson of the meeting, a representative of Norway, noted “that efforts to stem [humanitarian kickbacks] were appreciated and that there was evidence that this was taking place, despite statements to the contrary.” In reply to an inquiry from France, Mr. Zarif explained that OIP similarly scrutinized all humanitarian applications, whether subject to 661 Committee approval or to OIP approval

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<sup>423</sup> Edith M. Lederer, “Iraq reported to demand illegal kickbacks on humanitarian goods,” *Associated Press*, Mar. 7, 2001.

<sup>424</sup> “Joint goal to block Saddam kickbacks,” *Lloyd’s List*, Mar. 10, 2001, p. 15.

<sup>425</sup> United States draft non-paper, “Commissions on Oil-for-Food contracts” (Mar. 14, 2001); DPA notes of informal 661 Committee meeting, p. 1 (Apr. 11, 2001).



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

(under the fast track procedures). The chairperson indicated that the 661 Committee would meet again soon to continue these discussions.<sup>426</sup>

On April 11, 2001, the 661 Committee reconvened informally to resume its discussion on alleged humanitarian kickbacks (as well as on oil surcharges and port charges). Again, discussion of the United States non-paper was limited. The United States underscored the importance of eliminating kickbacks in order to ensure that Iraq lacked the funds necessary to develop weapons of mass destruction. Both France and Russia indicated they were awaiting instructions from their capitals regarding the United States proposals.<sup>427</sup> However, it does not appear that France or Russia ever responded with any definitive positions on these proposals.<sup>428</sup>

At this same meeting, Russia asked OIP whether adoption of any of the United States proposals would require the 661 Committee to alter its procedures. Felicity Johnston, Senior Customs Expert of OIP, answered that the proposals seemed consistent with the 661 Committee Procedures, except for a part of the proposed letter that seemed to conflict with OLA's advice regarding the scope of permissible payments to the Government of Iraq or an Iraqi entity. Ms. Johnston explained that most humanitarian contracts included "making some form of payment for internal transport costs to transportation companies that may have links to the Government of Iraq." The United States proposed letter deemed such payments unacceptable, but she believed that OLA considered them permissible. Accordingly, Ms. Johnston noted that sending the entire proposed letter would preclude OIP from circulating and notifying a substantial number of humanitarian applications, and "imports under the food and other sectors might well come to a halt."<sup>429</sup>

Ultimately, the 661 Committee did not adopt any of the United States proposals regarding kickbacks. The United States has indicated that this was because of "lack of consensus." A French official noted that the proposal circulated within the 661 Committee to combat humanitarian kickbacks was less elaborate than the proposals in regard to oil pricing, and the humanitarian proposal was discussed in less detail. Nonetheless, this French official told the

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<sup>426</sup> Ibid., p. 3.

<sup>427</sup> DPA notes of informal 661 Committee meeting, p. 2 (Apr. 11, 2001); OIP notes of informal 661 Committee meeting, p. 2 (Apr. 11, 2001). Information obtained by the Independent Inquiry Committee suggests that China viewed the issue of humanitarian kickbacks as a legal matter between Iraq and the goods suppliers and therefore advocated that the 661 Committee not intervene. The Committee sent a letter to the Chinese Permanent Mission in an effort to confirm whether China took this position at a 661 Committee meeting, but the Independent Inquiry Committee has not received a substantive reply to this question. Committee letter to China Permanent Mission (Aug. 12, 2005) (requesting clarification of China's position on humanitarian kickbacks); Committee letter to China Permanent Mission (Aug. 22, 2005) (noting that China had not provided a substantive response and again inviting it to do so).

<sup>428</sup> Although the meeting records do not suggest that France communicated its position to the 661 Committee, a French official stated that France supported all elements of the United States proposal, which was not adopted because of the lack of consensus. France official #7 interview (Aug. 26, 2005).

<sup>429</sup> OIP notes of informal 661 Committee meeting, p. 2 (Apr. 11, 2001).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

Committee that the French and United States governments both had instructed their own companies participating in the Programme that payments to Iraq outside the escrow account were prohibited. A Chinese official similarly stated that the government had issued a written notification to participating Chinese companies, asking them to comply fully with the sanctions regime and not to act outside the scope of the Programme.<sup>430</sup>

## 2. United Kingdom Letter to OIP

On April 9, 2001, a United Kingdom official sent a letter to Mr. Elfverson of OIP, identifying fifteen humanitarian applications that included “unusual payment/service clauses that could mask payment of commissions to Iraq.” The United Kingdom noted that, because of humanitarian concerns involving these items, it had not placed holds on most of these contracts, and the holds it had imposed were maintained only for about a day. Notwithstanding the United Kingdom’s reluctance to block these contracts, it indicated that it was not “keen to let Iraq get away with blatant and profitable manipulation of the [Programme] to obtain hard currency outside UN control.” The United Kingdom therefore reiterated its request that, based on “‘informal’ contacts with companies,” OIP brief the 661 Committee on humanitarian kickbacks. In addition, in light of the information contained in the letter, the United Kingdom called on OIP to “insist that Iraq put an end to this practice.” Moreover, the United Kingdom “expressed surprise that OIP had chosen to circulate these contracts when they clearly offer Iraq the opportunity to obtain uncontrolled revenue.”<sup>431</sup>

For each of the fifteen contracts on this list, the table appended to the United Kingdom letter included: (1) the supplier’s country; (2) description of the contract; (3) a contract number; and (4) comments on the payment mechanism. These fifteen contracts included goods suppliers from China, Denmark, Germany, India, Jordan, Lebanon, Oman, Russia, Syria, and the United Arab Emirates. Six of the fifteen contracts explicitly involved after-sales-service fees. For three of the fifteen contracts, the United Kingdom noted that the accompanying OIP customs report had indicated that pricing appeared excessive. With regard to another contract, the supplier had explained that the charge for production costs “in essence [was] a surcharge.” Other concerns identified in the table related to the payment mechanism, ancillary costs such as training and documentation, and a penalty clause.<sup>432</sup>

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<sup>430</sup> United States Department of State, “The UN Oil-for-Food Program: Uncovering the Facts and Preventing Abuse,” <http://www.state.gov/t/pa/prs/ps/2005/41576.htm> (Feb. 3, 2005); France official #2 interview (Dec. 3, 2004); China officials #1-2, 4-5 interview (Jan. 19, 2005).

<sup>431</sup> United Kingdom Mission letter to J. Christer Elfverson (Apr. 9, 2001) (identifying concerns with COMM nos. 900003, 730873, 900004, 830007, 830008, 830009, 830062, 730829, 730875, 702940, 801748, 801581, 801654, 830031, 830076). The United Kingdom sent this letter to Mr. Elfverson because Mr. Sevan was out of town. United Kingdom official #7 interview (July 14, 2005). OIP’s handling of this letter is discussed further in Chapter 4 of Volume III, which addresses the Secretariat’s response to sanctions violations.

<sup>432</sup> United Kingdom Mission letter to J. Christer Elfverson (Apr. 9, 2001).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

When interviewed, a United Kingdom official did not recall OIP ever formally responding to this letter; similarly, the Committee has not located any response in OIP's files. However, a United Kingdom official stated that he met with Mr. Elfverson, who—in the official's view—provided OIP's "standard response": an acknowledgement that this was occurring along with an insistence that OIP was not authorized to do anything about it. The official did not recall the United Kingdom raising the letter directly with Mr. Sevan and stated that the United Kingdom did not forward the letter to the whole 661 Committee because it would have been "yet another agenda item in limbo."<sup>433</sup>

The United Kingdom also sent letters to officials in missions—including ones identified in the letter to Mr. Elfverson—through which problematic contracts had been submitted. In each letter, the United Kingdom identified its concerns with particular applications (by number) and encouraged the mission to investigate and report to OIP any instances of kickbacks so that OIP could bring such evidence and documentation to the 661 Committee's attention. These letters were identical—except for the addresses and identification of the relevant COMM numbers. Although the United Kingdom official suggested that these letters might have gotten lost in member state bureaucracy, he did not recall any mission replying to the United Kingdom letter, and the United Kingdom has been unable to locate any reply in its files.<sup>434</sup>

In the end, fourteen of the fifteen contracts identified in the United Kingdom letter to OIP were approved,<sup>435</sup> and eleven of these were fulfilled, resulting in payments from the escrow account<sup>436</sup>. Even more tellingly, there is evidence from the Iraqi ministries that Iraq levied kickbacks on ten of the eleven fulfilled contracts<sup>437</sup> and collected kickbacks on at least seven of these<sup>438</sup>. Given that the Independent Inquiry Committee has an incomplete dataset, and in light of Iraq's formal kickback policy, this evidence does not exclude the possibility that Iraq collected a kickback on any of the four fulfilled contracts for which further evidence confirming such a payment has not been obtained.

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<sup>433</sup> United Kingdom official #7 interview (July 14, 2005).

<sup>434</sup> Ibid.; United Kingdom e-mail to the Committee (July 20, 2005) (reporting that it had not located any reply in its files).

<sup>435</sup> TaR, COMM nos. 900003, 730873, 900004, 830007, 830008, 830009, 830062, 730829, 730875, 702940, 801581, 801654, 830031, 830076. The United Kingdom and the United States initially had placed holds on COMM no. 801654, but OIP subsequently approved the contract on November 11, 2002, because the contract involved fogging machines, which were not on the GRL. OIP customs report, S/AC.25/2001/986/COMM.801654M (Nov. 7, 2002).

<sup>436</sup> TaR, COMM nos. 900003, 730873, 830007, 830008, 830009, 830062, 730829, 730875, 801581, 830031, 830076.

<sup>437</sup> TaR, COMM nos. 730873, 830007, 830008, 830009, 830062, 730829, 730875, 801581, 830031, 830076.

<sup>438</sup> TaR, COMM nos. 730873, 830008, 830062, 730829, 730875, 830031, 830076. This Report does not include names of specific companies involved in paying kickbacks to Iraq. The Committee's next report will focus on the role and activities of particular companies.

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 3**  
**THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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**D. HIGH-PRICED CONTRACTS REPORTED BY OIP TO THE 661 COMMITTEE**

During 2001 and 2002, OIP submitted customs reports to the 661 Committee that identified pricing concerns in at least seventy humanitarian applications. However, it appears that only one of these contracts ever was placed on hold because of pricing concerns. The United Nations has relied publicly on these customs reports to bolster its claim that OIP fulfilled its oversight responsibility. This Section provides background on and analysis of these customs reports. It then discusses various dynamics within the 661 Committee and OIP that likely contributed to the ultimate approval of these contracts—notwithstanding OIP notifying the 661 Committee of pricing concerns.

**1. Background**

In March 2004, before OIP was disbanded, its staff drafted a memorandum targeted, in part, at combating the allegation “that the United Nations Secretariat was complicit [in regard to humanitarian kickbacks] since it was aware of these arrangements prior to the war, and could have alerted the Security Council to this abuse.” The memorandum emphasized that, in fact, OIP examined the pricing of the humanitarian applications and “report[ed] suspicious findings to the 661 Committee on a case-by-case basis” in “at least 70 such cases.” It stated that none of these contracts were held for pricing concerns, and most of these contracts actually were approved.<sup>439</sup>

Mr. Mocibob has provided a spreadsheet that identified this set of contracts for which OIP’s customs experts identified pricing concerns.<sup>440</sup> This list was compiled by electronically searching for customs reports that referenced “overpricing” or included similar language. During 2001 and 2002, OIP forwarded these contracts to the 661 Committee with customs reports indicating that pricing seemed high. When interviewed, Mr. Mocibob explained that identifying a “pricing concern” was akin to expressing concern about the possibility of a kickback, but OIP preferred to use “pricing concern” to avoid allegations in the absence of hard evidence. However, Mr.

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<sup>439</sup> OIP memorandum, “Alleged kickbacks on Oil-for-food contracts,” pp. 1, 4, 8 (Mar. 2004). Mr. Mocibob told the Committee that he drafted this memorandum, which includes comments consistent with other information he has provided the Committee. Darko Mocibob interviews (July 6 and Sept. 20, 2004; Jan. 6 and Aug. 16, 2005).

<sup>440</sup> OIP spreadsheet, “Cases identified as ‘problems with pricing’” (May 14, 2004). These contracts were culled from a longer list of approximately one hundred contracts. The contracts not referred to the 661 Committee as potentially overpriced fell within two categories: (1) OIP originally thought that pricing was high, but concluded upon further investigation that there was no problem to report to the 661 Committee; and (2) OIP sought additional information that it had not received, resulting in the contract being classified as “inactive” or some other lapsed status. *Ibid.*

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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Mocibob stated that, so far as he knew, the 661 Committee never rejected or held any of the contracts that OIP referred to it as overpriced.<sup>441</sup>

On numerous occasions, the United Nations has relied publicly on the fact that OIP notified the 661 Committee that these contracts potentially were overpriced.<sup>442</sup> Various commentators<sup>443</sup> and legislators<sup>444</sup> also have referenced these contracts.

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<sup>441</sup> Darko Mocibob interviews (July 6 and Sept. 20, 2004; Aug. 16, 2005). To determine whether there were any pricing-related holds, Mr. Mocibob consulted the OIP database—which contained hold information for the contract applications—as well as relevant correspondence with the suppliers’ missions. More broadly, he noted that OIP had developed pre-defined categories of frequently employed bases for holds. Pricing concerns was not one of these categories, and Mr. Mocibob did not remember pricing concerns falling within any other category. Darko Mocibob interview (Aug. 16, 2005). The methodology for compiling this set of contracts understandably did not yield an exhaustive list. For example, the United Kingdom letter to Mr. Elfverson of OIP (discussed above) included two contracts for which OIP had identified pricing concerns, but which are not on the list of contracts provided by Mr. Mocibob. United Kingdom Mission letter to J. Christer Elfverson (Apr. 9, 2001) (indicating that OIP had highlighted pricing concerns in regard to COMM nos. 830031 and 830076). Furthermore, as discussed in Chapter 4 of Volume III, the 661 Committee at least twice approved a contract for which the customs report indicated that OIP had contacted the supplier because the submitted paperwork essentially indicated an agreement to pay a kickback, at which point the supplier stated this was an error and had been rescinded. See TaR, COMM nos. 830474, 901962.

<sup>442</sup> See, e.g., Colum Lynch, “Oil-for-Food Official May Have Blocked Inquiries; Head of U.N. Program in Iraq Accused of Improperly Accepting Purchasing Rights,” *Washington Post*, Nov. 14, 2004, p. A26. Edward Mortimer, who serves as Chief of Communications within the Office of the Secretary-General, has referenced these contracts in letters to the editor. See, e.g., Edward Mortimer letter to the editor, “Column on U.N. misstated facts,” *Grand Forks Herald*, June 17, 2004; Edward Mortimer letter to the editor, “Oil-for-Food,” *Commentary*, July 1, 2004, p. 3; Edward Mortimer letter to the editor, “Annan acted promptly when he learned of possible UN abuses,” *Ottawa Citizen*, Nov. 7, 2004, p. A13.

<sup>443</sup> See, e.g., Joy Gordon, “The U.N. is us: exposing Saddam Hussein’s silent partner,” *Harper’s Magazine*, Dec. 1, 2004, p. 67 (“On more than seventy occasions, the OIP told the committee it was concerned that a price was so high it might allow for kickbacks, and gave the committee all the documentation. In not a single instance did the United States choose to block any transaction due to suspected kickbacks.”); Ramesh Thakur, “Cheerleaders for war round on the UN,” *Canberra Times (Australia)*, Dec. 14, 2004, p. A17 (making a similar comment); Fauzia Qureshi, “Kofi Annan: time to go,” *The Nation (Pakistan)*, Jan. 3, 2005 (same).

<sup>444</sup> See, e.g., United States House of Representatives hearing, National Security, Emerging Threats, and International Relations Subcommittee of the Government Reform Committee, “The UN Oil-for-Food Program: The Inevitable Failure of UN Sanctions” (Apr. 12, 2005); United States House of Representatives hearing, Oversight Subcommittee of the International Relations Committee, “BNP/Paribas, Oil-for-Food and Third Party Payments” (Apr. 28, 2005); United States House of Representatives hearing, International Relations Committee, “Reforming the United Nations: Budget and Management Perspectives” (May 19, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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## 2. Summary Analysis of the Customs Reports

The Independent Inquiry Committee has compiled the relevant customs reports as well as other important documentation and data relating to these seventy humanitarian applications, which OIP forwarded to the 661 Committee as potentially overpriced.<sup>445</sup> Of these seventy contracts, sixty-two were funded.<sup>446</sup> Forty-six of these were fulfilled, resulting in payments from the escrow account to the suppliers.<sup>447</sup> The Iraqi regime levied kickbacks on at least forty-five of these contracts (totaling about \$9.2 million),<sup>448</sup> and it collected kickbacks on at least nine of these contracts (totaling about \$1 million)<sup>449</sup>. For twenty-one of these forty-six fulfilled contracts, the Committee has obtained the actual side agreements or company correspondence indicating an agreement to pay kickbacks to the Iraqi regime.<sup>450</sup> However, given Iraq's formal kickback policy at this time, the fact that the Committee has not obtained contract-specific evidence that a

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<sup>445</sup> TaR, COMM nos. 601991, 630979, 730638, 730828, 730859, 730959 (1230484), 801654, 801753, 801841 (1201427), 801873 (702831), 801894, 801996, 802072 (1300127), 802084, 802109, 802367 (1000951), 802479, 802493, 802612, 830124, 830132, 830236, 830250 (1230049), 830252, 830465, 830509, 830515, 830593 (1230060), 830806, 830819, 900026, 900398, 900403, 900503, 900651, 900990, 901482, 901857, 901858, 901890 (1100182), 930114 (731018), 930243, 930247 (1230074), 930284, 930328, 930613, 930667, 1001790, 1002020, 1002113, 1030012 (1230097), 1030034, 1030035, 1030052 (631112), 1030211, 1030301 (1230114), 1030337, 1030338, 1030339, 1030353, 1030378 (1230122), 1030389, 1030430, 1030554, 1030614, 1030623, 1030684, 1030689, 1030727 (1230169), 1030742. Fifteen of the seventy contracts forwarded to the 661 Committee as potentially overpriced were transferred to different phases of the Programme and therefore assigned new contract numbers. These new numbers are included in parentheses, but subsequent references include only the original contract numbers.

<sup>446</sup> TaR, COMM nos. 601991, 630979, 730638, 730828, 730859, 730959, 801753, 801841, 801873, 801996, 802072, 802084, 802109, 802367, 802493, 830124, 830132, 830236, 830250, 830252, 830465, 830509, 830515, 830593, 830806, 830819, 900026, 900398, 900403, 900503, 900651, 901857, 901858, 901890, 930114, 930243, 930247, 930284, 930328, 930613, 930667, 1001790, 1030012, 1030034, 1030035, 1030052, 1030211, 1030301, 1030337, 1030338, 1030339, 1030353, 1030378, 1030389, 1030430, 1030554, 1030614, 1030623, 1030684, 1030689, 1030727, 1030742.

<sup>447</sup> TaR, COMM nos. 601991, 630979, 730828, 730959, 801753, 801841, 801873, 801996, 802072, 802084, 802367, 802493, 830124, 830236, 830250, 830252, 830465, 830509, 830515, 830593, 830819, 900026, 900398, 900403, 900651, 901857, 901858, 901890, 930243, 930247, 930284, 930613, 1030012, 1030034, 1030035, 1030052, 1030301, 1030337, 1030338, 1030339, 1030353, 1030378, 1030389, 1030614, 1030727, 1030742.

<sup>448</sup> TaR COMM nos. 730959, 801894, 802084, 802612, 830124, 830132, 830236, 830250, 830252, 830465, 830509, 830515, 830593, 830806, 830819, 901857, 901858, 901890, 930114, 930243, 930247, 930284, 930328, 930613, 930667, 1030012, 1030034, 1030035, 1030052, 1030211, 1030301, 1030337, 1030338, 1030339, 1030353, 1030378, 1030389, 1030430, 1030554, 1030614, 1030623, 1030684, 1030689, 1030727, 1030742.

<sup>449</sup> TaR COMM nos. 830124, 830236, 830252, 830465, 830515, 901857, 930243, 930613, 1030052.

<sup>450</sup> TaR COMM nos. 830236, 830250, 830252, 830515, 830593, 830806, 901857, 901858, 930243, 930247, 930284, 1030052, 1030211, 1030337, 1030338, 1030339, 1030389, 1030430, 1030684, 1030689, 1030727.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

kickback was levied on or collected in connection with a particular contract does not preclude the possibility that this occurred.

The pricing assessments provided in these customs reports generally were quite limited. Of the seventy customs reports, only eleven of the reports described the customs experts' pricing concerns beyond a broad notion that pricing seemed high (sometimes in relation to past applications). A few of these eleven reports, however, included estimated percentages of overpricing.<sup>451</sup> For example:

- COMM no. 601991 – Price of school desks “appear[s] about 50% higher than in previous applications.”
- COMM no. 801753 – “[T]he price of the tin to be shipped appears 30% higher than market price taking into consideration . . . the freight and insurance.”
- COMM No. 801873 – The prices of the personal computers and laptops “are approximately 100% higher than the normal market value,” and “[t]hese goods are considered to be very high in price in comparison to similar and current normal fair market values for the supply of like goods.”<sup>452</sup>

Other reports suggested that the pricing problems did not relate to the actual items, but rather to some ancillary charge or service. For example:

- COMM no. 730859 – “[T]he prices for the CD ROMs appear reasonable and acceptable,” but “both the prices for the ‘delivery and handling services’ and the ‘after sales services’ are considered to be significantly higher than what is considered reasonable.”
- COMM no. 1030211 – The price for the gaskets “appear[s] acceptable . . . but appear[s] higher for Inland Transportation.”
- COMM no. 1030338 – “The item price and value of the goods . . . appear within a reasonable and acceptable range,” but “[t]he price of ‘Handling, freight & insurance’ appeared higher.”
- COMM no. 1030389 – The item price appears “reasonable and acceptable,” but “[t]he cost per man per day for installation and commissioning appear[s] higher . . .

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<sup>451</sup> OIP customs reports, COMM nos. 601991, 730859, 801753, 801873, 900026, 1030211, 1030301, 1030338, 1030339, 1030389, 1030742. For ease of citation, references containing more than ten OIP customs reports indicate only the relevant contract numbers.

<sup>452</sup> OIP customs report, S/AC.25/2001/986/COMM.601991E (July 11, 2001); OIP customs report, S/AC.25/2001/986/COMM.801753Q (Feb. 21, 2001); OIP customs report, S/AC.25/2001/986/986/COMM.801873/Amend.1 (S/2001/561) (Oct. 15, 2001).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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[though] the value of these services represents only less than 4.5% of the total contract.”<sup>453</sup>

A majority of these customs reports at least referenced that the supplier had submitted a clarification on pricing. Specifically, forty-eight of the customs reports included (either on their face or appended thereto) supplier explanations in regard to pricing, and the remaining twenty-two cases did not indicate supplier responses.<sup>454</sup> Even when the seller provided an explanation, however, it often was quite limited or vague (e.g., asserting without any explanation that the price indeed was fair or that the goods were high quality). In other cases, though, the supplier’s response was unusually colorful and sometimes even indicative of possible impropriety:

- COMM no. 830806 – “Basically, all prices are a matter of negotiations between the customer and the supplier, based on everybody’s skillness [*sic*] and strategy. . . . But if all the partners come to some agreement . . . then it means that the complete offer must have some reasonable price level.”
- COMM no. 901858 – The supplier provided four explanations for the pricing, including “[b]etter negotiation with the client.”
- COMM no. 930284 – Prices were based on manufacturers’ quotations, packing and transport costs, and an additional ten percent for “Company General Overhead.”<sup>455</sup>

Regardless of the specificity or believability of the explanations provided by the sellers, these OIP customs reports never offered any substantive evaluations of the sellers’ responses. Rather, the reports merely forwarded the concerns along to the 661 Committee.<sup>456</sup>

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<sup>453</sup> OIP customs report, S/AC.25/2001/986/COMM.730859 (Feb. 1, 2001); OIP customs report, S/AC.25/2002/986/COMM.1030211 (Feb. 14, 2002); OIP customs report, S/AC.25/2002/986/COMM.1030338 (Feb. 28, 2002); OIP customs report, S/AC.25/2002/986/COMM.1030389 (Apr. 30, 2002).

<sup>454</sup> OIP customs reports, COMM nos. 601991, 730828, 730959, 801654, 802072, 802084, 802367, 802612, 830124, 830132, 830236, 830465, 830515, 830593, 830806, 830819, 900403, 900503, 900651, 900990, 901857, 901858, 901890, 930114, 930243, 930247, 930284, 930328, 930613, 930667, 1001790, 1002020, 1030012, 1030034, 1030035, 1030052, 1030211, 1030337, 1030338, 1030339, 1030353, 1030378, 1030554, 1030623, 1030684, 1030689, 1030727, 1030742. It is unclear why OIP forwarded the remaining twenty-two customs reports to the 661 Committee without any indication of seller responses—though it is possible that there was some correspondence with the suppliers about price, which was not indicated on the actual reports.

<sup>455</sup> Thomas Franta fax to Carl de Cruze (Nov. 15, 2001) (explaining to OIP the basis for the pricing of the goods in COMM no. 830806); OIP customs report, S/AC.25/2001/986/COMM.901858H (Oct. 19, 2001); Claudio Iaconi fax to Carl de Cruze (Oct. 9, 2001) (explaining to OIP the basis for the pricing of the goods in COMM no. 930284).

<sup>456</sup> OIP customs reports, COMM nos. 601991, 730828, 730959, 801654, 802072, 802084, 802367, 802612, 830124, 830132, 830236, 830465, 830515, 830593, 830806, 830819, 900403, 900503, 900651, 900990, 901857, 901858, 901890, 930114, 930243, 930247, 930284, 930328, 930613, 930667, 1001790, 1002020,



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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In addition, information collected from the OIP database reflects that, under the “green list” or GRL, OIP (not the 661 Committee) approved at least twenty-eight of the seventy applications.<sup>457</sup> Available evidence reflects that OIP approved one more of these contracts prior to the war’s end.<sup>458</sup> OIP also approved at least nine more of the seventy contracts after the war (some of which the 661 Committee previously had approved); the value for each of these contracts was reduced by approximately ten percent.<sup>459</sup> In short, OIP approved a significant number of the seventy contracts on its own authority—though the 661 Committee still would have been notified of OIP’s approvals, and the 661 Committee retained the responsibility for determining whether to approve all of the other contracts (i.e., those not on the “green list” or those on the GRL).<sup>460</sup>

Although 661 Committee members placed holds on a substantial number of the seventy contracts, except in one case, the need for further technical specifications or concerns about possible dual use appear to have motivated these holds.<sup>461</sup> The one exception involved COMM no. 730859,

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1030012, 1030034, 1030035, 1030052, 1030211, 1030337, 1030338, 1030339, 1030353, 1030378, 1030554, 1030623, 1030684, 1030689, 1030727, 1030742.

<sup>457</sup> TaR COMM nos. 601991, 730959, 801654, 801841, 802072, 802479, 830250, 830593, 900026, 900398, 900651, 900990, 901482, 930114, 930247, 930328, 1001790, 1002113, 1030012, 1030337, 1030338, 1030339, 1030378, 1030389, 1030614, 1030689, 1030727, 1030742.

<sup>458</sup> OIP table, “Letters of credit pending issuances as at 24 April 2002” (listing COMM no. 801894 as a contract approved in Phase VIII and awaiting issuance of a letter of credit).

<sup>459</sup> OIP customs report, S/AC.25/2001/986/COMM.1230049/Corr.1 (Nov. 4, 2003); Viktor Morozov fax to Mahmoud D. Hmoud (Nov. 18, 2002) (indicating that COMM no. 830250 was renumbered COMM no. 1230049); OIP customs report, S/AC.25/2001/986/COMM.731018/Corr.1 (Nov. 7, 2003) (indicating approval of COMM no. 731018); Viktor Morozov fax to Houssam Diab (Sept. 20, 2002) (indicating that COMM no. 930114 ultimately became COMM no. 731018); OIP customs report, S/AC.25/2001/986/COMM.1230074/Corr.1 (Sept. 18, 2003) (indicating approval of COMM no. 1230074); Viktor Morozov fax to Mahmoud D. Hmoud (Nov. 19, 2002) (indicating that COMM no. 1230074 was previously COMM no. 930247); OIP customs report, S/AC.25/2002/986/COMM.930613/Corr.1 (Oct. 17, 2003); OIP customs report, S/AC.25/2001/986/COMM.1030034/Corr.4 (Oct. 10, 2003); OIP customs report, S/AC.25/2002/986/COMM.1230114/Corr.1 (Nov. 3, 2003) (indicating approval of COMM no. 1230114, which previously was numbered COMM no. 1030301); OIP database, COMM no. 1230114; OIP customs report, S/AC.25/2002/986/COMM.1030554/Corr.1 (Oct. 8, 2003); OIP database, COMM no. 1030554; OIP customs report, S/AC.25/2002/986/COMM.1030614/Corr.1 (Oct. 10, 2003); OIP customs report, S/AC.25/2002/986/COMM.631112/Corr.1 (Oct. 15, 2003); OIP database, COMM no. 631112 (indicating that COMM no. 1030052 was renumbered COMM no. 631112).

<sup>460</sup> As discussed above, when OIP approved a contract under the “green list” or GRL, members of the 661 Committee were advised “for informational purposes,” but could not retroactively block such approvals. Darko Mocibob interview (Aug. 16, 2005). Mr. Mocibob stated that including within this set of seventy contracts certain contracts approved by OIP—rather than by the 661 Committee—was probably in error. *Ibid.*

<sup>461</sup> See, e.g., OIP database, COMM no. 801654; OIP weekly holds update (Oct. 12-19, 2001) (indicating that COMM no. 801873 was released from hold after revision of the 1051 list); OIP weekly holds update (Aug. 20-24, 2001) (indicating that COMM no. 802612 was being held awaiting additional technical specifications); OIP database, COMM no. 1230060 (indicating also that this contract was originally

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

which it appears both the United Kingdom and the United States placed on hold because of pricing concerns.<sup>462</sup> The Committee has not obtained evidence suggesting that pricing concerns motivated any of the other holds placed on these contracts.

### 3. 661 Committee and OIP Dynamics

In order to understand precisely how contracts identified as being overpriced were approved—despite concerns within the 661 Committee and OIP about humanitarian kickbacks—it is necessary to consider two reinforcing dynamics: one involving the customs reports and another involving the authority to reject contracts. This Subsection briefly addresses these dynamics with a focus on the 661 Committee; a subsequent chapter focuses on the dynamics relating to OIP.

First, OIP's customs reports provided very limited information on pricing: OIP viewed itself as obligated to assess contract prices, but it forwarded suppliers' pricing clarifications to the 661 Committee (requested by OIP) without corroborating the explanations offered. However, regardless of whether or not OIP's customs reports were appropriately detailed, this investigation has not obtained any evidence suggesting that the 661 Committee ever requested that OIP generally provide more detailed pricing analyses. In addition, the Independent Inquiry Committee has not located any evidence suggesting, in the specific cases of these contracts, that the 661 Committee asked OIP to obtain from the suppliers additional clarifications on pricing or to evaluate (rather than merely forward) the replies previously provided by suppliers. Although, as noted above, a United Kingdom letter to OIP expressed concerns about particular contracts, including three for which OIP previously had identified pricing issues (one of which is within the set of seventy contracts discussed in this Section).<sup>463</sup>

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COMM no. 830593); OIP weekly holds update (July 27 to Aug. 3, 2001) (indicating that the hold on COMM no. 900990 related to "material composition"); OIP weekly holds update (Apr. 26 to May 3, 2002) (indicating that the hold on COMM no. 930667 related to technical specifications); OIP weekly holds update (Mar. 22-29, 2002) (indicating that the hold on COMM no. 1001790 related to technical specifications); OIP weekly holds update (Feb. 1-8, 2002) (indicating that the hold on COMM no. 1030012 related to technical specifications); OIP customs report, S/AC.25/2003/986/COMM.1030689/Amend.1 (Feb. 21, 2003) (indicating that the previously held contract, COMM no. 1030689, contained an item appearing on the GRL). The United States has communicated that it placed holds on thirty-three of these contracts, but only one of these holds related to pricing concerns. United States Department of State e-mails to the Committee (Aug. 26 and Sept. 1, 2005).

<sup>462</sup> OIP spreadsheet, "Applications Pending Feedback from the Holding Missions in Excess of 75 Days (as of 24/10/2001)" (indicating that, in placing this contract on hold, the United Kingdom requested "a justification for the unreasonably high 'delivery and handling services' and 'after sale service'"); United States Department of State e-mail to the Committee (Aug. 26, 2005) (stating the United States placed this contract on hold because "[p]rices for delivery and handling services and the after-sale services [were] considered to be significantly higher than what is considered reasonable").

<sup>463</sup> Felicity Johnston interview (June 10, 2005); United Kingdom Mission letter to J. Christer Elfverson (Apr. 9, 2001).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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Second, OIP did not consider it within its mandate to withhold circulating or approving contracts merely because of pricing concerns. Nonetheless, even putting aside whether OIP was permitted to reject a contract because of pricing concerns (either by not circulating it to the 661 Committee for approval or by rejecting it outright if on the “green list” or not on the GRL), there remains the issue of why no member state placed a hold on any of these contracts on account of the pricing concerns identified by OIP. The United Kingdom letter to OIP (discussed above) suggests one possible explanation: a focus on the “humanitarian need for the items.” Similarly, a United Kingdom official acknowledged that the United Kingdom must have been aware of the cases in which OIP had identified pricing concerns, but that the United Kingdom always balanced reasons to hold a particular contract against “humanitarian impact,” and it preferred to avoid placing holds on contracts. In addition, this official noted that OIP never identified a whole series of overpriced contracts (but rather did so on a case-by-case basis) and that the 661 Committee never focused on the issue of contract pricing.<sup>464</sup>

A United States official provided another possible explanation for the lack of pricing-related holds: Contracts raising pricing concerns almost always included overriding concerns (such as dual use) that were emphasized instead of pricing.<sup>465</sup> Accordingly, while the official reason provided for a contract hold might have been “dual use” or “need for technical specifications,” this does not preclude that concerns about pricing or the possibility of a kickback also motivated the hold.

## **E. EXPLANATIONS FOR THE 661 COMMITTEE’S INACTION**

Although the United States had presented a non-paper on humanitarian kickbacks in March 2001, and the 661 Committee subsequently met formally and informally to address kickbacks, there was only minimal discussion of this issue. Then, after the relative flurry of attention in spring 2001, the 661 Committee did not resume discussions regarding humanitarian kickbacks until after the war in Iraq (in 2003), in relation to the transitioning of responsibility for the Programme to CPA, which is discussed in the next Section. In fact, the last mention of humanitarian kickbacks at a formal 661 Committee meeting, before the war, was merely an oblique reference in a discussion of port fees on April 5, 2001.<sup>466</sup>

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<sup>464</sup> Felicity Johnston interview (May 26, 2005); Darko Mocibob interview (Sept. 20, 2004); United Kingdom Mission letter to J. Christer Elfverson (Apr. 9, 2001); United Kingdom official #7 interview (July 14, 2005).

<sup>465</sup> United States official #10 interview (Feb. 10, 2005). For example, the United States placed a hold on COMM no. 930167 because it viewed the goods as “WMD dual use,” but it notified OIP that “[e]ven if the supplier were able to address this objection, another objection is that the price charged seems excessive for the normal cost of these goods.” OIP customs database, COMM no. 930167; United States Department of State e-mail to the Committee (Aug. 26, 2005).

<sup>466</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.246, pp. 2-3, 6-7 (Oct. 23, 2003); Provisional record of 661 Committee meeting, S/AC.25/SR.216, p. 3 (Apr. 5, 2001). At this April 2001

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

During the approximately thirty formal meetings after this reference, the 661 Committee did not further discuss the United States proposals regarding humanitarian kickbacks. Indeed, the 661 Committee did not even discuss the existence of humanitarian kickbacks or strategies to combat them. Likewise, during this time period, the Security Council did not discuss the issue of humanitarian kickbacks in its formal or informal meetings. A United Kingdom official stated that there was “little appetite for further discussion” of humanitarian kickbacks because the Security Council was concentrating on broader political issues such as the revised sanctions policy and implementation of the goods review list. Moreover, the official stated that “after September 11, 2001 happened, politics changed,” and there was a focus on disarmament and inspections as well as retroactive pricing.<sup>467</sup>

In any event, prior to the war in Iraq, the 661 Committee never reached consensus on whether Iraq was seeking and goods suppliers paying humanitarian kickbacks—let alone what if any action the 661 Committee should take. As demonstrated above, the meeting records provide little assistance in understanding reasons for the 661 Committee’s inaction on kickbacks. However, in the Independent Inquiry Committee’s discussions with government officials, a number of interrelated themes emerged, including: (1) lack of proof; (2) absence of company complaints; (3) focus on dual use; (4) reliance on OIP to address pricing; and (5) disagreement on the appropriateness of investigation.

#### **1. Lack of Proof**

A common explanation for the 661 Committee’s inaction was that there simply was no proof of humanitarian kickbacks. When interviewed, a Russian official acknowledged that evidence now supports the allegation that sanctions were violated on the humanitarian component of the

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meeting, the 661 Committee Chairman noted that “the Secretariat’s understanding [was] that the issue [being discussed] concerned a regular port fee and *not some kind of surcharge.*” Ibid. (emphasis added).

<sup>467</sup> United Kingdom official #7 interview (July 14, 2005); see also 661 Committee annual report, para. 25 (Aug. 31, 2001) (noting that the 661 Committee’s “discussion related to illegal surcharge, commission on humanitarian goods and port fees is still underway”). One United States official recalled that the issue of humanitarian kickbacks was discussed in private meetings of the P-5. United States official #6 interview (June 27, 2005). However, a United Kingdom official could not recall the issue of humanitarian kickbacks being raised in informal P-5 consultations after spring 2001. United Kingdom official #7 interview (July 14, 2005). Although not discussed in the Security Council, Mr. Sevan noted once in a statement prepared for informal Security Council consultations on February 26, 2002, that “Iraqi authorities . . . should likewise ensure that the port fees asked for the discharge of goods are ‘reasonable’ and not the 10 per cent of the contract value, which has been requested from some suppliers who have brought the matter to the attention of the Office of the Iraq Programme.” Benon Sevan statement at informal Security Council consultations, p. 7 (Feb. 26, 2002). Later that year, an article in the *Daily Telegraph* noted that “sanctions have provided an opening for corrupt officials to enrich themselves at the expense of Iraq’s children” by buying medicines from “cheap suppliers in neighboring Syria and Jordan in return for large kickbacks.” In addition, the article noted that “[m]uch of the best medicine in Iraq’s hospitals ends up on the black market, fetching exorbitant prices.” David Blair, “Iraqi children left to suffer as corruption inflates drug prices,” *Daily Telegraph*, Dec. 16, 2002, p. 11.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

Programme, but he maintained that the allegations that surfaced during the course of the Programme were based only on media reports, and Russia wanted to deal only with proven issues and not with rumors. Another Russian official asserted that, without credible evidence, there was no ground to explore further the allegations of humanitarian kickbacks or jeopardize a company's reputation. This official added that—though he had heard allegations of contracts including side payments—he never saw any such contracts. Moreover, though he recognized that companies may have presented gifts to Iraqi officials in order to obtain business under the Programme, he insisted that he was unaware of any institutional system of funneling secret payments to the Iraqi regime.<sup>468</sup>

The 661 Committee's Secretary, Mr. Wan, stated that he never came across any information (other than mass media reports) relating to humanitarian kickbacks; he added that there were rumors, but no hard evidence. A German official commented that he never reviewed any evidence indicating that companies had paid humanitarian kickbacks, and he did not learn of sanctions violations until the end of the Programme. A Dutch official stated that he may have heard rumors and suspected that this was occurring, but he never saw anything concrete. An Australian official indicated that—even though it definitely was believed among 661 Committee members that goods suppliers had to pay kickbacks to the Iraqi regime—he lacked any independent information or specific evidence of such Programme violations. A United States official stated that there existed a “broad sense” that Iraq was trying to “cheat the system,” but conceded that it was very difficult to find concrete evidence that Iraq was demanding kickbacks. In testimony before the United States Congress, John D. Negroponte, then serving as Permanent Representative of the United States to the United Nations, stated that the United States was “hampered by the lack of substantiated evidence” because “members claimed that absent receipt of evidence indicating that such kickbacks existed, no action could be taken.” A United Kingdom official stated that, without concrete evidence or documentation of kickbacks, member states focused instead on contract holds. Another United Kingdom official remarked that, in retrospect, it is surprising how little was known about Programme abuses other than oil smuggling.<sup>469</sup>

## 2. Absence of Company Complaints

Second, and as a partial explanation for the lack of concrete evidence, numerous member states told the Committee that they never received complaints about kickbacks from companies submitting humanitarian applications through their respective missions. A Chinese official stated that no Chinese company ever informed the government that Iraq had approached the company seeking a humanitarian kickback. Another Chinese official confirmed that he never had received any complaints from Chinese companies; he added that he had heard allegations of humanitarian

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<sup>468</sup> Russia officials #3, 6-7 interview (Nov. 16, 2004).

<sup>469</sup> Jing Zhang Wan interview (Jan. 18, 2005); Germany official #4 interview (Nov. 18, 2004); Netherlands official #2 interview (Mar. 10, 2005); Australia official #8 interview (Feb. 25, 2005); United States official #13 interview (Feb. 11, 2005); John D. Negroponte statement to the United States Senate, Foreign Relations Committee (Apr. 7, 2004); United Kingdom official #7 interview (July 14, 2005); United Kingdom official #6 interview (Dec. 7, 2004).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

#### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

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kickbacks only in the media and at formal and informal 661 Committee meetings. A Russian official stated that neither the Russian Mission nor the Russian Ministry of Foreign Affairs ever received complaints from companies indicating that Iraq tried to extort money from them in exchange for contracts under the Programme. He asserted further that the financial controls operative in Russia would have prevented this and, in fact, that Russia has no knowledge of any specific Russian company ever paying a humanitarian kickback.<sup>470</sup>

When interviewed, two Dutch officials could not recall any reports or complaints of humanitarian kickbacks. A Norwegian official indicated that Norway has no specific information regarding Norwegian companies having been asked to pay humanitarian kickbacks. An Australian official indicated that he had no knowledge of the Government of Iraq ever demanding payments from Australian companies (other than for port fees) and, similarly, no knowledge of Australian companies ever paying kickbacks to the Government of Iraq or to agencies connected to the Government of Iraq. A Bulgarian official similarly stated that he never received any information from Bulgarian companies indicating that Iraq had sought humanitarian kickbacks on Programme contracts, and he had no knowledge of sanctions violations by any Bulgarian companies participating in the Programme. A Syrian official noted that he was unaware of any case in which a Syrian company was involved in inappropriate arrangements with the Government of Iraq. A German official likewise stated that she never heard contractors express concerns about any humanitarian kickbacks.<sup>471</sup>

However, other member states have acknowledged learning of efforts by the Iraqi regime to extract kickbacks from companies selling goods under the Programme. As noted above, Japan first received a company complaint in November 1999, and, in November 2000, France learned of the Iraqi Minister of Trade's request, at a trade fair in Baghdad, that companies pay kickbacks of ten percent into Iraqi bank accounts outside of Iraq. In addition, the United States and the United Kingdom both have indicated that they received complaints from companies selling goods under the Programme. As noted above, the United States asserted in a public statement in March 2001 that companies had complained to it about Iraq seeking humanitarian kickbacks, and it encouraged companies to come forward with any information. Moreover, a United States official stated that the United States became aware informally that at least one company had complained about having been solicited to pay a kickback. The United States did not forward this information to the 661 Committee because it lacked definitive evidence of whether a kickback was paid and, regardless, believed that other members would have viewed this as an isolated incident and not part of a larger scheme. In addition, a United Kingdom official recalled at least

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<sup>470</sup> China officials #1-2, 4-5 interview (Jan. 19, 2005); China official #3 interview (Jan. 20, 2005); Russia officials #3, 6-7 interview (Nov. 16, 2004). Moreover, Russian officials maintained that the Tax Police under the Russian Ministry of Taxation would have uncovered any humanitarian kickbacks when it investigated most major companies in relation to the Programme, but it found no tax fraud. Ibid.

<sup>471</sup> Netherlands official #8 interview (Sept. 1, 2004); Netherlands official #2 interview (Mar. 10, 2005); Norway official #3 interview (Nov. 4, 2004); Australia official #6 interview (Feb. 25, 2005); Bulgaria official #1 interview (May 17, 2005); Syria officials #2-3 interview (Dec. 27, 2004); Germany official #3 interview (Nov. 17, 2004).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

one occasion when a colleague had received a call from a goods contractor inquiring about having to make a payment to Iraq outside the escrow account.<sup>472</sup>

Although government officials generally have noted the lack of company complaints, it is true also that the 661 Committee never approved the United States proposal or any similar measure to advise all companies submitting humanitarian applications that paying humanitarian kickbacks was prohibited. Furthermore, there is no evidence suggesting that the 661 Committee or its individual member states—other than the United States’ broad invitation in March 2001—actively solicited such feedback from companies participating in the Programme.

### 3. Focus on Dual Use

Third, those member states reviewing in greatest detail the circulated humanitarian applications focused largely on concerns relating to dual use. A United Kingdom official stated that the key motivation for the United Kingdom’s and the United States’ review of the humanitarian applications—a task other 661 Committee members avoided altogether—was to eliminate items of technological concern, especially in regard to weapons of mass destruction. As with the United Kingdom and the United States, a German official explained that the paramount consideration was identifying applications involving dual-use items. In Germany, the Federal Office of Economics and Export Control (“BAFA”) employed an extensive staff to examine each contract and determine whether or not there was any possibility of the goods being used for a prohibited purpose. A German official noted that this process was taken very seriously and took a considerable amount of time.<sup>473</sup>

More broadly, a United States official stated that the 661 Committee’s primary involvement in reviewing the humanitarian applications involved identifying potential dual-use items. This is underscored by the Security Council’s adoption of Resolutions 1284 and 1409, discussed above, respectively involving the “green list” and the GRL. These procedural changes progressively increased OIP’s authority to approve humanitarian applications without the involvement of the 661 Committee. As discussed above, the “green list” empowered OIP to approve applications involving only certain pre-approved humanitarian goods, and the GRL later authorized OIP to approve all goods applications, except those involving pre-identified technological goods. One United States official stated that the United States welcomed the adoption of the GRL (and “green

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<sup>472</sup> Japan Mission letter to the Committee (Aug. 31, 2005); France Mission letter to the Committee (Sept. 1, 2005); United States Mission to the United Nations, “Transcript of Remarks by Ambassador James B. Cunningham, Acting U.S. Permanent Representative to the United Nations, on the Oil-for-Food Program, at the Security Council Stake-Out, March 8, 2001,” [http://www.un.int/usa/01\\_034.htm](http://www.un.int/usa/01_034.htm); William M. Reilly, “U.S.: No surprise report Iraqis seek payoffs,” *United Press International*, Mar. 7, 2001; United States official #6 interview (June 27, 2005); United Kingdom official #7 interview (Jan. 12, 2005).

<sup>473</sup> United Kingdom official #6 interview (Dec. 7, 2004); Germany official #4 interview (Nov. 18, 2004).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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list”) because it believed that these shifts would enable it to concentrate on the contracts it perceived as being most disconcerting (i.e., those involving potentially dual-use items).<sup>474</sup>

Another United States official explained the prioritization that occurred: “Our first line was to maintain [the sanctions regime]; our second line was to improve. We spent an awful lot of time maintaining.” Similarly, a United Kingdom official explained that the United Kingdom “was constantly concerned by reports of over-invoicing and inflated transport and other costs, but the UK was more often than not under attack from other members of the 661 Committee for placing holds on goods, which could have had a dual use,” and “[i]t was deemed politically impossible to sustain holds on the basis of price alone, without support from OIP.” This is consistent with a statement submitted to the United States Congress by John Ruggie, a former Assistant Secretary-General and chief advisor for strategic planning to Secretary-General Annan, in which he suggested that “it seems reasonable to infer that the US and Britain held their noses and overlooked pricing irregularities in order to keep the sanctions regime in place and to put all their efforts into preventing dangerous technologies from getting into Saddam’s hands.”<sup>475</sup>

Given the frequent assertion by government officials that the primary focus in reviewing contracts was identifying dual-use items, it is worth highlighting a related conundrum: By

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<sup>474</sup> United States official #10 and United Kingdom official #7 interview (Sept. 8, 2004); S/RES/1284, para. 17 (Dec. 17, 1999); S/RES/1409, paras. 2-3 (May 14, 2002); United States official #13 interview (Feb. 11, 2004). A United States official did not recall any concerns about granting additional authority to OIP in connection with the creation of the GRL and noted that the 661 Committee continued to receive copies of all applications and could place holds when necessary. United States official #6 interview (June 27, 2005). Similarly, a United Kingdom official explained that the shift of additional responsibility to OIP to approve contracts did not raise much concern among member states because OIP already was approving contracts involving goods on the “green list.” The official added that, once the GRL was adopted, member states’ primary concern was not OIP’s technical ability to approve contracts, but the sufficiency of its resources to handle the volume of contracts, including the ones on hold that had to be reassessed against the GRL. In general, the official stated that there was confidence that OIP could handle the job, and the United Kingdom’s main focus was to ensure that OIP acted consistently with the GRL. United Kingdom official #7 interview (July 14, 2005).

<sup>475</sup> United States official #6 interview (June 27, 2005); United Kingdom Mission letter to the Committee (Aug. 23, 2005); Harvard University John F. Kennedy School of Government, “John Ruggie’s Profile at Harvard University,” [http://ksgfaculty.harvard.edu/John\\_Ruggie](http://ksgfaculty.harvard.edu/John_Ruggie); John Ruggie statement to the United States House of Representatives, International Relations Committee (Apr. 28, 2004). Before suggesting that the lack of pricing holds stemmed from the balancing of “competing priorities,” Mr. Ruggie noted:

Every member had the right to hold up contracts if they detected irregularities, and the US and Britain were by far the most vigilant among them. Yet, as best as I can determine, of those 36,000 contracts not one—not a single solitary one—was ever held up by any member on the grounds of pricing. Several thousand were held up because of dual-use technology concerns. What does this suggest about US and British motives, as permanent members of that committee? Stupidity? Complicity? Or competing priorities?

Ibid.



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

focusing on dual use at the expense of scrutinizing and blocking those contracts possibly including humanitarian kickbacks, the 661 Committee failed to prevent the Iraqi regime from collecting illicit funds that could have enabled it to acquire smuggled weapons that were more dangerous than the dual-use items placed on hold.

#### 4. Reliance on OIP

Fourth, with regard to reviewing the prices of humanitarian applications, some 661 Committee members indicated that they relied on OIP. A German official explained that its Foreign Ministry lacked the expertise to determine the exact prices of goods and therefore performed only a basic check of each contract's price to determine whether a contract was plausible; it relied primarily on OIP regarding contract pricing. Another German official, involved with the processing of humanitarian applications, stated that goods were never put on hold because of prices. A Norwegian official, involved with Norway's chairmanship of the 661 Committee, observed that OIP would look at contract pricing—though he questioned how OIP established fair market value in a non-functioning market. Nonetheless, this official did not remember OIP ever notifying the 661 Committee that a particular contract was overpriced. He stated that he was unfamiliar with the customs experts' reporting processes, but likewise did not recall hearing about any companies contacting OIP to inquire about whether they were permitted to pay after-sales-service fees to Iraq. Another Norwegian official did not recall OIP ever suggesting that items were overpriced. This official stated that she was unfamiliar with the extent to which OIP conducted a pricing review, but that she did not recall any 661 Committee member asking OIP to conduct a more rigorous pricing review.<sup>476</sup>

One United States official asserted that it was not the 661 Committee's responsibility to determine whether Iraq was overpaying for goods and that holds were not placed on contracts for pricing reasons alone. In contrast, another United States official noted that the Iraqi regime made a concerted effort to waste money, which required the United States to consider pricing issues. A United Kingdom official stated that the United Kingdom would place a contract on hold for pricing concerns alone, and another United Kingdom official recalled an instance when either the United States or United Kingdom placed a hold on a contract where OIP's customs expert had identified a concern about pricing. This same official added that he believed that the customs experts within OIP ensured against anything going wrong. Another United Kingdom official stated that the United Kingdom lacked the necessary resources to review pricing but, in any event, pricing was explicitly within OIP's mandate. A Dutch official suggested that the Netherlands did not become aware of any pricing manipulation and kickbacks because it was not involved in screening contracts.<sup>477</sup>

<sup>476</sup> Germany official #4 interview (Nov. 18, 2004); Germany official #3 interview (Nov. 18, 2004); Norway official #6 interview (Dec. 9, 2004); Norway official #2 interview (Dec. 9, 2004).

<sup>477</sup> United States officials #1, 10 and United Kingdom official #7 interview (Aug. 24, 2004); United States official #12 interview (Nov. 4, 2004); United Kingdom official #2 interview (Dec. 6, 2004); United

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

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These comments by government officials are consistent with the requirement in the 661 Committee Procedures that OIP evaluate the prices of humanitarian applications under the Programme.<sup>478</sup> However, even crediting member states' explanations that they relied solely on OIP to perform this analysis, it is curious—as discussed above—that member states appear almost never to have placed on hold the contracts identified by OIP as being overpriced (at least not on account of pricing concerns). Moreover, there is no evidence suggesting that member states ever requested OIP to review pricing in greater depth.

#### 5. Disagreement on the Appropriateness of Investigation

Last, the 661 Committee could not reach the necessary consensus to investigate—let alone to take particular remedial steps. A United States official noted the controversial nature of any effort to persuade the 661 Committee to investigate kickbacks: “We were trying to maintain a regime and improve it, while another very strong block was trying to walk it back. The result was the status quo; we cancelled each other out.” Another United States official stated that, even though goods suppliers were making “under the table payments,” whenever this subject was broached at 661 Committee meetings, Russia typically would dismiss the information and stymie further investigation. Without hard evidence, a United States official stated that it was almost impossible to persuade the 661 Committee to address humanitarian kickbacks. This is consistent with Russia's view, noted above, that there was no credible evidence warranting investigation.<sup>479</sup> Unable to resolve even this preliminary disagreement on further inquiry, the 661 Committee therefore remained disengaged on the issue of humanitarian kickbacks.

Nonetheless, it is worth reiterating that both the United States and the United Kingdom requested in early 2001 that OIP brief the 661 Committee on humanitarian kickbacks. A United Kingdom official stated, however, that whenever asked to report on kickbacks, OIP merely reiterated that it had received informal communications but would not volunteer further details. Yet even though no substantive report materialized, it does not appear that the 661 Committee further pressed OIP. In fact, as detailed earlier, Russia asserted that OIP lacked the resources to conduct such an investigation and already had “undertaken to give the Committee any further information that reached it on the matter.” As noted above, France recalled that OIP had indicated “any report would be ‘thin,’” but noted also that OIP could share the relevant information without revealing informal sources.<sup>480</sup> Moreover, there is no evidence suggesting that any 661 Committee member

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Kingdom official #4 interview (Dec. 6, 2004); United Kingdom official #6 interview (Dec. 7, 2004); Netherlands official #6 interview (Mar. 31, 2004).

<sup>478</sup> 661 Committee Procedures, para. 33.

<sup>479</sup> United States official #6 interview (June 27, 2005); United States officials #1, 10 and United Kingdom official #7 interview (Aug. 24, 2004); United States official #13 interview (Feb. 11, 2005); Russia officials #3, 6-7 interview (Nov. 16, 2004).

<sup>480</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.212, pp. 7-8 (Jan. 18, 2001); OIP notes of informal 661 Committee meeting, p. 2 (Feb. 13, 2001); United Kingdom official #7 interview (July 14, 2005); Provisional record of 661 Committee meeting, S/AC.25/SR.214, pp. 8-9 (Mar. 1, 2001).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 3

### THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS

ever forwarded to the 661 Committee any report based on investigation into the nature or extent of humanitarian kickbacks, which might have detailed evidence sufficient to prompt corrective action.

## F. RECALIBRATION OF CONTRACTS AT THE PROGRAMME'S END

After the war in Iraq, the 661 Committee was briefed on and discussed the process of amending the outstanding humanitarian contracts in order to eliminate kickbacks. For purposes of this Part, it is unnecessary to consider the exact processes by which humanitarian contract applications were renegotiated. However, it is important to note the 661 Committee's acknowledgment—albeit late in the Programme—of the prevalence and magnitude of humanitarian kickbacks (and the need to eliminate them).

Resolution 1472 “[a]uthorize[d] the Secretary-General and representatives designated by him . . . to negotiate and agree on necessary adjustments in the terms or conditions of these [humanitarian] contracts.” Shortly thereafter, Resolution 1483 called on the Secretariat—in conjunction with CPA and the Iraqi authorities—to review and prioritize the outstanding humanitarian contracts and “to facilitate as soon as possible the shipment and authenticated delivery of priority civilian goods.” Mr. Mocibob of OIP, who assisted in prioritizing contracts during the transition, stated that CPA had notified the United Nations that research as well as discussions with individuals from Iraq's Trade Ministry helped determine that kickbacks—termed “after-sales-service fees”—were included in most if not all goods contracts after Phase VIII. On July 5, 2003, CPA formally requested that the United Nations negotiate with suppliers to eliminate after-sales-service fees by deducting an appropriate percentage when amending contracts in connection with prioritization under Resolution 1483.<sup>481</sup>

In September 2003, the United States Defense Contract Audit Agency and Defense Contract Management Agency released a report that evaluated the pricing of humanitarian contracts under the Programme and formulated recommendations for the transition to CPA. From within a sample of 759 approved and funded contracts, the report found “potential overpricing in at least 48 percent of the contracts,” amounting to \$656 million in potential overpricing within a set of contracts valued at \$3.1 billion. More specifically, the report found overpricing “in 87 percent of [food commodity] contracts, averaging 22 percent of the contract value” and “37 percent of contracts in other sectors . . . , averaging 20 percent of the contract value.” Evidence was insufficient to evaluate the pricing of an additional 44 contracts valued at \$1.1 billion. The report

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<sup>481</sup> S/RES/1472, para. 4(d) (Mar. 28, 2003); S/RES/1483, paras. 16(a)-(b) (May 22, 2003); Darko Mocibob interview (July 6, 2004); CPA note verbale to Kofi Annan (July 5, 2003) (noting that “[t]he Authority's concurrence on the prioritization of contracts is contingent upon the elimination of the after-sales service fees in appropriate cases”); OIP memorandum, “Alleged kickbacks on Oil-for-food contracts,” p. 4 (Mar. 2004). In August 2003, an Iraqi official from the Ministry of Trade informed a United Kingdom official that, after Phase VIII, all goods contracts were inflated by ten percent so that the additional payment could be kicked back to the Iraqi regime. United Kingdom official #7 interview (Jan. 12, 2005).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 3**

### **THE SECURITY COUNCIL - RESPONSE TO SURCHARGES AND KICKBACKS**

ultimately recommended wholesale price adjustments on Programme contracts and the removal of all service charges that suppliers could not explain.<sup>482</sup>

On September 29, 2003, at an informal 661 Committee meeting, CPA representatives briefed the 661 Committee on the prioritization of humanitarian contracts and the renegotiation of prioritized contracts. A CPA advisor informed the 661 Committee that “[s]ome suppliers were challenging the 10% after sale service fee deduction from the value of contracts, thus slowing down contracts renegotiations/amendments.”<sup>483</sup>

At a formal meeting on October 23, 2003, Mr. Mocibob updated the 661 Committee on efforts to prioritize and amend contracts prior to transferring responsibility to CPA on November 21, 2003, including efforts to resolve “‘extra-fee’ disputes.” Mr. Mocibob noted that OIP had received seventy-three percent of the requested clarifications and that the United Nations agencies and programs had forwarded 1,453 amended contracts, almost half of the 3,182 prioritized and confirmed contracts. The United States added that “the Authority had been informed by the Iraqi ministries that the [after-sales-service] fee[s] had been added on by the former regime for its own purposes, and so the Authority was trying to remove [them] from the contracts.”<sup>484</sup>

Regarding “the 10 per cent after-sale fee,” France inquired whether “a system could be adopted whereby the fee would be waived if the Authority did not reply within a certain time, in order to speed up the process.” China added: “Since the 10 per cent after-sale service fee appeared to be affecting the amendments process, [it] hoped that the Authority and the relevant Iraqi ministries would continue their efforts to resolve that problem.” Russia inquired about procedures for “‘extra-fee’ disputes” unresolved before the transfer to CPA.<sup>485</sup> No one at this meeting disputed the existence of the kickback agreements or the need to eliminate them.

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<sup>482</sup> Joint Defense Contract Audit Agency and Defense Contract Management Agency OFF Pricing Evaluation Team, “Report on the Pricing Evaluation of Contracts Awarded under the Iraq Oil for Food Program,” pp. 3-4, 11 (Sept. 12, 2003). Notwithstanding this pricing report, a United States official acknowledged the difficulty in “get[ting] inside contracts and figur[ing] out if they had kickbacks.” United States official #6 interview (June 27, 2005).

<sup>483</sup> OIP notes of informal 661 Committee meeting, p. 1 (Sept. 29, 2003).

<sup>484</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.246, pp. 2-3, 7 (Oct. 23, 2003).

<sup>485</sup> *Ibid.*, pp. 3, 6-7 (Oct. 23, 2003). All but 251 contracts were renegotiated by the transition to CPA on November 21, 2003. Robin L. Raphael statement to the United States Senate, Foreign Relations Committee (Apr. 7, 2004). Ms. Raphael served as CPA’s Senior Advisor to the Ministry of Trade in Baghdad from April to August 2003. *Ibid.*

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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## I. INTRODUCTION AND SUMMARY

It is now well known that the Iraqi regime of Saddam Hussein derived far more revenues from smuggling oil outside the Programme than from its demands for surcharges and kickbacks from companies that contracted within the Programme.<sup>486</sup> The reality was that thousands of vessels, vehicles, and trucks carried smuggled goods, petroleum, and petroleum products—in both directions across the Iraqi border—without any kind of inspection or oversight by the United Nations. This was not for lack of inspectors or funding to support them. Throughout the Programme, scores of inspectors paid by the United Nations were stationed at several of Iraq's major border crossing points. However, by the Programme's design, these inspectors could inspect only oil and goods that were sold and purchased through the Programme. They had no directions or mandate to inspect or report on cargo smuggled in violation of United Nations sanctions and outside the Programme.

Because smuggling occurred outside the Programme, tracing the details of and responsibilities for it has not constituted a major focus of the Committee's work. Nevertheless, smuggling cannot be extricated from the overall mandate of the Committee to evaluate the management and administration of the Programme. That is because—in the words of one United States ambassador—“[s]muggling steals money from the oil-for-food programme and puts it to illicit purposes.”<sup>487</sup> To the extent that the responsible authorities knew that smuggling was occurring during the course of the Programme, it posed a serious question of management responsibility with respect to the overriding objectives of containing Iraq and forestalling its corrupt government from gaining access to unrestricted funds.

The prevalence of smuggling activity had practical implications for the design and oversight of the transactions taking place within the Programme. For example, Iraq's proclivity for smuggling oil suggested a disposition to manipulate transactions occurring within the Programme. Furthermore, smuggling raised questions regarding the efficacy of monitoring safeguards in connection with the “oil spare parts” component of the Programme, an expansion of the Programme that began in June 1998, which allowed Iraq to draw on the escrow account for investment in equipment to improve oil production, distribution, and export capacity.<sup>488</sup> Iraq's intent to smuggle its oil signaled a significant possibility that such an investment of Programme funds could, in turn, promote Iraq's ability to derive illegal revenues from the smuggling of oil.

Other chapters of this Report examine the conduct of United Nations officials. This Chapter, however, centers on the role of the Security Council—including its 661 Committee—as the body

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<sup>486</sup> “First Interim Report,” pp. 41-42 (summarizing smuggling estimates compiled by the United States Senate Permanent Subcommittee on Investigations, the United States Government Accountability Office, the United States Iraq Survey Group, and the Coalition for International Justice).

<sup>487</sup> Provisional record of Security Council meeting, S/PV.4120, p. 10 (Mar. 24, 2000) (statement of United States Ambassador James Cunningham).

<sup>488</sup> S/RES/1175 (June 19, 1998).

## **MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**

### **VOLUME II - CHAPTER 4**

#### **SMUGGLING**

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that possessed primary authority to determine both the scope of the Programme and the degree to which it would acquiesce to trade outside the Programme. Indeed, the Programme existed at the behest of the Security Council and continued only if reauthorized every six months by a new resolution of the Council. Any single member of the 661 Committee could have frozen implementation of the Programme merely by declining to approve a monthly oil pricing mechanism or by placing a blanket hold on requests for approval of humanitarian contracts.<sup>489</sup> This is not to suggest that such drastic action was warranted as a response to the smuggling outside the Programme, but rather to highlight the degree to which the fundamental power and responsibility to control the Programme, as well as to set the tone for the enforcement of its mandate, resided with the United Nations Security Council.

For all these reasons, this Chapter addresses the following three questions regarding smuggling:

1. What smuggling occurred during the course of the Programme?
2. What did the Security Council and member states know about this smuggling activity?
3. What did the Security Council and member states do in response to smuggling activity?

Parts II through V below review Iraq's smuggling trade with three of its neighbors—Jordan, Turkey, and Syria—and its smuggling of oil by sea through the Persian Gulf. The names of the countries and the means of smuggling vary, but several common themes emerge:

- The Security Council's awareness of the massive amounts of border trade activity outside the Programme, as indicated by many contemporaneous media reports and statements by members of the 661 Committee;
- The constraints of the consensus rule of decision-making on the effectiveness of the Security Council and the 661 Committee in their responses to reports of illegal smuggling activity;
- The primacy of political preference over evenhanded enforcement of sanctions against Iraq and its neighboring countries—as most prominently demonstrated by the United States' tolerance for trade with Jordan and Turkey (but not Syria) and by Russia's and France's reluctance to redress smuggling activity between Iraq and Syria; and

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<sup>489</sup> Oil contracts that already had been approved by the oil overseers but not executed could have proceeded despite the 661 Committee's later disapproval of a pricing mechanism; in the later stages of the Programme, after the passage of Resolution 1284 in 1999 and Resolution 1409 in 2002, an increasingly large percentage of humanitarian contracts were not subject to the 661 Committee's approval. See S/RES/1284 (Dec. 17, 1999); S/RES/1409 (May 14, 2002).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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- The degree to which Iraq and its neighbor states ultimately were emboldened by Security Council inaction to formalize their illicit trading relationships and to expand their illicit trade—all at a cost to the Programme and for the profit of the Iraqi regime.

Below are the main points that are covered in this Chapter of the Report regarding Iraq's trade outside of the Programme with Jordan, Turkey, and Syria, as well as smuggling of Iraqi oil and oil products by sea.

*Part II – Jordan:* In the case of Jordan, the Security Council declined to act on Jordan's repeated requests for official authorization to import oil from Iraq. Instead, the 661 Committee ambiguously "took note" of Jordan's intent to import Iraqi oil. This furnished sufficient cover for Jordan to acquire close to \$6 billion worth of oil and oil products from Iraq (most of it during the Programme, from 1996 to 2003). There was no genuine effort by the Security Council to monitor these transactions or the goods that Jordan in turn shipped back to Iraq. By September 2002, Jordan abandoned a barter arrangement, and it started paying cash to Iraq. Ultimately, by early 2003, Jordan decided—with help from the United States—to engage in the single largest series of smuggling transactions that took place during the entire Programme. This involved the illegal purchase and sale of 7.7 million barrels of oil from the Iraqi oil terminal at Khor al-Amaya, resulting in nearly \$54 million of illegal proceeds for the regime of Saddam Hussein.

*Part III – Turkey:* In the case of Turkey, the 661 Committee turned a blind eye to widespread reports of oil smuggling through Iraq's Kurdish area and across its northern border. When Turkey sought formal permission in 1996 to trade with Iraq, the 661 Committee repeatedly deferred consideration of the request for several years. Then, it simply removed the item from its agenda, while the illegal and unmonitored border trade continued. A belated effort in 1999 by the Netherlands and the United Kingdom to bring Turkey's trade within the Programme failed for lack of support among other members of the Security Council. Thereafter, Turkey negotiated a formal border trade protocol with Iraq in January 2000, and Iraq ultimately derived at least \$767 million in oil sales proceeds outside the Programme from illegal trade with Turkey.

*Part IV – Syria:* Iraq had long harbored ambitions to reopen and use a historic pipeline that stretched from Iraq's northern Kirkuk fields to the Mediterranean coast in Syria and that had been closed in the early 1980s. To this end, Iraq sought approval at the outset of the Programme, in 1996, to export oil through the Syrian pipeline. However, the Security Council allowed only two points for the export of Iraqi oil—one through a pipeline into Turkey and one through the Mina al-Bakr terminal in the Persian Gulf. Iraq and Syria later decided to take matters into their own hands. They negotiated a formal border trade protocol in 2000 and then refurbished and reopened the pipeline in November 2000. The reopening of the pipeline was widely reported in the press and also raised in the 661 Committee, but the 661 Committee was unable to reach a consensus on how to respond. It could not even agree to send a letter of inquiry to Syria about the matter, much less initiate any true investigation of the matter. In light of the smuggling that already was occurring through Jordan and Turkey, the United Kingdom and the United States sought, in mid-2001, to reform the Programme to bring within its purview all of Iraq's border trade. This effort failed due to the reluctance of several Security Council members, including Russia, France, and China, to accept these proposals. Iraq's border countries, which had long since accustomed

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

themselves to trading freely outside the Programme, also opposed the mid-2001 proposals on smuggling. In the meantime, because of the economies of scale afforded by the pipeline, Syria soon became Iraq's largest illegal oil export outlet. When Syria joined the Security Council in 2002, it was easily able—because of the 661 Committee's consensus voting requirement—to block any inquiry by the 661 Committee. During the last years of the Programme, Iraq derived more than \$2.81 billion of smuggling revenues from Syria.

*Part V – Smuggling by Sea:* In the case of smuggling through the Persian Gulf, the naval advantage of the Multinational Interception Force allowed the Security Council to exercise a greater degree of control over smuggling by sea than over smuggling by land with Jordan, Turkey, and Syria. Smuggling by sea remained a constant occurrence, but, over time and with the active diplomatic efforts of 661 Committee chairmen and the cooperation of Iran, the level of smuggling was effectively reduced.



**Figure: Map of the Middle East Region.**

Parts II through V below discuss smuggling through Jordan, Turkey, Syria, and the Persian Gulf. As indicated in each of these Parts, the Committee has requested information from Iraq's border countries concerning their trade with Iraq outside of the Programme, but these countries have not furnished substantive responses. Accordingly, the information set forth below is principally



## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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derived from Iraqi and United Nations records, with references for context to information that was reported in the worldwide media at the time of the events at issue.

It should be noted that even though this Chapter of the Report discusses primarily the Security Council's response to Iraq's trade with Jordan, Syria, and Turkey in the framework of intergovernmental border trade protocols not covered by the Programme, smuggling also existed between Iraq and other countries. For instance, SOMO has supplied the Committee with data on Iraq's sales of nearly \$45 million worth of oil and oil products to Egypt in 2001 and 2002. Additionally, oil and oil products were smuggled out of Iraq to border countries outside of formal trade protocols. According to data provided to the Committee by SOMO, during the Programme Iraq sold more than \$1 billion worth of oil and oil products to various entities outside of *both* the Programme and any of the border trade protocols.<sup>490</sup>

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<sup>490</sup> SOMO Table on Oil Sales. The Government of Egypt has not responded to the Committee's letter requesting information on Iraq's trade with Egypt. Committee letter to Egypt Mission (May 27, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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## II. JORDAN

Of Iraq's neighbor states, perhaps none felt the consequences of the sanctions regime imposed on Iraq more strongly than Jordan. From 1985 to 1990, Iraq had become one of Jordan's major trading partners and its principal source of oil. In 1985, Iraq supplied about twenty percent of Jordan's crude oil; by 1990, Iraq was supplying more than eighty-five percent of Jordan's crude oil. The total value of Jordan's trade with Iraq (imports and exports) rose from \$377 million in 1985 to \$631 million in 1990.<sup>491</sup>

Even after the Security Council imposed sanctions against Iraq in August 1990, trade continued between Iraq and Jordan through the fall of Saddam Hussein in 2003. This trade included Iraq's export of oil to Jordan and Jordan's export of goods to Iraq. The Security Council and its 661 Committee were aware of this trade from the earliest days of the embargo against Iraq. Their responses to these commercial relations outside the Programme are outlined below.

### A. INITIAL REQUEST FOR RELIEF FROM SANCTIONS

After the passage of Resolution 661 on August 6, 1990, Jordanian authorities immediately expressed both their intentions to enforce sanctions and their apprehensions about the effect that the embargo would have on Jordan's economy. Two days after the Resolution's enactment, Jordan's Foreign Minister stated in an interview that "it is mandatory for us to comply" and that his government was "studying the implications," but Jordan Crown Prince Hassan bin Talal soon noted that Jordan would "suffer enormously" if it enforced Resolution 661.<sup>492</sup>

In the meantime, the United States President (George H. W. Bush) met with King Hussein and offered to help offset the economic burden of sanctions by providing financial assistance to Jordan in exchange for its compliance with the embargo. At the same time, President Bush publicly warned Jordan that United States ships would intercept trading traffic passing from Jordan to Iraq.<sup>493</sup> Crown Prince Hassan reiterated Jordan's commitment to the sanctions, noting:

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<sup>491</sup> These figures are derived from trade statistics submitted by Jordanian authorities to the United Nations Statistics Division for inclusion in the United Nations Commodity Trade Statistics Database. See United Nations, "Commodity Trade Statistics Database," <http://unstats.un.org/unsd/comtrade/default.aspx> (hereinafter "Comtrade").

<sup>492</sup> Nora Boustany, "Jordan Accepts U.N. Boycott, Closing Port of Aqaba to Iraq," *Washington Post*, Aug. 10, 1990, p. A25; "Jordan Backs UN Sanctions on Iraq," *Reuters*, Aug. 10, 1990; "Jordan Would Suffer if Applied Iraq Embargo-Prince," *Reuters*, Aug. 14, 1990; Michael Theodoulou, "Husain tries shuttle diplomacy between Bush and Saddam," *The Times*, Aug. 15, 1990 (discussing King Hussein of Jordan's efforts to mediate between Iraq and the United States).

<sup>493</sup> Patrick E. Tyler, "Bush Offers Aid to Jordan if Iraq Embargo Honored," *Washington Post*, Aug. 15, 1990, p. A1; Liz Sly and Elaine S. Povich, "Bush warning for Jordan: Heed Embargo," *Chicago Tribune*, Aug. 15, 1990, p. C1; Stephen Kurkjian, "Bush Sees Jordanians, Progress is Scant," *Boston Globe*, Aug. 17, 1990, p. 1.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

---

“I think there should be no confusion at all. We have accepted the U.N. mandatory resolution.” Nevertheless, news outlets continued to report the movement of goods across the Iraq-Jordan border.<sup>494</sup>

On August 20, 1990, Jordan’s Foreign Minister sent a letter to the Security Council requesting relief from the sanctions regime. Specifically, Jordan sought relief under Article 50 of the United Nations Charter, which provides that if a State is burdened by “special economic problems” arising from the Security Council’s “preventive or enforcement measures” against another State, then the affected State “shall have the right to consult the Security Council with regard to a solution of those problems.” The Foreign Minister noted that adherence to the terms of the resolution would lead to “extreme economic hardships” to Jordan, including a “direct financial loss” of no less than \$1.5 billion per year and “total collapse” of the Jordanian economy. Jordan’s calculation of this \$1.5 billion figure included a claimed debt of \$310 million owed to it by Iraq. This was exacerbated by an “additional obligation” incurred by Jordan of \$2.6 billion as a result of a commitment it had made to guarantee a debt owed by Iraq to an unspecified “third party.”<sup>495</sup>

Three days later, Jordan’s Permanent Representative to the United Nations appeared before the 661 Committee to caution that “no State should be asked to commit economic suicide.” Article 50, the ambassador explained, provided a means of “balancing” the “opposing considerations” of Jordan’s obligations under the Charter and its interest in self-preservation. For these reasons, Jordan hoped that the Security Council would supply not merely “promises of help” but also “prompt, effective and complete” relief.<sup>496</sup>

However, real relief was not in sight. On September 18, 1990, the Committee noted the “unique economic difficulties confronting Jordan,” and it requested that the Secretary-General conduct a “full assessment with suggestions for appropriate remedies” and appoint a special representative to coordinate assistance for Jordan. The Committee further appealed “to all States on an urgent basis, to provide immediate technical, financial, and material assistance to Jordan to mitigate the consequences of the difficulties faced by Jordan as a result of this crisis.”<sup>497</sup> Saudi Arabia—the

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<sup>494</sup> “Jordan Intends to Abide by U.N. Sanctions, Crown Prince Says,” *Reuters*, Aug. 17, 1990; Martin Woollacott, “King must convince wary subjects to support sanctions against Iraq,” *The Guardian*, Aug. 18, 1990, p. 3; Alex Efty, “Jordan Continues Shipments to Iraq Despite Embargo,” *Associated Press*, Aug. 14, 1990; “Official says Jordan is breaking UN embargo,” *The Independent*, Aug. 13, 1990, p. 7; Paul Clancy, “Jordan: The hole in the embargo,” *USA Today*, Aug. 16, 1990, p. 4A.

<sup>495</sup> Jordan Permanent Representative letter to the President of the Security Council (Aug. 20, 1990) (attaching “A memorandum on the economic and financial impact on Jordan resulting from the imposition of restrictions on its economic relations with Iraq and Kuwait”); United Nations Charter, ch. VII, art. 50.

<sup>496</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.3, pp. 3-5 (Aug. 23, 1990).

<sup>497</sup> “Special Report of the Security Council Committee Established by resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait on the Communication Received from Jordan with regard to Special Economic Problems Arising from the Carrying Out of the Measures Contained in Resolution 661 (1990),”

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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world's largest oil producer and another neighbor of Jordan—appeared as if it would furnish an alternative source of supply for Jordan's oil needs, but, according to media reports, this never came to pass as Jordan's relations with Saudi Arabia rapidly deteriorated.<sup>498</sup>

On October 22, 1990, in accordance with the 661 Committee's request for an assessment, the Secretary-General submitted a report from his special representative, which concluded that the sanctions had put Jordan "in an extremely difficult situation" in part because its oil supplies were "taken entirely" from Iraq via truck. Included with the special representative's report was a memorandum from the government of Jordan stating its general intention to support sanctions but advising that it would continue importing oil from Iraq unless "an alternative becomes available." The memorandum promised that Jordan would not transfer money to Iraq for the oil it received; instead, the value of the oil would merely be used to offset Iraq's debt to Jordan. "[N]o transfer of funds is being made to Iraq," the memorandum noted.<sup>499</sup>

About two months later, another senior United Nations official visited Jordan and reported back to the 661 Committee Jordan's great frustration with "the international community's apathy towards Jordan's plight." He also noted Jordan's intention to import oil from Iraq.<sup>500</sup>

Neither the Security Council nor the 661 Committee took action for the remainder of 1990 to grant Jordan's requested relief under Article 50 or to approve Jordan's stated intentions to continue the importation of Iraqi oil. In a meeting of the 661 Committee on January 14, 1991, the United Kingdom representative commented that the most recent report "offered a fairly reassuring picture" of Jordan's enforcement of sanctions and suggested the possibility that the United Nations organize ongoing monitoring of trade passing over the Iraq-Jordan border. The United States representative responded that he believed that the government of Jordan wanted to organize "long-term monitoring" and suggested that the 661 Committee "pursue further contacts" with Jordan to enable it to better cope with its economic difficulties. Although this suggestion of border monitoring was forwarded to the government of Jordan, which welcomed future missions

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S/21786 (Sept. 18, 1990); President of the Security Council letter to Javier Pérez de Cuéllar (Sept. 24, 1990) (informing the Secretary-General of the special report of the 661 Committee).

<sup>498</sup> "Saudis Halt Oil Supplies to Jordan as 'Reprisal,'" *The Jerusalem Post*, Sept. 23, 1990, p. 1; "Saudis cut off crude oil supplies," *The Times*, Sept. 22, 1990.

<sup>499</sup> Javier Pérez de Cuéllar letter to the President of the Security Council (Oct. 22, 1990); "Report on a Mission to Jordan Undertaken by the Special Representative of the Secretary-General, Mr. Jean Ripert, Former Director-General for Development and International Co-Operation," S/21938 (Annex) (Oct. 17, 1990); "Memorandum dated 13 October on measures carried out by the Government of Jordan to implement sanctions," S/21938 (Oct. 13, 1990) (enclosure).

<sup>500</sup> "Report of Mission to Jordan by United Nations Official, Mr. James Ngobi, Pursuant to the Invitation of the Government of Jordan to the Security Council Committee Established by resolution 661 (1990) concerning the situation between Iraq and Kuwait," S/AC.25/1990/COMM.167 (Dec. 18, 1990).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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by a designated United Nations official, it does not appear that a monitoring system along the Iraq-Jordan border was ever established.<sup>501</sup>

In the meantime, in late January 1991, United States planes bombed five tanker trucks carrying oil from Iraq to Jordan. This action prompted condemnation by the government of Jordan and a claim by Jordan's Foreign Minister that Jordan was authorized to import oil from Iraq.<sup>502</sup> The United States responded that Jordan's trade constituted "a clear violation" of the United Nations embargo and that the 661 Committee had "never approved an exception for Jordan." In addition, according to a media report, the Chairman of the 661 Committee disclosed that she had "no recollection" of the 661 Committee authorizing Jordan to import Iraqi oil.<sup>503</sup>

Nearly two months later, on March 22, 1991, twenty-one countries (including Jordan) that had previously requested relief under Article 50 submitted a memorandum to the Security Council expressing their disappointment that the appeals for international assistance "have not evoked responses commensurate with the urgent needs of the affected countries." Although the memorandum provoked a renewed appeal to member states, it did not result in further action by the 661 Committee or the Security Council.<sup>504</sup>

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<sup>501</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.24, pp. 2-3 (Jan. 14, 1991); Provisional record of 661 Committee meeting, S/AC.25/SR.25, p. 4 (Jan. 23, 1991); Provisional record of 661 Committee meeting, S/AC.25/SR.27, p. 1 (Feb. 7, 1991); Jordan Permanent Representative letter to 661 Committee Chairman, S.AC.25/1991/COMM.46 (Jan. 31, 1991).

<sup>502</sup> Jamal Halaby, "Foreign Minister: U.S. Warplanes Kill Four Jordanians, One Egyptian," *Associated Press*, Jan. 30, 1991; Rana Sabbagh, "Jordan Accuses Anti-Iraq Front of Bombing its Civilians," *Reuters*, Jan. 30, 1990.

<sup>503</sup> United States Department of State, "US Department of State Daily Briefing #20: Friday, 2/1/91," [http://dosfan.lib.uic.edu/ERC/briefing/daily\\_briefings/1991/9102/020.html](http://dosfan.lib.uic.edu/ERC/briefing/daily_briefings/1991/9102/020.html) (recording that State Department Spokesperson Margaret Tutwiler stated "[s]uch imports are a clear violation of U.N. Security Council Resolution 661, and the Sanctions Committee has never approved an exception for Jordan"); "State Department Says Jordan Is Not Free To Import Oil From Iraq," *Associated Press*, Feb. 1, 1991. The Independent Inquiry Committee has been unable to confirm from the 661 Committee Chairman, Marjatta Rasi, the accuracy of her quote as it appears in the media report.

<sup>504</sup> "Letter dated 22 March 1991 from the representatives of Bangladesh, Bulgaria, Czechoslovakia, Djibouti, India, Jordan, Lebanon, Poland, Romania, Seychelles, Sri Lanka, the Sudan, the Syrian Arab Republic, Tunisia, Mauritania, Pakistan, the Philippines, Uruguay, Viet Nam, Yemen and Yugoslavia to the United Nations addressed to the President of the Security Council," S/22382 (Mar. 22, 1991). These twenty-one countries had directed their appeals to a working group created for the purpose of evaluating requests for relief under Article 50. The working group's recommendations were forwarded to the Security Council. "Report of the Working Group of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait," WG/8/Rev.2 (Nov. 30, 1990); 661 Committee Chairman letter to the President of the Security Council, S/22021 (Dec. 19, 1990); 661 Committee Chairman letter to the President of the Security Council, S/AC/25/1991/CRP.6/Rev.1/Add.6 (Mar. 7, 1991); "Note by the President of the Security Council," S/22548 (Apr. 29, 1991).

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME**  
**VOLUME II - CHAPTER 4**  
**SMUGGLING**

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**B. THE 661 COMMITTEE “TAKES NOTE” OF JORDAN’S OIL IMPORTS**

Later in the spring of 1991, Jordan’s Foreign Minister wrote to the 661 Committee emphasizing Jordan’s “great difficulties” in “finding a continuous and secure source” of oil from sources other than Iraq. He stated Jordan’s intention to continue “on an urgent basis” its importation of oil and oil derivatives from Iraq and that these imports would be “funded by drawing down on Iraqi debts to Jordan.” Moreover, he stated that “the Government of Jordan is prepared to report to the Committee each month on the quantities, value, and dates of imports of all Iraqi oil and oil derivatives.”<sup>505</sup>

At the 661 Committee’s next meeting on May 21, 2001, the Chairman suggested that, “given the unique position of Jordan with respect to Iraq,” the Committee should “take note” of Jordan’s resumption of oil imports. The Chairman conditioned this “taking note” as “pending any arrangements . . . to obtain supplies from other sources.” The significance or meaning of the Committee simply “taking note” of an activity is not otherwise discussed in the Committee’s record of this meeting. Despite this lingering ambiguity, the Chairman’s “taking note” proposal passed without objection or comment.<sup>506</sup>

On the next day, the Chairman formally advised the Permanent Representative of Jordan of the 661 Committee’s decision to “take note” of Jordan’s importation of oil from Iraq.<sup>507</sup>

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<sup>505</sup> Jordan Permanent Representative note verbale to 661 Committee Chairman, S/AC.25/1991/COMM.159 (May 16, 1991).

<sup>506</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.41, p. 1 (May 21, 1991).

<sup>507</sup> 661 Committee Chairman letter to Jordan Permanent Representative, S/AC/25/1991/NOTE/55 (May 22, 1991).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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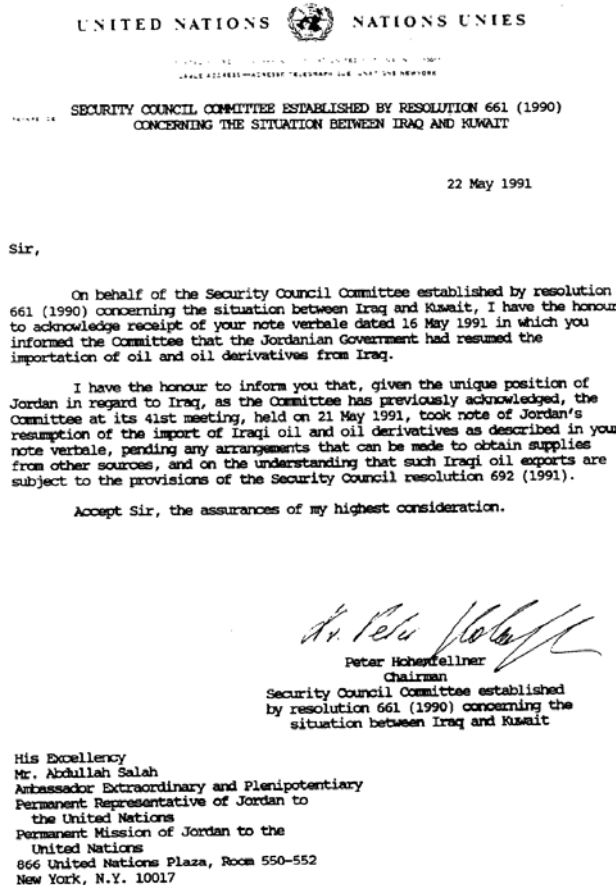


Figure: 661 Committee Chairman letter to Jordan Permanent Representative (May 22, 1991).

The Chairman's letter did not mention either of the proposed grounds for allowing Jordan to continue importing oil from Iraq, namely (1) that the imports would be in return for reduction of Iraq's debt, and (2) that Jordan would submit monthly reports to the Committee on the "quantity, value, and dates of imports of all Iraqi oil and oil derivatives." The letter suggested an obligation from Jordan that was not explicitly articulated in the Permanent Representative's note verbale, namely that Jordan would continue its efforts to obtain an alternative source of oil.<sup>508</sup>

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<sup>508</sup> Ibid.; Jordan Permanent Representative note verbale to 661 Committee Chairman, S/AC.25/1991/COMM.159 (May 16, 1991).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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## C. CONTINUED TRADE WITH IRAQ FROM 1991 TO 1994

According to the Committee's interviews of several senior officials from Iraq and Jordan, including former Oil Minister Amer Rashid, Iraq continued trading with Jordan outside of the Programme throughout the early 1990s, thereby extending a trade relationship that had existed well before the imposition of sanctions. Under the trade protocols in force from 1991-1993, Iraq provided 33,000 barrels per day of crude oil to Jordan free of charge, and volume exceeding this amount was sold at approximately \$16 per barrel. Beginning in 1994, Jordan began receiving half the oil it received from Iraq free of charge and the remainder at a discounted rate on the condition that Iraqi revenues would not fall below or exceed a certain threshold (between approximately \$200 and \$300 million). Two Iraqi officials stated that the first oil protocol signed during the sanctions periods specified that all of Iraq's oil exports to Jordan would be repaid in commodities.<sup>509</sup>

The government of Jordan has confirmed to the Committee the existence of trade protocols between Iraq and Jordan as well as the existence of the half-free, half-discounted arrangement described by Iraqi officials. A high-level official in the government of Jordan has explained that, under the terms of the protocol, the agreed-upon cash value of Iraq's oil exports to Jordan was placed in an account in the Central Bank of Jordan. Iraq did not pay suppliers directly with these funds. Rather, it provided Jordanian suppliers with vouchers that could be used to draw down on this oil-proceeds account. When presented with such a voucher, the Central Bank of Jordan would pay its holder the specified amount and debit the same amount from the oil-proceeds account.<sup>510</sup>

Jordan's importation of oil and its trade protocols with Iraq was also a subject of regular media reports. Many articles described the 661 Committee as having "tacitly approved" or "allowed" this exchange of commodities. Many also noted the dates and locations of negotiations of oil sales agreements. Some articles, especially those in specialized trade journals, provided details on the volumes, rates, and monetary value of the oil exported from Iraq to Jordan. Articles from 1990 to 1994 noted imports of about 50,000 barrels per day of crude oil.<sup>511</sup>

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<sup>509</sup> Amer Rashid interview (Feb. 20, 2005); Iraq officials interviews; Jordan official #3 interview (Jan. 26, 2005).

<sup>510</sup> Ibid. The Committee has not been able to locate a copy of the Jordan-Iraq trade protocols.

<sup>511</sup> See, e.g., Jamal Halaby, "Oil Tankers Rumble across Jordan-Iraq Border; Food Supplies Halted," *Associated Press*, Nov. 6, 1990 (quoting Jordanian Information Minister Ibrahim Izzedine as stating that Jordan is "importing oil from Iraq under a special arrangement under which Iraq is repaying a \$310 million debt" at a maximum rate of \$16.40 per barrel of crude oil); Dan Fesperman, "Jordan Asserts Right to Import oil from Iraq," *Baltimore Sun*, Feb. 3, 1991, p. 11A (quoting legal advisor to King Hussein Aoun Khasawneh as stating that "[f]rom the very beginning it has never been a secret that we were using this oil"); "Crude Oil Shipments to Jordan Recommence," *Middle East Economic Digest*, Apr. 26, 1991, p. 24 (reporting that Jordan imported around 47,000 barrels per day from Iraq in 1990); "Iraqi Oil Exports Reported," *New York Times*, Nov. 25, 1991, p. A2 (reporting that the 661 Committee had "turned a blind



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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The United States acquiesced to Jordan's violation of the United Nations sanctions, declining to suspend foreign assistance to Jordan, despite a provision of United States law that prohibited financial assistance to countries that were "not in compliance" with the United Nations sanctions against Iraq. A provision of this law allowed an exception if the President decided that such foreign assistance was "in the national interest." For example, when it invoked this exception in 1999 to allow the payment to Jordan of \$196.6 million of aid, the United States administration acknowledged that "[d]espite UNSC resolutions banning Iraqi oil imports (except under the terms of 'oil for food' resolutions such as UNSCR 986), Jordan has continued to import oil from Iraq." The United States, however, would "continue to work through the UN Sanctions Committee and with the government of Jordan to strengthen enforcement of the sanctions regime," and "[t]he provision of FY99 assistance to Jordan will underscore U.S. support for Jordanian sanctions enforcement efforts, which remain key to U.S. interests in the region."<sup>512</sup>

Indeed, these "national interest" waivers were invoked by the United States every year from 1991 to 2002. The waivers cleared the way for the United States to provide at least \$2.4 billion in aid to Jordan between 1991 and 2003.<sup>513</sup>

Diplomats interviewed by the Committee frequently brought up the position of the United States and, to a lesser degree, of the United Kingdom, as a key factor in determining the measures taken

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eye" to Iraqi oil exports to Jordan); Jane Arraf, "Jordan Offered Oil to Implement Monitoring Plan," *Reuters*, June 28, 1992 (reporting that Jordan imports 50,000 barrels per day from Iraq); Rana Sabbagh, "Jordan and Iraq sign 1993 oil purchase accord," *Reuters*, Jan. 7, 1993 (reporting that Jordan would receive half of its oil imports for free and the remainder at \$16 a barrel, and quoting an unnamed government official that "Jordan has renewed and signed its annual oil purchase agreement with Iraq"); "Food, oil trucks remain stranded on Jordan side of Iraqi border," *Agence France-Presse*, May 8, 1993 (reporting that Jordan imports 50,000 barrels of oil each day from Iraq); "Jordan Asks U.N. to Ease Trade Curbs With Iraq," *Associated Press*, Jan. 18, 1994 (stating that "Iraq supplies Jordan with its full daily need of 50,000 barrels of crude oil and 25,000 barrels for fuel oil under special permission from the United Nations"); James Tanner, "Flood of Iraq Crude Oil Fades as Market Threat," *Wall Street Journal*, May 24, 1994, p. C1 (stating that "Iraq is allowed by the U.N. to send 60,000 barrels a day to Jordan").

<sup>512</sup> United States Department of State, "Memorandum of Justification Regarding the Determination under Section 535 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999 that Providing Assistance to Jordan is in the National Interest" (Dec. 21, 1998); see also United States Department of State, "Memorandum of Justification Regarding the Determination that Providing Assistance to Jordan is in the National Interest" (Oct. 17, 2002); United States Department of State letter to the Committee (Apr. 29, 2005) (stating that "Jordan was and remains a critical partner of the United States in bringing stability and a lasting peace to the Middle East").

<sup>513</sup> United States Department of State, "Memorandum of Justification Regarding the Determination that Providing Assistance to Jordan is in the National Interest" (Oct. 17, 2002) (stating that "the restriction has been waived with respect to Jordan every year since its enactment in FY [fiscal year] 1991"); see also United States Department of State letter to the Committee (Apr. 29, 2005) (confirming that the United States waived restrictions on aid to Jordan yearly beginning in 1991); United States Agency for International Development, "U.S. Overseas Loans and Grants [Greenbook]," <http://quesdb.cdie.org/gbk> (further noting that \$980 million of this \$2.4 billion was donated in 2003).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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by the 661 Committee and Security Council to address the Jordanian issue. One United Kingdom official stated that the “Jordanian exception” was known to everyone and “tolerated” because the United States and the United Kingdom wanted it to be tolerated. A German official remarked that the United States informally allowed Jordan’s practice of importing Iraqi oil to persist, and, as a result, the issue was not raised at 661 Committee meetings. A second German official said that his government assumed that questions relating to Jordan’s trade with Iraq had been resolved bilaterally between the governments of Jordan and the United States. A Dutch official made a similar comment, stating that the United States and the United Kingdom were reluctant to discuss any topics relating to Jordan. A Russian official remarked that the United States seemed to favor Jordan over other countries that applied for Article 50 exceptions.<sup>514</sup>

When interviewed by the Committee, the United States officials acknowledged the peculiar position of the United States government towards Jordan. One former United States official advised the Committee that Jordan’s trade with Iraq was “formally blessed” by his government. He added that during sanctions the United States had decided not to pursue efforts to halt the flow of Iraqi oil into Jordan. Another former United States official made references to the foreign assistance waivers and noted that Jordan was “important to us.” A third former official commented that the question of trade between Iraq and Jordan, as well as Turkey, boiled down to the United States’ relations with two important allies.<sup>515</sup>

## D. REPORTS TO THE 661 COMMITTEE FROM 1991 TO 1994

As discussed above, Jordan offered in 1991 to submit monthly reports to the 661 Committee concerning its importation of oil from Iraq. For the three-year period from May 1991 to June 1994, Jordan submitted twenty-four reports describing the quantity and value of its oil imports from Iraq. Jordan’s reporting was initially intermittent and incomplete. In particular, the 661 Committee received reports on only six of the twelve months between August 1991 and July 1992. After August 1992, Jordan’s communications on oil imports were comprehensive but not timely (e.g., the 661 Committee received information on oil imports for June to December 1993 only in January 1994).<sup>516</sup>

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<sup>514</sup> United Kingdom official #5 interview (Sept. 27, 2004); Germany official #2 interview (Nov. 19, 2004); Germany official #1 interview (Feb. 11, 2005); Netherlands official #2 interview (Mar. 10, 2005); Russia officials #3, 6-7 interview (Mar. 1, 2005).

<sup>515</sup> United States official #3 interview (Dec. 13, 2004); United States official #9 interview (Dec. 22, 2004); United States official #11 interview (Jan. 13, 2005).

<sup>516</sup> Jordan’s reports to the 661 Committee concerning its importation of Iraqi oil are contained in the following United Nations documents: Jordan Permanent Representative letters to 661 Committee Chairman, S/AC.25/COMM.423 (Sept. 13, 1991) (imports during August 1991); S/AC.25/1991/COMM.500 (Oct. 18, 1991) (imports during September 1991); S/AC.25/1991/COMM.638 (Dec. 5, 1991) (imports during October 1991); S/AC.25/1991/COMM.707 (Dec. 23, 1991) (imports during November 1991); S/AC.25/1992/COMM.435 (May 27, 1992) (imports during April 1992); S/AC.25/1992/COMM.556 (July 2, 1992) (imports during May 1992); S/AC.25/1992/COMM.1421 (Nov.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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The records of the formal meetings of the 661 Committee reflect that the 661 Committee “took note” of the receipt of these reports, but the reports were generally not further discussed by the 661 Committee. The records do not reflect that the 661 Committee requested Jordan to provide trade data for the months for which it had failed to provide a report. Chairmen of the 661 Committee routinely wrote letters to the Permanent Mission of Jordan informing it of the body’s decision to take note. These letters reiterated the condition that Jordan’s imports of Iraqi oil would continue “pending any arrangements that can be made to obtain supplies from other sources.”<sup>517</sup>

In the meantime, substantial doubts emerged about whether Jordan was understating the level of its oil imports in its reports to the 661 Committee. In December 1991, the London-based newsletter *Energy Compass* reported that Jordan’s imports of Iraqi oil were flowing at nearly twice the rate indicated in Jordan’s submission to the 661 Committee. The newsletter added that revenues from the sale of oil to Jordan were controlled by “members of Saddam Hussein’s family and inner circle.” It also noted that “Jordan is the prime location for the Iraqi oil industry’s efforts to secure equipment and materials in defiance of U.N. sanctions.” This story was subsequently reported by the *Reuters* news service.<sup>518</sup>

The doubts of the media were confirmed within the United Nations by Paul Conlon, who then worked for the United Nations Department of Political Affairs. Mr. Conlon noticed that Jordan

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6, 1992) (imports during September 1992); S/AC.25/1992/COMM.1663 (Nov. 27, 1992) (imports during October 1992); S/AC.25/1992/COMM.1717 (Dec. 7, 1992) (imports during August 1992); S/AC.25/1992/COMM.1778 (Dec. 17, 1992) (imports during November 1992); S/AC.25/1993/COMM.207 (Feb. 1, 1993) (imports during December 1992); S/AC.25/1993/COMM.1285 (May 20, 1993) (imports during February 1993); S/AC.25/1993/COMM.1116 (May 6, 1993) (imports during March 1993); S/AC.25/1993/COMM.1382 (May 28, 1993) (imports during April 1993); S/AC.25/1993/COMM.1638 (June 23, 1993) (imports during May 1993); S/AC.25/1994/COMM.336 (Jan. 17, 1994) (imports between June 1 and December 31, 1993); S/AC.25/1994/COMM.2129 (Mar. 23, 1994) (imports during February 1994); S/AC.25/1994/COMM.2968 (May 10, 1994) (imports during March 1994); S/AC.25/1994/COMM.3022 (May 12, 1994) (imports during April 1994); S/AC.25/1994/COMM.3808 (July 12, 1994) (imports during January 1994); Jordan Permanent Representative letter to 661 Committee Chairman (Oct. 13, 1994) (imports during June 1994); Jordan Mission letters to 661 Committee Chairman, S/AC.25/1991/COMM.267 (July 15, 1991) (imports between May 10, 1991 and June 30, 1991); S/AC.25/1993/COMM.358 (Feb. 22, 1993) (imports during January 1993); S/AC.25/1994/COMM.3449 (June 15, 1994) (imports during May 1994). The Committee has not located reports on oil imports during July 1991, December 1991, January 1992, February 1992, March 1992, June 1992, and July 1992.

<sup>517</sup> See, e.g., Provisional record of 661 Committee meeting, S/AC.25/SR.81, pp. 2-3 (Nov. 11, 1992) (“taking note” of Jordan’s submission of report). For examples of letters from the 661 Committee Chairman to Jordan, see 661 Committee Vice Chairman letter to Jordan Permanent Representative (June 9, 1992); 661 Committee Chairman letter to Jordan Permanent Representative, S/AC.25/1993/OC.1073 (June 15, 1993); 661 Committee Chairman letter to Jordan Permanent Representative, S/AC.25/1994/OC.2835 (Aug. 29, 1994).

<sup>518</sup> “Oil Racketeering Helps Sustain Saddam’s Leadership of Iraq,” *Energy Compass*, Dec. 4, 1991, p. 15; “Iraqi Exports Running at 105,000 bpd – Compass,” *Reuters*, Dec. 5, 1991.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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was reporting far less in oil imports to the 661 Committee than it was separately reporting to the United Nations Department of Economic and Social Development for use in a general commercial statistics database known as “Comtrade.” In December 1993, Mr. Conlon prepared a lengthy memorandum that was informally distributed to the members of the 661 Committee and that described a gap of several hundred million dollars between what Jordan reported to the 661 Committee and what Jordan reported to Comtrade. Specifically, Jordan had reported \$135 million and \$256 million worth of oil trade with Iraq in 1991 and 1992, respectively, whereas Comtrade estimated the oil imports to be worth \$269 million and \$426 million for the same periods, respectively.<sup>519</sup>

Mr. Conlon’s memorandum observed that “[n]ot only do the trade statistics submitted by Jordan [to the 661 Committee] contain gaps and internal inconsistencies, but they are contradicted on major points by the statistics which Jordan simultaneously submits to the Department of Economic and Social Development for inclusion in Comtrade.”<sup>520</sup>

Mr. Conlon also noted concerns with the premise that Jordan’s ongoing oil imports were merely in exchange for a reduction in Iraq’s debt to Jordan. He noted that the debt figures furnished by Jordan to the 661 Committee in seeking Article 50 relief “contained no less than three discrepant quantifications of the amount in question” and were “never clarified in any way.” According to Mr. Conlon, “the most reasonable interpretation of the contradictory” debt figures suggested a debt of \$238 million, which would have been entirely paid off by April 1992 based on the oil import figures reported by Jordan to the 661 Committee. Mr. Conlon concluded that “trade with Jordan now earns currency for Iraq.”<sup>521</sup>

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<sup>519</sup> Paul Conlon memorandum to James C. Ngobi (Dec. 1, 1993). At the time, Mr. Ngobi was Deputy Director of the Security Council Subsidiary Organs, Secretariat Services Branch, Department of Political Affairs. The Comtrade figures cited by Mr. Conlon for 1992 appear to include not only crude oil and oil derivatives but also other mineral fuels, including natural gas. These other mineral fuels account for \$5 million of the \$426 million noted by Mr. Conlon for that year. Comtrade record, Jordan trade with Iraq (1991-1992). It should also be noted that SOMO records pertaining to trade between Iraq and Jordan are inconsistent with Jordan’s reporting to both Comtrade and to the 661 Committee. According to SOMO, in 1991 and 1992 Jordan received about \$334 million and \$472 million worth of oil and oil products from Iraq, respectively. SOMO Table on Oil Sales.

<sup>520</sup> Ibid. Mr. Conlon acknowledged in his memorandum that the oil import figures Jordan reported to the 661 Committee did not encompass all months in 1991 and 1992, but noted that “[t]he contradiction [between Comtrade and Jordan’s reports] is not eliminated even after making allowances for what can be assumed to be average monthly oil flows for months for which reportings were never submitted.” Paul Conlon memorandum to James C. Ngobi (Dec. 1, 1993).

<sup>521</sup> Mr. Conlon calculated the debt owed by Iraq to Jordan by reducing the figure provided in the August 24, 1990 letter of Jordan’s Foreign Minister (\$310 million) by the monetary value of Jordan’s imports of Iraqi oil during the months between autumn 1990 and late spring 1991. Mr. Conlon did not claim to have arrived independently at the figure of \$238 million, but rather stated that his estimate was “the most reasonable interpretation of the contradictory remarks” provided by Jordanian officials. When contacted by the Committee, Mr. Conlon explained that this calculation was “highly speculative” and required the input of several other persons on “the appropriate parameters.” With respect to Mr. Conlon’s assertion that Iraqi

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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With respect to the disparate trade data, Mr. Conlon noted that the Comtrade data was “in the public domain,” and he warned that “at any moment a thorough researcher can replicate most of what is in [his] report.” Accordingly, Mr. Conlon “consider[ed] it important that these figures be brought to the attention of the members [of the 661 Committee] to spare them potential embarrassment of being unprepared for the questions that would ultimately be raised if the figures found their way into press reports.” He further recommended that “the [661] Committee be made aware of the potential ongoing damage to its dignity and status in ‘taking note of’ or otherwise seeming to accept unqueringly [*sic*] correspondence from Governments on these matters which contains non-credible data, internal discrepancies or other obvious defects.”<sup>522</sup>

The disparities noted by Mr. Conlon between Comtrade figures and Jordan’s disclosures to the 661 Committee continued in subsequent years. In 1993, Jordan reported \$249 million in oil and oil derivative imports to the 661 Committee, compared to a figure of \$438 million to Comtrade—a difference of nearly \$190 million. In 1994, Jordan reported \$373 million in imports of oil and oil derivatives to the 661 Committee, compared to \$407 million to Comtrade.<sup>523</sup>

Mr. Conlon’s memorandum was circulated to at least the 661 Committee’s Chairman and also the representatives from France, the United Kingdom, and the United States, but there was little response. The summary records of the 661 Committee do not reflect that Mr. Conlon’s memorandum or the concerns he raised were the subject of discussion before the 661 Committee. In April 1994, Mr. Conlon raised his concerns outside the United Nations to a reporter who published an article in the Kuwaiti News Agency. This article was sent to the Chairman and some of the members of the 661 Committee.<sup>524</sup>

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debt to Jordan was paid off by April 1992, it appears Mr. Conlon averaged the monthly values of Jordan’s oil imports from Iraq as reported to the 661 Committee and estimated that the value of these imports had exceeded \$238 million after ten months. Paul Conlon interview (Aug. 15, 2005).

<sup>522</sup> Paul Conlon memorandum to James C. Ngobi (Dec. 1, 1993).

<sup>523</sup> Comtrade record, Jordan trade with Iraq (1993-1994); S/AC.25/1993/COMM.358 (Feb. 22, 1993) (imports during January 1993); S/AC.25/1993/COMM.1285 (May 20, 1993) (imports during February 1993); S/AC.25/1993/COMM.1116 (May 6, 1993) (imports during March 1993); S/AC.25/1993/COMM.1382 (May 28, 1993) (imports during April 1993); S/AC.25/1993/COMM.1638 (June 23, 1993) (imports during May 1993); S/AC.25/1994/COMM.336 (Jan. 17, 1994) (imports between June 1 and December 31, 1993). According to SOMO estimates, in 1993 and 1994 Iraq provided Jordan with approximately \$405 million and \$378 million worth of oil and oil products, respectively. SOMO Table on Oil Sales. Jordan did not report to Comtrade on its imports of Iraqi fuel oil, gas oil, or liquefied petroleum gas in 1994. As noted below, the 661 Committee did not receive statistics on Jordan’s importation of Iraqi oil during the period of July through December 1994 until March 1997. See Jordan Permanent Representative letter to 661 Committee Chairman, S/AC.25/1997/COMM.2190 (Mar. 4, 1997).

<sup>524</sup> Paul Conlon interview (Feb. 3, 2005); Walter Pfaeffle, “Sanctions Iraq-Jordan,” *Kuwaiti News Agency*, Apr. 28, 1994 (stating that Jordan was deliberately supplying a U.N. sanctions enforcement panel with false figures about its trade with Iraq); Victor Sukhodrev note-to-file (May 16, 1994); Jordan Permanent Representative letter to Boutros Boutros-Ghali (May 19, 1994); Rosario Green letter to Jordan Permanent Representative (May 26, 1994).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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On May 18, 1994, the representative of the United States requested that the Secretariat “provide figures on the aggregate amount of oil received by Jordan from Iraq,” both in terms of volume and dollar value. He added that “[m]any of the economic losses suffered by Jordan could have been made up from that source,” yet no additional comments on this matter were offered by other representatives, and the Committee Chairman ambiguously concluded that the 661 Committee would “proceed accordingly.”<sup>525</sup>

Despite the questionable basis for Jordan’s oil imports and its erratic reporting to the 661 Committee, in early 1994 it submitted a memorandum requesting “compensation for all the direct and indirect losses” from the sanctions against Iraq. Jordan’s Prime Minister appeared before the Committee on January 27, 1994 to stress the economic consequences of Jordan’s efforts to “strictly” apply the United Nations embargo. The memorandum and presentation did not produce any substantial discussion in the 661 Committee.<sup>526</sup>

After addressing the 661 Committee, the Prime Minister stated that the 661 Committee had not questioned Jordan’s practice of importing Iraqi oil. Moreover, in contrast to Jordan’s prior representations that oil would be imported for a reduction in Iraq’s debt to Jordan, the Prime Minister stated that Jordan was exporting “humanitarian goods in payment for what we get in oil.”<sup>527</sup>

Jordan’s export of goods to Iraq in return for the oil it received was not subject to United Nations inspection or control. One United States official characterized the trade protocol between Jordan and Iraq as resulting in a daily flow of goods with no scrutiny.<sup>528</sup>

## E. ILLICIT TRADE WITH IRAQ DURING THE PROGRAMME

In April 1995, the Security Council passed Resolution 986 to authorize what became the Oil-for-Food Programme. Although this measure was a watershed development in the evolution of the sanctions regime against Iraq, Resolution 986 did not address or acknowledge pre-existing trade between Iraq and any of its neighbor states that occurred outside of the Programme.<sup>529</sup>

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<sup>525</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.112, p. 10 (May 18, 1994).

<sup>526</sup> Government of Jordan, “Memorandum on the Jordanian economy and the implementation of U.N. sanctions, concerning the Gulf crisis,” (Jan. 1994); Provisional record of 661 Committee meeting, S/AC.25/SR.108, p. 1 (Jan. 27, 1994).

<sup>527</sup> Anthony Goodman, “Jordan tells U.N. it is complying with Iraq sanctions,” *Reuters*, Jan. 27, 1994.

<sup>528</sup> United States official #10 interview (Aug. 24, 2004); see also United Kingdom official #6 interview (Dec. 7, 2004).

<sup>529</sup> See S/RES/986 (Apr. 14, 1995). Although Resolution 986 did not address the general issue of Iraq’s trade with border countries, numerous companies from border countries elected to participate in transactions conducted under Programme. Companies registered with the Programme through the

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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SOMO has provided the Committee with data on the value of oil and oil products sold to Jordan between 1991 and April 2003. According to SOMO, in this time period Jordan received nearly \$6 billion worth of oil and oil products, out of which nearly \$4 billion worth of oil and oil products were provided to Jordan between 1996 and 2003. According to Iraqi official interviews, Iraq imported \$451 million in goods from Jordan outside the Programme as a result of its oil sales to Jordan. All of this trade was outside the Programme.<sup>530</sup>

As noted above, Jordan's import of oil was initially said to be in return for reduction of Iraqi debt and only later described as a "barter" arrangement involving the exchange of goods for oil provided by Iraq. By late 2002, a "cash component" was introduced, whereby Iraq would receive sixty percent of the revenues of its oil sales in commodities and forty percent in cash. The cash component account, which was opened at the Jordan National Bank in March 2002 in the names of two senior SOMO officials, received the equivalent of over €5.1 million in wire transfers from the Jordanian Ministry of Finance and the Central Bank of Jordan between September 2002 and January 2003 and an additional €2.3 million from an unidentified source in February 2003. In a letter requesting the opening of this account, a SOMO official noted that that the account was intended for "the deposit of incoming funds from the Jordanian Ministry of Energy and Mineral Resources." The 661 Committee was not advised at the time of this cash component of Jordan's trade with Iraq, and government officials who spoke with the Independent Inquiry Committee were not aware of this cash component.<sup>531</sup>

Frequent press reports similarly reflected the continuation of oil trade from 1995 through 2003—all outside the purview of the Programme. These media accounts suggested a steady increase from 60,000 barrels per day to a high of 100,000 barrels per day.<sup>532</sup> The Committee has

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Permanent Mission of Jordan accounted for 1.15 percent of total oil purchases and 7.46 percent of total humanitarian sales under the Programme. TaR (1996-2003).

<sup>530</sup> SOMO Table of Oil Sales; Iraq officials interviews. SOMO has also provided the Committee with data on Jordan's payments to Iraq in the total amount of nearly \$623 million between January 2002 and March 2003. SOMO record, Jordanian agreement payments (Jan. 2002 to Mar. 2003). By the final years of the Programme, Jordan's daily imports of Iraqi oil had reached 80,000 barrels per day. Iraq officials interviews.

<sup>531</sup> Jordan National Bank record, Ali Rajab Hassan letter to Jordan National Bank (Mar. 13, 2002); Jordan National Bank record, Ali Rajab Hassan and Yakhthman Hassan Ibrahim bank account statement (Sept. 2002 to Mar. 2003); Iraq officials interviews; United States official #16 interview (Jan. 11, 2005); United States official #14 interview (Apr. 1, 2005); United Kingdom official #3 interview (Jan. 5, 2005); France official #3 interview (Dec. 12, 2004); Norway official #1 interview (Aug. 31, 2004); Russia official #11 interview (Nov. 2, 2004).

<sup>532</sup> See, e.g., Andrew Borewicz, "Iraq embargo feeds Jordanian economy, Oil finances myriad essential imports," *Washington Times*, Oct. 27, 1995, p. A1 (reporting that "hundreds of trucks deliver 70,000 barrels of oil a day to Jordan's Zarqa refinery"); "Iraq, Jordan Signs [*sic*] Increased Oil Supply Agreement," *Dow Jones International News*, Dec. 30, 1995 (reporting on an agreement for export of oil to Jordan during 1996); "Jordanian PM Discusses Trade with Iraqi Minister," *BBC Monitoring Service*, Dec. 11, 1996 (referring to Jordanian Minister of Information Marwan Al-Mu'ashshir stating that the Jordanian-Iraqi trade protocol was separate from Resolution 986); "Jordan, Iraq discuss renewing oil and trade deals,"

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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requested trade data from Jordan in order to verify the accuracy of information it has received from SOMO and that was reported in the media, but Jordan has not furnished further data.<sup>533</sup>

On the issue whether trade with Jordan should have been brought within the Programme, a United States official noted the discounted rate that Jordan enjoyed on its imports and commented that “all of us would have been happy if, with the passage of Resolution 986, Jordan would have paid more to be part of the Programme . . . but no one can really expect that [Jordan] would have made that choice.” A French official expressed a similar point of view, stating that 661 Committee members had decided in advance that it would be easier to keep the pre-existing arrangements between Jordan and the United Nations separate from the wider umbrella of Resolution 986. More succinctly, a United Kingdom official stated that political considerations led to a decision not to include Iraq-Jordan trade under the Programme.<sup>534</sup>

## F. IMPORTS THROUGH AQABA

Aqaba, Jordan’s only major port, is situated on the north shore of the Gulf of Aqaba on the Red Sea. Both prior to and during the Programme, the Port of Aqaba was a major transit point for commodities destined for Iraq and the only location in Jordan at which large vessels could load and discharge goods. Following the imposition of sanctions against Iraq, the Multinational Interception Force (“MIF”)—a multinational coalition of naval forces that patrolled the international waters of the Persian Gulf in accordance with authority granted by the Security

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*Agence France-Presse*, Jan. 16, 1997 (noting that an oil agreement signed in 1990 “calls on Iraq to supply Jordan 3.2 million tonnes and 1.2 million tonnes of petroleum products”); “Iraqi Minister hopes for increased trade with Jordan,” *BBC Monitoring Service*, June 16, 1998 (relating a report by the Iraqi News Agency that Iraq will increase the volume of trade with Jordan to \$256 million “to cover purchases of commodities and goods”); “Iraq, Jordan sign oil supply agreement,” *Reuters*, Jan. 4, 1999 (reporting the signing of an oil protocol for 4.8 million tons of crude oil and oil derivatives); Hassan Hafidh, “Iraq and Jordan agree on oil deal for coming year,” *Reuters*, Jan. 22, 2000 (reporting the signing of an agreement for the import of 4.8 million tons of crude oil and derivatives at a maximum value of \$19 per barrel in exchange for food and medicine); “Iraq to continue to export oil to Jordan, Turkey if they reject US-UK plan,” *BBC Monitoring Service*, June 4, 2001 (relating a report on Iraqi television in which Iraqi Minister of Trade Muhammad Mahdi Salih stated that trade between Jordan and Iraq “has not changed since the beginning of the embargo and the United Nations has never objected to Iraq exporting oil to Jordan”); “Iraq and Jordan renew oil deal,” *Agence France-Presse*, Nov. 21, 2002 (reporting Jordan’s renewal of an “11-year special agreement” for the importation of oil from Iraq); Ruba Husari, “Jordan Stockpiles Oil In Preparation for War,” *Energy Intelligence Briefing*, Dec. 11, 2002 (noting Jordan’s imports of 80,000 barrels of crude oil a day from Iraq); “Jordan preparing for war, Hoarding Smuggled Iraqi Oil,” *Oil Daily*, Mar. 11, 2003 (reporting that Jordan is importing 100,000 bpd from Iraq). Iraq and Jordan also discussed construction of a pipeline. See, e.g., Leon Barkho, “Iraq, Jordan renew oil deal, agree to construct pipeline,” *Associated Press*, Nov. 3, 2000.

<sup>533</sup> Committee letter to Jordan Permanent Representative (Apr. 29, 2005); Committee letter to Jordan Permanent Representative (June 9, 2005).

<sup>534</sup> United States official #16 interview (Jan. 11, 2005); France official #4 interview (Dec. 12, 2004); United Kingdom official #3 interview (Jan. 5, 2005).



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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Council—began patrolling both the Persian Gulf and the Gulf of Aqaba, intercepting ships suspected of sanctions violations.<sup>535</sup> The government of Jordan took strong exception to MIF activities near Jordanian waters, and hired the British firm Lloyd’s Register (“Lloyd’s”) to perform inspections services at Aqaba in an attempt to eliminate the need for further MIF policing of Jordan-bound vessels.<sup>536</sup> Jordan’s hiring of Lloyd’s met with the approval of the 661 Committee, and Lloyd’s inspections began in late August 1994.<sup>537</sup>

The Lloyd’s agreement for inspections at Aqaba stipulated that Lloyd’s would provide Jordan with reports on its inspections at mutually determined intervals, which Jordan would transmit to the Secretariat. The Secretariat would forward the reports it received concerning the operations of Lloyd’s at Aqaba to the 661 Committee.<sup>538</sup> Accordingly, between 1994 and 2000, Jordan regularly provided the 661 Committee with reports prepared by Lloyd’s officers in Aqaba.<sup>539</sup> In addition, representatives of Lloyd’s periodically briefed the 661 Committee on the activities at Aqaba. Jordan provided Lloyd’s officers complete access to all areas of the port, and inspectors were on the ground at Aqaba seven days a week, twenty-four hours a day. In addition, the government of Jordan supplied a team of customs agents that worked in parallel with Lloyd’s officers.<sup>540</sup>

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<sup>535</sup> S/RES/665 (Aug. 25, 1990). The activities of the MIF are discussed below in Section V.B.

<sup>536</sup> Government of Jordan, “Memorandum on the Jordanian economy and the implementation of U.N. sanctions, concerning the Gulf crisis,” (Jan. 1994); Provisional record of 661 Committee meeting, S/AC.25/SR.108 (Jan. 27, 1994); Jordan Permanent Representative letter to Boutros Boutros-Ghali (Mar. 10, 1994); *The Naval Interdiction of Aqaba Shipping: Issues Arising Under International Law* (1994); Tony Sanders interview (Nov. 16, 2004) (containing discussion by Mr. Sanders, a former employee of Lloyd’s, of Jordan’s hiring of the company).

<sup>537</sup> “Agreement Between the United Nations and the Government of the Kingdom of Jordan” (Aug. 25, 1994); United Kingdom Permanent Representative letter to 661 Committee Chairman (Aug. 17, 1994); Provisional record of 661 Committee meeting, S/AC.25/SR.131, p. 2 (Jan. 25, 1996) (noting that inspections began on August 25, 1994). It should be noted that the United Nations later hired Lloyd’s in 1996 to conduct inspections at various Iraqi border checkpoints for Programme goods entering Iraq. This was a separate arrangement from the agreement between Lloyd’s and Jordan, and it is described in the Committee’s First Interim Report. See “First Interim Report,” pp. 97-107.

<sup>538</sup> “Umbrella agreement among the United Nations, the Government of the Kingdom of Jordan and Lloyd’s Register Inspection, Ltd.” (Aug. 1994).

<sup>539</sup> See, e.g., Lloyd’s Register, “Report of the Lloyd’s Register Cargo Examination and Verification Team in Aqaba, August 1995 to July 1996” (undated); “Letters dated 15 and 22 March 1999 from the Ports Corporation Aqaba addressed to the Chairman,” S/AC.25/1999/COMM.32 (Mar. 25, 1999) (containing Weekly Report Number 237 from Lloyd’s register “pertaining to Examination and Verification of Cargo at Aqaba” from March 6 to March 11, 1999).

<sup>540</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.116, pp. 3-5 (Oct. 11, 1994); Provisional record of 661 Committee meeting, S/AC.25/SR.131, pp. 1-2 (Jan. 25, 1996); Provisional record of 661 Committee meeting, S/AC.25/SR.158, p. 2 (June 27, 1997).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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Lloyd's soon found itself in a difficult position in the spring and summer of 1995 when it became clear that the government of Jordan did not believe that it needed notice from the 661 Committee before allowing foodstuffs to pass through Aqaba to Iraq. This practice seemed to be a departure from the terms of Resolution 687, which stated that the "transactions related thereto contained in Resolution 661 (1990) shall not apply to foodstuffs notified to the [661 Committee], with the approval of that Committee, under the simplified and accelerated 'no-objection' procedure." Although Lloyd's raised this concern with the 661 Committee, the Committee endorsed a suggestion by the United Kingdom representative that the body allow Lloyd's to release foodstuffs to Iraq without first seeking approval from the United Nations. In making this suggestion, the United Kingdom representative claimed that "the relevant resolutions did not expressly require prior notification."<sup>541</sup>

During this period, Lloyd's also discovered that the Jordanian customs authorities' understanding of the term "foodstuffs" was broader than the United Nations' definition. Between 1995 and 2000, Lloyd's regularly released cargos of foodstuffs to Iraq, including alcohol and tobacco, without a United Nations letter of approval. For example, it reported to the 661 Committee in November 2000, that since August 2000, it had "released to Iraq, in line with the Jordanian Customs interpretation of foodstuffs, without a United Nations letter," more than four million cigarettes, nearly 2,500 metric tons of tobacco, more than 1.5 million liters of beer, more than 185,000 bottles of wine, more than 300,000 liters of vodka, and more than 700,000 bottles of whiskey. So far as the 661 Committee's meeting notes reflect, this report from Lloyd's caused no concern or response by the 661 Committee.<sup>542</sup>

In early November 2000, Jordan advised the 661 Committee that it was terminating its contract with Lloyd's at the end of the year, but that it was "in the process of executing a new contract with a different contractor (other than Lloyd's) at lesser prices."<sup>543</sup> A few weeks later, Jordan queried "how the Committee would react" if Jordan were "unable to find a replacement for Lloyd's Register, either in the short term or at all." The United States and the United Kingdom

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<sup>541</sup> S/RES/687, para. 20 (Apr. 8, 1991); Lloyd's Register, "Report of the Lloyd's Register Cargo Examination and Verification Team in Aqaba, July 1994-August 1995" (undated); Provisional record of 661 Committee meeting, S/AC.25/SR.131, p. 5 (Jan. 25, 1996).

<sup>542</sup> Lloyd's Register, "Report of the Lloyd's Register Cargo Examination and Verification Team in Aqaba, July 1994-August 1995" (undated); "Lloyd's Register Aqaba Weekly Report" (Aug. 18, 1998); "Letters dated 27 April & 10 May 1999 from the Ports Corporation, Aqaba addressed to Chairman," S/AC.25/1999/COMM.43 (May 10, 1999) (attaching "Lloyd's Register Aqaba Weekly Report" (Apr. 27, 1999) and "Lloyd's Register Aqaba Weekly Report" (Apr. 18, 1999)); "Letter Dated 27 November 2000 from the Lloyd's Register addressed to the Committee," S/AC.25/2000.COMM.229 (Dec. 5, 2000) (with attached "Aqaba Port Project: Annual Report August 1999-July 2000"). See, e.g., Lloyd's Register, "Lloyd's Register Aqaba Weekly Report" (Nov. 2, 1999) (reporting that thirteen 40 foot containers of cigarettes and 1,100 cases of whiskey had been approved for release "in line with Jordanian Customs interpretation of foodstuffs without UN letter"); "Provisional record of 661 Committee meeting," S/AC.25/SR.131, pp. 3-5 (Jan. 25, 1996).

<sup>543</sup> Jordan Permanent Representative letter to 661 Committee Chairman (Nov. 9, 2000); Alan Whitehead letter to Abdullah Abu-Alim (Dec. 1, 2000).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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replied that the 661 Committee would “not welcome” this action and requested that Jordan provide a written rationale for its actions.<sup>544</sup>

By February 2001, *The Jordan Times* reported that Jordan had not made arrangements with any companies to resume inspections at Aqaba. On March 19, 2001, in response to a query by a representative of the United States, the Chairman informed the 661 Committee that Jordan had hired a “French firm” and would provide details shortly. On June 14, 2001, a representative of the United Kingdom asked the Chairman if Jordan had provided any further details on Lloyd’s successor. The Chairman replied that he had not heard anything from Jordan. This issue was never raised again in a meeting of the 661 Committee.<sup>545</sup>

In short, the 661 Committee exercised little oversight of Iraqi-bound trade that entered Jordan through Aqaba. It endorsed the Lloyd’s inspection regime in place of MIF inspections, but it paid little heed to reports from Lloyd’s, allowed Lloyd’s to acquiesce to Jordanian procedures that were inconsistent with the terms of United Nations sanctions resolutions against Iraq, and ultimately overlooked Jordan’s apparently unfulfilled promise to obtain a replacement company upon the departure of Lloyd’s in 2000.

### G. JORDAN’S LAPSE IN REPORTING AND THE ABSENCE OF RESPONSE BY THE 661 COMMITTEE

The passage of Resolution 986 in April 1995 did not prompt Jordan to resume reporting its Iraqi oil imports to the 661 Committee. At the same time, Comtrade figures and large numbers of press accounts continued to reflect that Jordan received oil from Iraq.<sup>546</sup> At a meeting of the 661 Committee on May 22, 1995, the United States remarked that Jordan had stopped reporting approximately one year earlier. The Committee Chairman said that he would research when the

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<sup>544</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.210, p. 5 (Dec. 21, 2000).

<sup>545</sup> “No Plans for Aqaba Iraq-Bound Cargo Inspections Resumption,” *IPR Strategic Information Database*, Feb. 25, 2001 (noting that *The Jordan Times* reported that the Government of Jordan had no agreements with any company to resume inspections in Aqaba); Provisional record of 661 Committee meeting, S/AC.25/SR.215, p. 11 (Mar. 19, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.220, p. 1 (June 14, 2001).

<sup>546</sup> Comtrade records reflect that Jordan reported \$407 million in crude oil and oil derivatives from Iraq in 1994, \$440 million in 1995, and \$497 million in 1997. Comtrade records indicate that Jordan did not report crude oil imports in 1996 and did not report fuel oil imports between 1994 and 1998. Comtrade record, Jordan trade with Iraq (1994-1998). For press reports, see “Jordanian Team to visit Iraq on oil needs,” *Reuters*, Dec. 18, 1995; “Iraq, Jordan Signs Increased Oil Supply Agreement,” *Dow Jones International News*, Dec. 30 1995; “Jordan considers alternatives to Iraqi oil – King,” *Reuters*, Feb. 29, 1996 (reporting a statement by Amer Rashid that “[t]he oil deal (with Jordan) still stands and is based on the interests of the two countries”); “Jordanian PM Discusses Trade With Iraqi Minister,” *BBC Monitoring Service*, Dec. 11, 1996; “Iraq, Jordan discuss trade, oil sales,” *Agence France-Presse*, Dec. 30, 1996; “Trade Agreement Signed With Iraq,” *Middle East Economic Digest*, Jan. 27, 1997.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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last report had been received.<sup>547</sup> At the conclusion of the next meeting the Chairman advised that the last communication from Jordan of this nature had been received in October 1994 and had concerned Jordan's imports of oil during June 1994.<sup>548</sup>

As noted in Chapter 2 of Volume II, a significant event in the decision of Iraq to accept the Programme was the defection from Iraq of General Hussein Kamel, the son-in-law of Saddam Hussein, on August 10, 1995. This defection also turned out to be significant for Jordan because General Kamel fled to Jordan, where he was granted asylum by Jordan's King Hussein. The United States praised Jordan's action and promised protection against Iraq in the case of reprisal.<sup>549</sup>

According to media reports, less than a week after General Kamel's defection, United States Assistant Secretary of State Robert Pelletreau met with King Hussein in Jordan, reportedly in the hopes of persuading the government of Jordan to lessen its dependence on Iraqi oil. Mr. Pelletreau also visited Saudi Arabia and Kuwait in an effort to convince authorities in both countries to provide Jordan with oil. King Hussein denied reports of the United States' demarche, but, shortly after Mr. Pelletreau's visit, the monarch delivered a highly critical speech on Iraq, calling its plans to invade Kuwait "catastrophic." In this speech, King Hussein stated that, although he would not close Jordan's border with Iraq, he was taking "precautionary steps" to find alternative sources of oil "in the event of an emergency."<sup>550</sup>

On December 18, 1996, the topic of Jordan's oil imports, specifically Jordan's failure to submit reports on its oil imports from Iraq, was taken up again by the 661 Committee. The United States commented that "no one seemed to know why" Jordan had ceased to report on its oil imports, and the United States and the United Kingdom agreed that a letter should be sent to the Jordanian authorities. The 661 Committee's Secretary noted that, when Jordan stopped reporting its oil imports in 1994, the 661 Committee had asked the Secretariat to approach Jordan about resuming reporting. According to the 661 Committee's Secretary, the Secretariat had done so, but "had never received any answer" from Jordan. Following this comment from the Secretary, France

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<sup>547</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.123, pp. 8-9 (May 22, 1995).

<sup>548</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.124, p. 13 (June 28, 1995).

<sup>549</sup> Youssef M. Ibrahim, "Senior Army Aides To Iraq President Defect To Jordan," *New York Times*, Aug. 11, 1995, p. A1; Alison Mitchel, "U.S. to Protect Jordan From Iraq, Clinton Says," *New York Times*, Aug. 11, 1995, p. A10.

<sup>550</sup> United States Department of State, Press Briefings (Aug. 18, 1995); "Assistant Secretary of State Robert Pelletreau Met Thursday with King Hussein," *Agence France-Presse*, Aug. 18, 1995; "U.S. seeks support for isolating Iraq," *Baltimore Evening Sun*, Aug. 21, 1995, p. 3A; "U.S. envoy meets Saudi Arabia's King Fahd," *Reuters*, Aug. 21, 1995; "U.S. Envoy visits Kuwait after Saudi talks," *Reuters*, Aug. 21, 1995; "King Hussein Denies U.S. Sought Halt In Jordan-Iraq Trade," *Dow Jones International News*, Aug. 19, 1995; Jack Redden, "Jordan's King Turns on Saddam Hussein," *The Age*, Aug. 25, 1995, p. 10; James Whittington, "Iraqi TV Shows Hussein Speech," *Financial Times*, Aug. 25, 1995, p. 4; Ian Black, "Jordan Jolts Iraq With Oil Policy Shift," *The Guardian*, Aug. 25, 1995, p. 11; R. Jeffrey Smith, "Four Arab States Indicate Interest In a More Concerted Effort Against Saddam," *Washington Post*, Aug. 25 1995, p. A24.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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suggested contacting the government of Jordan orally and, in the event that this did not achieve results, sending a written request at a later point. The 661 Committee ultimately decided on this course of action, and the Chairman contacted the Permanent Representative of Jordan “immediately after” the meeting.<sup>551</sup>

More than a month later, there was no response from Jordan. On January 23, 1997, the 661 Chairman alerted the Committee that Jordan’s response was “still pending.” The United States remarked that it “should not be difficult” for Jordan to respond and wondered whether the Committee should make another inquiry. France replied that the information requested by the 661 Committee might not be easy for Jordan to provide and suggested affording more time to Jordan to obtain “the necessary figures.” One meeting participant from the Secretariat noted that he had met with the Chargé d’affaires of the Permanent Mission of Jordan two weeks earlier and had been told that “the matter was being reviewed very carefully in Amman.”<sup>552</sup>

On the same day, Iraq’s Deputy Prime Minister Tariq Aziz publicly acknowledged that Iraq’s oil was not, in fact, provided to Jordan in return for a reduction of debt. Mr. Aziz stated during an interview with the economic weekly *Emirates Today* that Iraq had no debt to Jordan and had “taken goods and services in return for the free oil supplies.”<sup>553</sup>

On March 4, 1997, Jordan submitted its first report on its oil imports from Iraq in nearly two and a half years. The report provided monthly volumes and values of imports of Iraqi crude oil, fuel oil, gas oil, and liquefied petroleum gas for the years 1994-1996.<sup>554</sup> Although this reporting was comprehensive, the figures provided by Jordan for the period January through June 1994 were inconsistent with the figures contained in its earlier reporting to the 661 Committee. In addition, the figures for 1994 and 1995 were inconsistent with Jordan’s reporting to Comtrade (Jordan did not report to Comtrade on its importation of oil from Iraq in 1996).<sup>555</sup> Notwithstanding these

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<sup>551</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.146, pp. 5-6 (Dec. 18, 1996); Provisional record of 661 Committee meeting, S/AC.25/SR.148, p. 8 (Jan. 23, 1997) (noting that the Chairman “had contacted the Permanent Representative of Jordan immediately after the 146th meeting”).

<sup>552</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.148, p. 8 (Jan. 23, 1997).

<sup>553</sup> “Iraq-Jan. 23-Iraq says no debt to Jordan,” *APS Diplomatic Reporter*, Jan. 25, 1997; “Iraq Says it has no debt to Jordan,” *Agence France-Presse*, Jan. 23, 1997.

<sup>554</sup> Jordan Permanent Representative letter to 661 Committee Chairman, S/AC.25/1997/COMM.2190 (Mar. 4, 1997).

<sup>555</sup> *Ibid.*; S/AC.25/1994/COMM.2129 (Mar. 23, 1994) (imports during February 1994); S/AC.25/1994/COMM.2968 (May 10, 1994) (imports during March 1994); S/AC.25/1994/COMM.3022 (May 12, 1994) (imports during April 1994); S/AC.25/1994/COMM.3449 (June 15, 1994) (imports during May 1994); S/AC.25/1994/COMM.3808 (July 12, 1994) (imports during January 1994); Jordan Permanent Representative letter to 661 Committee Chairman (Oct. 13, 1994) (imports during June 1994); Comtrade record, Jordan trade with Iraq (1994–1995). For 1994, Jordan reported \$373 million in oil and oil derivative imports to the 661 Committee and \$417 million to Comtrade; in 1995, Jordan reported \$427 million in oil and oil derivative imports to the 661 Committee and \$451 million to Comtrade. Jordan

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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discrepancies, the representative of the United States “expressed his gratitude” to Jordan “for having communicated very useful information.” No other representatives commented on Jordan’s report.<sup>556</sup>

Three months later, in June 1997, Jordan formally requested the 661 Committee’s approval to import Iraqi oil by sea. Previously, Jordan’s receipt of oil from Iraq had been by trucks over land. This new request provoked an extended discussion among 661 Committee members about Jordan’s legal basis to import Iraqi oil. On the one hand, France favored granting Jordan’s request on the condition that Jordan submit a “detailed plan of operations.” In expressing this view, the French representative noted that the 661 Committee had “approved the export of Iraqi oil to Jordan, or at least had taken note of it,” and that the manner of how the oil was transported to Jordan was “secondary.” The United States did not agree, stating that “the fact that the [661] Committee had taken note of something did not mean or imply that it approved it.” The United States representative added that the 661 Committee “had never formally approved Jordan’s oil imports from Iraq” and “it was not clear whether the [661] Committee had the authority to approve” such trade. As a result, he asked that Jordan’s request be refused. The United Kingdom representative echoed the statements of the United States, commenting: “it was clear that the [661] Committee had never approved imports of Iraqi oil to Jordan.” The United Kingdom warned that “[i]f the [661] Committee considered the new request from Jordan, it would be tacitly approving the export of oil from Iraq to Jordan, which would raise all sorts of questions which had been put aside over the past few years.” According to the United Kingdom, “it was beyond the [661] Committee’s competence to approve exports of Iraqi oil,” and it advocated that the “situation with regard to the import of Iraqi oil into Jordan should remain as it was.”<sup>557</sup>

In the absence of consensus among 661 Committee members, the request was effectively denied. The Chairman noted that the request would be removed from the 661 Committee’s agenda and proposed to address the matter informally.<sup>558</sup> It does not appear, however, that the question of Jordan’s importing Iraqi oil through Aqaba was discussed again by the 661 Committee.

Nearly two more years passed before Jordan decided to submit another report to the 661 Committee about its oil imports from Iraq. On April 27, 1999, Jordan submitted a chart detailing the quantity and value of monthly crude oil, fuel oil, gas oil, liquefied petroleum gas, and gasoline imports from Iraq between January 1997 and December 1998.<sup>559</sup> Unlike in previous years, this data was consistent with the information provided by Jordan to Comtrade. The 661 Committee took note of this communication at a meeting on May 27, 1999, but no members commented on

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Permanent Representative letter to 661 Committee Chairman, S/AC.25/1997/COMM.2190 (Mar. 4, 1997); Comtrade record, Jordan trade with Iraq (1994–1995).

<sup>556</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.151, p. 9 (Mar. 17, 1997).

<sup>557</sup> Jordan Permanent Representative letter to 661 Committee Chairman, S/AC.25/1997/Comm.4351 (June 6, 1997); Provisional record of 661 Committee meeting, S/AC.25/SR.157, pp. 9-11 (June 11, 1997).

<sup>558</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.157, p. 11 (Sept. 26, 1997).

<sup>559</sup> Jordan Mission letter to 661 Committee Chairman, S/AC.25/1999/COMM.40 (Apr. 27, 1999).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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Jordan's report except France, which noted that Jordan had been granted "special consideration" under Article 50.<sup>560</sup>

Jordan does not appear to have submitted additional reports after this point for the remaining four years of the Programme from 1999 to 2003. Nor does it appear from the 661 Committee's meeting records that the 661 Committee noticed or made any further requests for more information from Jordan.

The publication of major reports in 2002 documenting the large scale of trade between Iraq and Jordan did not prompt the 661 Committee to consider this issue again. In May 2002, the United States Government Accountability Office released a report asserting that Iraq had "earned more than \$4.3 billion in illegal revenue from oil smuggling" between 1997 and 2001. It noted that Iraqi oil "is smuggled out through several routes," including "by truck through entry on the borders with Jordan and Turkey." It also estimated that, in 1992, Iraq's "smuggling" of crude oil to Jordan began at a level of 75,000 barrels per day and increased at a rate of 2,000 barrels per day each year.<sup>561</sup> Less than six months later, the Coalition for International Justice, a non-governmental organization based in Washington, D.C., released a lengthy report estimating that Saddam Hussein reaped \$2 billion each year from illicit trade, including \$200-450 million worth of annual oil sales to Jordan.<sup>562</sup>

## H. THE UNCERTAIN LEGAL STATUS OF IRAQ-JORDAN TRADE

The Independent Inquiry Committee's interviews of government officials have yielded differing and, at times, inconsistent interpretations of the legal status of Jordan's trade with Iraq. Every government official who spoke with Committee staff acknowledged the flow of oil and commodities across the Iraq-Jordan border, but opinions varied on the legality of this trade and the meaning of the 661 Committee's "taking note" of this trade.

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<sup>560</sup> Ibid.; Comtrade record, Jordan trade with Iraq (1997-1998); Provisional record of 661 Committee meeting, S/AC.25/SR.186, p. 13 (May 27, 1999).

<sup>561</sup> United States Government Accountability Office, "Weapons of Mass Destruction: UN Confronts Significant Challenges in Implementing Sanctions Against Iraq," GAO-02-625, pp. 7, 11, 30 (May 23, 2002). The United States Government Accountability Office issued three additional versions of this report with revised estimates of Iraq's smuggling revenues. United States Government Accountability Office, "Recovering Iraq's Assets: Preliminary Observations on U.S. Efforts and Challenges," GAO-04-579T (Mar. 18, 2004); United States Government Accountability Office, "Observations on the Oil for Food Program and Iraq's Food Security," GAO-04-880T (June 16, 2004); United States Government Accountability Office, "Observations on the Oil for Food Program and Areas for Further Investigation," GAO-04-953T (July 8, 2004).

<sup>562</sup> Coalition for International Justice, "Sources of Revenue for Saddam and Sons: A Primer of the Financial Underpinnings of the Regime in Baghdad," (Sept. 18, 2002). Drawing on press reports and public data from the Jordanian Department of Statistics, CIJ reported an increase in daily oil flows from 65,000 bpd in 1991 to 110,000 bpd in 2002. It asserted that half of the oil imported by Jordan was provided free of cost by Iraq and the remainder was sold at a discount of \$5-6 lower than per-barrel market price.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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The majority of officials who spoke with Independent Inquiry Committee staff stated that, in “taking note” of Jordanian imports of Iraqi crude, the 661 Committee and Security Council informally condoned this trade. A United States official remarked that Jordanian imports had always been “a separate understanding” and an “accepted situation” in the 661 Committee and Security Council. A Norwegian official voiced similar sentiments, noting that the 661 Committee had an understanding with regard to Iraqi-Jordanian commerce. A second Norwegian official stated that Jordanian imports did not constitute smuggling because the 661 Committee had taken note of this practice. Two French officials stated that Jordan had obtained an informal deal in 1990-1991 that allowed it to purchase oil from Iraq in exchange for goods. A Dutch official remarked that the 661 Committee had condoned Iraqi exports to Jordan. One Portuguese official was more expressive, remarking that “everyone accepted” Jordan’s trade with Iraq, and adding that “we [the 661 Committee] closed our eyes politically.” A German official who spoke with Independent Inquiry Committee staff stated that “this was not something we were concerned with.” The 661 Committee’s Secretary stated his opinion that, by taking note of Jordan’s trade, the 661 Committee had indicated it was “not bothered” by the issue.<sup>563</sup>

Other officials affirmatively stated that the 661 Committee had approved of the Iraq-Jordan oil trade. One Norwegian official commented that Jordan’s imports were a “well-established practice that the Security Council had embraced in some way or another.” A Russian official stated that Jordan was a special case and that the 661 Committee had approved its trade. A second Russian official was more explicit in his language, asserting that there was a decision made in Jordan’s favor based on Article 50. No other officials said that Jordan had been awarded such an exemption, but one United States official did say that Jordan’s application under Article 50 had led to special consideration being given.<sup>564</sup>

A smaller number of officials did not believe that the 661 Committee had in any form authorized Jordan’s imports of Iraqi oil. Even these individuals, however, acknowledged that the 661 Committee did nothing to halt the activity. Among these individuals, the strongest characterization of Iraq-Jordan trade was made by a German official who repeatedly described Jordan’s imports of Iraqi oil as an illegal practice. This official added, however, that such trade was a “fait accompli” that was generally accepted by the time of his arrival in New York in 1994. One United States official echoed this sentiment by stating that Jordan’s imports were technically a violation of sanctions that the 661 Committee did not attempt to remedy. A United Kingdom official noted that, while “everyone tolerated” Jordan’s imports from Iraq, his government was

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<sup>563</sup> United States official #13 interview (Feb. 11, 2005); Norway official #1 interview (Aug. 31, 2004); Norway official #2 interview (Dec. 9, 2004); France official #3 interview (Dec. 12, 2004); France official #4 interview (Dec. 12, 2004); Netherlands official #2 interview (Mar. 10, 2005); Portugal official #1 interview (Sept. 23, 2004); Germany official #2 interview (Nov. 19, 2004); Jing Zhang Wan interview (Jan. 18, 2005). Mr. Wan was the 661 Committee’s Secretary from 1993 until 2003. Ibid.

<sup>564</sup> Norway official #6 interview (Dec. 9, 2004); Russia official #11 interview (Nov. 2, 2004); Russia officials #6-7 interview (Nov. 16, 2004); United States official #3 interview (Dec. 13, 2004).



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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displeased with such activity. This official added, however, that the United Kingdom did not include exports to Jordan in its estimates of oil smuggled out of Iraq.<sup>565</sup>

A prevalent theme in the responses of officials interviewed by the Independent Inquiry Committee was the political impracticality of trying to curtail or regulate Jordan's imports. A United Kingdom official noted that there was no enforcement mechanism to address smuggling beyond invoking member state obligations under the United Nations Charter. He also noted that the United Kingdom had tried to persuade Saudi Arabia to provide oil to Jordan at a discounted rate, but that the government of Saudi Arabia had refused. A French official drew attention to Jordan's geopolitical importance, stating that Western countries supported Jordan's purchase of oil from Iraq under favorable terms because Jordan was seen as an economically fragile and significant ally. These views were echoed by a United States official who commented that Jordan was very poor and a crucial actor in the Middle East peace process. As a result, this official continued, one had to make a cost-benefit analysis in deciding whether to apply a "legalistic" approach to enforce sanctions with respect to Jordan.<sup>566</sup>

## I. SMUGGLING FROM KHOR AL-AMAYA IN EARLY 2003

By the beginning of 2003, Jordan was freely transacting in Iraqi oil without reporting to the 661 Committee and without fear of consequence from the United States or other Security Council members. This set the stage for Jordan to accomplish the single largest episode of oil smuggling to take place during the Programme—and to do so with the approval of the United States government.<sup>567</sup>

Under the terms of Resolution 986, Iraq could export oil only through its pipeline to Turkey and to the Persian Gulf through its offshore oil loading terminal known as Mina al-Bakr; Iraq was not authorized to export oil through another offshore oil loading terminal known as Khor al-Amaya, and there were no United Nations inspectors stationed there to monitor any activity.<sup>568</sup> Moreover, as discussed in the Section above, despite the fact that the 661 Committee had "taken note" of

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<sup>565</sup> Germany official #1 interview (Feb. 11, 2005); United States official #7 interview (Feb. 11, 2005); United Kingdom official #6 interview (Dec. 7, 2004).

<sup>566</sup> United Kingdom official #6 interview (Dec. 7, 2004); France official #4 interview (Dec. 12, 2004); United States official #9 interview (Dec. 22, 2004).

<sup>567</sup> A highly detailed description of the events at Khor al-Amaya has been set forth in a report recently issued from the United States Senate. See United States Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Report on Illegal Surcharges on Oil-for-Food Contracts and Illegal Oil Shipments from Khor al-Amaya" (May 17, 2005).

<sup>568</sup> S/RES/986, para. 6 (Apr. 14, 1995); Iraq official interviews.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

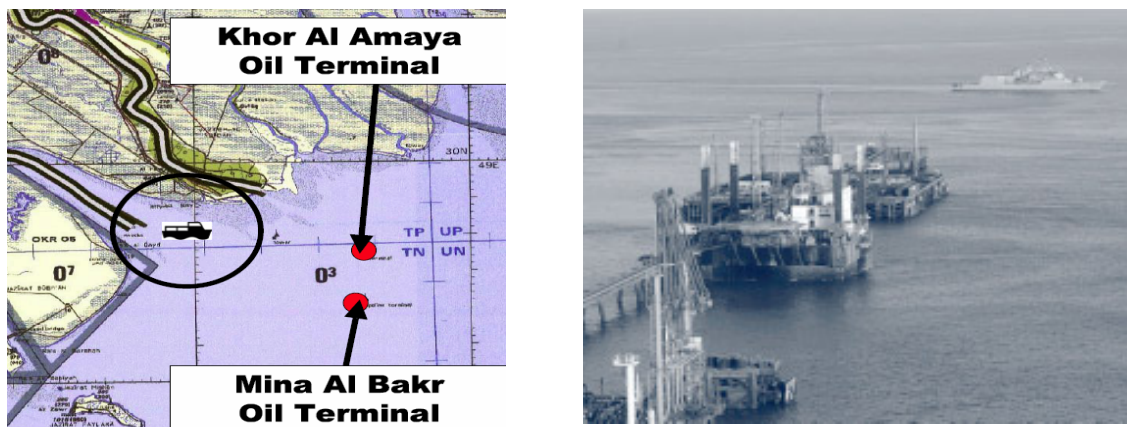
### SMUGGLING

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Jordan's import of oil from Iraq, it had specifically rejected Jordan's request to import Iraqi oil by sea.<sup>569</sup>

The Khor al-Amaya terminal lies about six nautical miles north across the Persian Gulf from the Mina al-Bakr terminal, which was the only terminal that was authorized for use under the Programme. Initially commissioned in the 1960s, the Khor al-Amaya terminal had been severely damaged and rendered inoperable in the 1980s during the Iran-Iraq war. Both the Khor al-Amaya and Mina al-Bakr terminals were fed by a common sea pipeline stemming from an onshore distribution center.

During the Programme, Iraq took steps to rehabilitate Khor al-Amaya, purportedly in order to have a back-up terminal if there were technical problems with loading at Mina al-Bakr. By January 2000, United Nations experts noted that Khor al-Amaya could offer a reduced capacity alternative if Mina al-Bakr were to cease operations, provided that repairs were performed using oil spare parts.<sup>570</sup>



**Figure: Diagram of Mina al-Bakr and Khor al-Amaya off-shore oil terminals and photo of Khor al-Amaya offshore oil terminal.**<sup>571</sup>

<sup>569</sup> Jordan Permanent Representative letter to 661 Committee Chairman, S/AC.25/1997/COMM.4351 (June 6, 1997); Provisional record of 661 Committee meeting, S/AC.25/SR.157 (June 11, 1997).

<sup>570</sup> "Report of the Group of United Nations Experts Established pursuant to Paragraph 30 of the Security Council Resolution 1284," pp. 59-62 (Mar. 2000); "Report of the Group of United Nations Experts Established pursuant to Paragraph 12 of the Security Council Resolution 1153," p. 61 (Mar. 1998) (stating that if Khor al-Amaya became operation, it would have an estimated loading capacity of 300,000 barrels per day).

<sup>571</sup> United States Department of Defense News Archive, "Department of Defense News Briefing Slide, March 21, 2003," <http://www.defenselink.mil/news/Mar2003/030321-D-6570C-001.pdf> (diagram); R. J. Allen, "Prepare for Outside the Square," *Touchdown*, Aug. 2, 2004, <http://www.navy.gov.au/publications/touchdown/html/august2004/square.htm> (photo).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

---

The United States opposed Iraq's efforts to restore Khor al-Amaya. In March 2000, the United States told the Security Council that it had "put on hold 14 oil-for-food contracts containing items destined for the unauthorized export facility at Khor al-Amaya." It explained that "[w]hen there are so many urgent needs in Iraq, it is unconscionable for the Government of Iraq to divert precious resources to a facility which the Council has not decided that Iraq may use."<sup>572</sup>

One year later, at a meeting of the 661 Committee in March 2001, the United Kingdom discussed a news article "concerning the intention of the Government of Iraq to use the Khor al-Amaya oil terminal to export oil." The United Kingdom stated that it "had no objections to legalizing that outlet through a relevant provision in a future resolution, if oil exports had grown so much that there was a need for an additional Gulf outlet," adding, however, that "the Committee must make it clear to the Government of Iraq that, until that outlet had been legalized, the export of any Iraqi oil through it would be regarded as a breach of the sanctions regime." The United Kingdom also questioned "how Iraq had managed to rebuild the terminal if the United Nations prohibited the export of goods from unauthorized terminals, and why the Iraqi Government had decided to use the spare parts for the oil sector in an illegal terminal when it complained that it was unable to maintain the legal ports."<sup>573</sup>

Nevertheless, Khor al-Amaya was evidently functional by early 2003, when the Iraqi ambassador to Jordan telephoned Samir Al-Nejm, Iraq's new Oil Minister who had replaced Amer Rashid, to inform him that a "Mr. Shaheen," a businessman and friend of the ambassador, was interested in purchasing oil from Iraq. Mr. Shaheen met with Mr. Al-Nejm in Baghdad and expressed his interest, apparently for reasons of favorable pricing, in lifting oil from Khor al-Amaya.<sup>574</sup>

Mr. Al-Nejm and another Iraqi official expressed concerns to Mr. Shaheen about his suggestion of using Khor al-Amaya since it was easy to detect and doing so could cause trouble for Iraq with the United Nations.<sup>575</sup> In particular, smuggled oil from Khor al-Amaya was at risk of seizure in the Persian Gulf by the MIF, in which the United States played a prominent role.<sup>576</sup>

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<sup>572</sup> Provisional record of Security Council meeting, S/PV.4120, p. 12 (Mar. 24, 2000) (statement of the United States Ambassador James Cunningham).

<sup>573</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.215, p. 10 (Mar. 19, 2001).

<sup>574</sup> Samir Al-Nejm interview (Feb. 24, 2005). In May 2002, the Security Council revamped and streamlined the contract approval process under the Programme by switching to a "Goods Review List" system. This change enabled Iraq to import more spare parts for use at the Khor al-Amaya terminal and without incurring contract "holds" from the United States, but it still did not authorize Iraq to export oil from Khor al-Amaya. S/RES/1409 (May 14, 2002) (instituting the "Goods Review List" reform); Darko Mocibob interview (Jan. 6, 2005) (noting change brought about by Resolution 1409 that allowed specific contracts designated for use in connection with Khor al-Amaya and without objection from the 661 Committee).

<sup>575</sup> Samir Al-Nejm interview (Feb. 24, 2005); Iraq official interview.

<sup>576</sup> For further discussion of the MIF, see Section V.B below.

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME****VOLUME II - CHAPTER 4****SMUGGLING**

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Mr. Shaheen assured the Oil Minister not to worry—he claimed to have strong friendships in the United States at the Department of Defense and the CIA, and stated that he had taken some measures to ensure a smooth process.<sup>577</sup> Another Iraq official said that Mr. Shaheen spoke of having the Pentagon in one pocket and the CIA in the other.<sup>578</sup> Amer Rashid, Iraq’s former Oil Minister, cautioned Mr. Al-Nejm not to get involved in the deal with Mr. Shaheen since it sounded like a CIA operation. The fact that the vessels made it through the Gulf untouched only reinforced Mr. Rashid’s assumption.<sup>579</sup>

Mr. Al-Nejm, the Oil Minister, agreed to go forward with Mr. Shaheen, and this ultimately led to at least seven shipments of oil from Khor al-Amaya during February and March 2003. A report prepared by SOMO reflects that seven vessels lifted approximately 7.7 million barrels of oil from Khor al-Amaya between February 18 and March 19, 2003.<sup>580</sup> The SOMO report reflects that these liftings were coordinated directly by Mr. Al-Nejm through an agreement with Akram Shaheen who, according to a confidential source, acted at the direction of his brother, Khaled Shaheen. The Committee has not been able to determine which of these two individuals was the “Mr. Shaheen” who met with Mr. Al-Nejm.<sup>581</sup>

In 2003, Khaled Shaheen was chairman and chief executive officer of Shaheen Business and Investment Group in Jordan; Akram Shaheen was a senior official in the company. Public records suggest he had connections to officials of the United States government. For example, in October 2003, Mr. Shaheen’s company sponsored the “American Jordanian Expo” at which he appeared as a discussion panelist and at which the United States ambassador to Jordan delivered a keynote address.<sup>582</sup> In March 2004, the United States Department of Defense announced the award to Mr. Shaheen’s company of a contract for \$71.8 million to furnish gasoline and diesel fuel for Iraq.<sup>583</sup> Neither Khaled Shaheen nor Akram Shaheen has replied to the Committee’s requests for interviews.<sup>584</sup>

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<sup>577</sup> Samir Al-Nejm interview (Feb. 24, 2005).

<sup>578</sup> Iraq official interview.

<sup>579</sup> Amer Rashid interview (Aug. 21, 2005).

<sup>580</sup> SOMO Summary Report, Attachment 3. The Committee has not acquired SOMO’s contemporaneous records of these transactions; however, the facts of these charters and the lifting of oil from Khor al-Amaya are corroborated by records of a ship charterer, Odin Marine, Inc. (hereinafter “Odin Marine”), that are in the possession of the Committee.

<sup>581</sup> *Ibid.*; Confidential witness interview (Jan. 21-22, 2005).

<sup>582</sup> See Shaheen Business & Investment Group, “AJEX Conference Program,” <http://www.ajex.org/ajex2003/confrence.asp>.

<sup>583</sup> United States Department of Defense News Archive, “Contract Press Release, March 16, 2004,” <http://www.defenselink.mil/contracts/2004/ct20040316.html>.

<sup>584</sup> Committee letter to Khaled Shaheen (June 21, 2005); Ahed Sukhon interview (July 28, 2005) (telephone call to Vice President of Shaheen Business Investment Group requesting to speak with Akram Shaheen).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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According to Iraqi witness accounts, before each of these oil transactions with Mr. Shaheen, Mr. Al-Nejm spoke to Iraqi Vice President Taha Yassin Ramadan. An official of Iraq's South Oil Company—which was in charge of distribution of Iraq's crude oil from southern Iraq—had originally refused to load the oil, but was personally ordered to do so by Vice President Ramadan.<sup>585</sup> It was the understanding that there would be no written contracts of sale, and that the oil would be sold at the very low price of approximately \$7 per barrel.<sup>586</sup> The oil would not be shipped to Jordan, but rather payments for the oil would be made through the SOMO accounts in Jordan in advance of each shipment.<sup>587</sup>

The Jordanian Minister of Energy and Mineral Resources, Mohammad Batayneh, directed the Khor al-Amaya liftings for the Shaheen brothers.<sup>588</sup> For the purpose of the Khor al-Amaya transactions, the Shaheens used the name of a company known as Millennium for the Trade of Raw Materials & Mineral Oils ("Millennium"). Millennium did not act as an ordinary private company contractor but as an agent of the government of Jordan in accordance with a "Power of Attorney" signed on February 6, 2003 by Mr. Batayneh and copied to the Prime Minister of Jordan.<sup>589</sup>

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On June 20, 2005, during Khaled Shaheen's visit to a major university in Washington, D.C., the Committee attempted to contact him via telephone and e-mail, but received no reply.

<sup>585</sup> Iraq official interviews; Samir Al-Nejm interview (Feb. 24, 2005); Taha Yassin Ramadan interview (Aug. 17, 2005). Mr. Al-Nejm recalls discussing the matter with Mr. Ramadan and receiving approval. Mr. Ramadan also recalls discussing the matter with Mr. Al-Nejm. However, according to Mr. Ramadan, he advised Mr. Al-Nejm simply to use his best judgment. Taha Yassin Ramadan interview (Aug. 17, 2005).

<sup>586</sup> Samir Al-Nejm interview (Feb. 24, 2005); Iraq official interviews.

<sup>587</sup> Samir Al-Nejm interview (Feb. 24, 2005).

<sup>588</sup> Iraq official interviews.

<sup>589</sup> Power of Attorney to Millennium on behalf of the Ministry of Energy and Mineral Resources of the Hashemite Kingdom of Jordan (Feb. 6, 2003) (obtained from records of Odin Marine, the company that chartered tankers used by Millennium for the Khor al-Amaya transactions).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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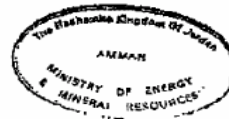


#### TO WHOM IT MAY CONCERN

This letter is to confirm that the Ministry of Energy and Mineral Resources of the Hashemite Kingdom of Jordan, hereby gives their Power Of Attorney and unconditional guarantee to Messrs. Millennium for the Trade of Raw Materials and Mineral Oils, to act on our behalf as it pertains to the carriage of crude oil between Iraq and other ports, and to issue any undertaking, warranty, guarantees, declaration for said time charter(s), and all other related matters of whatsoever nature.

Eng. Mohammad Batayneh  
*M. Batayneh*  
Minister of Energy &  
Mineral Resources

CC: H.E. Mr. Ali Abu Al-Ragheb  
Prime Minister



**Figure: Power of Attorney to Millennium from the government of Jordan (Feb. 6, 2003).**

Millennium chartered its vessels from a United States ship broker, Odin Marine. The vessels chartered included the *Argosea*, the first ship that would lift oil from Khor al-Amaya. Much of what is known about the circumstances of the Khor al-Amaya transactions are set forth in Odin Marine’s records of its communications with Millennium, as well as communications with the *Argosea*’s owner (Tsakos Group) and the owner’s broker (Petrian Shipbrokers).

On February 7, 2003, Odin Marine advised Millennium that it had “spoken to all 4 of the owners” of the vessels to be used to lift oil for Millennium and that “[w]e have also explained to them that, at the Coalition check point a Coalition vessel will escort them up to Iraq and back again . . . [I]t is essential that you advise the Coalition check point of the name of each of these vessels and exactly why/what they are doing for Millennium/the Jordan Government.”<sup>590</sup>

Millennium sent instructions to Vladimir Egoshin, captain of the *Argosea*, advising him to go to Mina al-Bakr and advising that the “US Navy” was “already aware about your passage”:

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<sup>590</sup> Michael Richards e-mail to Jamil Sayegh (Feb. 7, 2003) (capital letters in quotation converted to lower case).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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PRIVATE & CONFIDENTIAL

DATE: 9 FEB 03

SUBJECT: VOYAGE INSTRUCTIONS.

DR CAPT VLADIMIR

CHARTERERS INSTRUCTIONS FOR THE VOYAGE FROM FUJAIRAH TO MINA BAQR ARE AS FOLLOWS:

- 1- DEPART FUJAIRAH ON 10 FEB 2003 AT 00:01 HRS L.T.
- 2- PROCEED ON NORMAL NORTHBOUND SAFE COURSE TO MINA BAQR.
- 3- THE US NAVY WILL CALL YOU OFFSHORE BAHRAIN FOR VESSEL'S INSPECTION, THEY ARE ALREADY AWARE ABOUT YOUR PASSAGE AND ITENIRARY. AUTHORIZATION IS GRANTED FOR YOUR SHIP TO PROCEED TO BAQR AND BACK TO FUJAIRAH WITH FULL CARGO LOAD. PLS COOPERATE AS USUAL AND PROVIDE U.S. NAVY WITH ANY INFORMATION THEY REQUIRE.
- 4- ONCE CLEARED TO RESUME VOYAGE, STEAM AT A SPEED ENABLING YOU REACH NORTH ANCHORAGE, IN VICINITY OF BAQR TERMINAL ON 12 FEB 03 BY 03:00 GMT.

**Figure: Voyage Instructions from Mr. Sayegh to Captain Egoshin (Feb. 9, 2003) (excerpt).**

Millennium further instructed Captain Egoshin to maintain absolute secrecy at the loading port about his arrangements to lift oil.<sup>591</sup>

**MOREOVER, APART FROM CARGO WORKS AND MINIMUM NORMAL ROUTINE SHIPPING FORMALITIES, MASTER TO ENSURE THAT NO INFORMATION OF ANY KIND IS GIVEN TO ANY PERSON /// REPEAT ANY PERSON /// AT THE LOADING PORT WITH REGARD TO ARRANGEMENTS MADE OR MENTIONED HERE ABOVE.**

**Figure: Voyage Instructions from Mr. Sayegh to Captain Egoshin (Feb. 9, 2003) (excerpt).**

The *Argosea* arrived in the vicinity of Mina al-Bakr on February 11, 2003, but there was no response from the terminal. Odin Marine advised Millennium that “we have a bit of a situation on the *Argosea*” because Captain Egoshin had gotten “no response” to his calls. In the meantime, however, Millennium had sent directions to Captain Egoshin to change his port of call to Khor al-Amaya, providing the following instructions: “If you are asked (I repeat[:] if you are asked) for authorization: inform them that a special authorization to load at [Khor al-Amaya] terminal is granted to Millennium Shaheen Business Investment Group.”<sup>592</sup>

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<sup>591</sup> Jamil Sayegh voyage instructions to Vladimir Egoshin (Feb. 9, 2003) (capital letters in quotation converted to lower case).

<sup>592</sup> Odin Marine e-mail to Jamil Sayegh (Feb. 11, 2003); Jamil Sayegh e-mail to Vladimir Egoshin (Feb. 10, 2003) (capital letters in quotation converted to lower case).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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On February 13, 2003, Captain Egoshin sent a message that he was at Khor al-Amaya, and he remarked that the *Argosea* would be the first ship at this terminal since 1980.<sup>593</sup> On February 15, 2003, the vessel berthed at Khor al-Amaya and began taking on oil at a slow rate.<sup>594</sup> On February 16, 2003, SOMO's bank account at the Bank of Jordan received a deposit of €6,979,991 and subsequent deposits in February and March 2003 on behalf of Millennium.<sup>595</sup>

The *Argosea* lifted nearly one million barrels of crude oil from Khor al-Amaya.<sup>596</sup> After it was loaded, Millennium instructed the vessel to proceed through the Persian Gulf to Fujairah, United Arab Emirates. This would require a journey across MIF-patrolled international waters, but Millennium assured Captain Egoshin that he would have no problems from the United States Navy: "The U.S. Navy will call you on the way for vessel inspection, they are already aware about your passage and itinerary."<sup>597</sup>

Because Khor al-Amaya shared the same pipeline source with Mina al-Bakr, the loading of the *Argosea* caused a noticeable drop in flow at Mina al-Bakr where UN-approved vessels under the Programme were also loading. The activity at Khor al-Amaya also could be seen through binoculars from Mina al-Bakr, and soon there were complaints from tankers at Mina al-Bakr and from inspectors of Saybolt, the United Nations oil inspection company that was stationed at Mina al-Bakr.<sup>598</sup>

On February 17, 2003, Peter Boks, Saybolt's managing director, forwarded information on the *Argosea*'s activity at Khor al-Amaya to David Russell, operations officer at the United States Navy's Maritime Liaison Office ("MARLO") in Bahrain. MARLO was the communications liaison between commercial shipping interests and the MIF. Mr. Russell replied to Mr. Boks that same day.<sup>599</sup>

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<sup>593</sup> Vladimir Egoshin e-mail to Jamil Sayegh (Feb. 13, 2003).

<sup>594</sup> Vladimir Egoshin e-mail to Jamil Sayegh (Feb. 15, 2003).

<sup>595</sup> Bank of Jordan record, SOMO account, bank statement (Jan. 1, 2000 to Sept. 30, 2004).

<sup>596</sup> SOMO Summary Report, Attachment 3.

<sup>597</sup> Jamil Sayegh e-mail to Vladimir Egoshin (Feb. 17, 2003) (capital letters in quotation converted to lower case).

<sup>598</sup> Michel Tellings interview (Dec. 6, 2004); see also United States Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Report on Illegal Surcharges on Oil-for-Food Contracts and Illegal Oil Shipments from Khor al-Amaya," p. 72 (May 17, 2005) (referring to the Subcommittee's interview with Peter Boks).

<sup>599</sup> David Russell e-mail to Peter Boks (Feb. 17, 2003).



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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"Dave & Theresa Russell" <russell4@batelco.com.bh>

02/17/2003 05:50 PM

To: <peter\_boks@saybolt.com>  
cc:  
Subject: Re: Telcon

Peter

Thanks for the additional info.

We're still checking on this curious event. I still don't understand it, or how these people think they can get away with this.

Dave

**Figure: David Russell e-mail to Peter Boks (Feb. 17, 2003) (excerpt).**

When contacted by the Committee, Mr. Russell said that he discussed the matter within the MIF and specifically brought it to the attention of MIF Commander Harold French, who was the United States Coast Guard liaison to the United States Navy Fifth Fleet. However, Mr. Russell never received a response to whether the matter would be addressed. Mr. Russell added: "Those people that did know about it weren't very interested."<sup>600</sup>

Odin Marine also had been in contact with Commander French. In an effort to assure all involved that there would be no U.S. interference with the vessels loading at Khor al-Amaya, Odin Marine cleared the vessels with Commander French, who issued "no objections" to the loading at Khor al-Amaya.<sup>601</sup>

Ref TELCON COMMANDER FRENCH / Millenium

2330 pm Nyt March 14th, 2003 -  
Left message on Commander Harry French Phone tape requesting  
permission for M/T Sea Victory to Load at Khawr Amaya , Iraq.

0155 am Nyt March 15th, 2003 Received call from Commander Harry  
French confirming 'no objection' to the loading of the M/T Sea  
Victory.

ADDITIONALLY CDR FRENCH ADVISED ME THAT HIS JOB BASICALLY IS LIASON  
TO THE UNITED NATIONS AND HAS THE RESPONSIBILITY TO GIVE CLEARANCE  
FOR VESSEL TO CALL AT IRAQ FOR UN AUTHORIZED CARGOS. I AM  
PARAPHRASING HERE AS I WAS DEAD ASLEEP WHEN I RECEIVED THE CALL AT  
1:45 IN THE MORNING. I HAVE BEEN OVER THE PAST FEW WEEKS VERY  
COMFORTABLE THAT LIFTINGS WERE AUTHORIZED BY US GOVERNMENT. AFTER  
THIS CONVERSATION I AM EQUALLY COMFORTABLE THAT THEY ARE UN  
AUTHORIZED AS WELL.

**Figure: Dave Young e-mail to file (Mar. 15, 2003) (excerpt).**

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<sup>600</sup> David Russell interview (May 19, 2005).

<sup>601</sup> Dave Young e-mail to file (Mar. 15, 2003). Mr. Young was a manager at Odin Marine.

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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When contacted by the Committee, Commander French said that he had no recollection of the Khor al-Amaya liftings or of discussing them with either Odin Marine or Mr. Russell.<sup>602</sup>

Mr. Boks also e-mailed Benon Sevan—the Executive Director of the United Nations’ Office of the Iraq Programme—about the observations made at Khor al-Amaya.<sup>603</sup> Michel Tellings, one of the United Nations oil overseers, also alerted a 661 Committee representative of the United States. The United States representative told Mr. Tellings that he would contact Washington about the matter. Mr. Tellings recalled asking the United States representative to contact the United Kingdom representative. The United States and the United Kingdom representatives have advised the Committee that Mr. Tellings apprised their missions of the allegations of illegal oil liftings from Khor al-Amaya.<sup>604</sup>

Soon thereafter, Mr. Tellings received more calls from companies that were upset about the Khor al-Amaya liftings. They complained about the unfair competitive advantage for companies that did not comply with the United Nations rules or pricing structure.<sup>605</sup>

Subsequently, the oil that had been illegally lifted began to be introduced into the market. Mr. Tellings received calls from several companies that had been approached to purchase this oil, including Shell, Exxon, and possibly Taurus and Bayoil. He told each of them that they were prohibited from purchasing this oil because it had been lifted outside of the Programme.<sup>606</sup>

Mr. Tellings followed up directly with both the United States and United Kingdom representatives on the 661 Committee to assess what progress had been made. Both had said they had received no response from Washington or London, respectively. Mr. Tellings found it odd that the MIF, which had been so responsive to other smuggling allegations, was now silent on this matter. He never received an explanation for why the MIF failed to intervene.<sup>607</sup>

A representative of the United States mission to the United Nations acknowledged that he became aware of the Khor al-Amaya situation in mid-February 2003, when Mr. Sevan invited him to his office and provided reports that Mr. Sevan had received about unauthorized loadings. The United States official forwarded this information to the United States Department of State but could not recall if any action had been taken other than possibly alerting the MIF.<sup>608</sup>

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<sup>602</sup> Harold French interview (Aug. 11, 2005).

<sup>603</sup> Peter Boks e-mail to Benon Sevan (Feb. 18, 2003).

<sup>604</sup> Michel Tellings interview (Dec. 6, 2004); United States official #10 interview (Feb. 10, 2005); United Kingdom official #7 interview (Jan. 12, 2005).

<sup>605</sup> Michel Tellings interview (Dec. 6, 2004). Mr. Tellings contacted Mr. Sevan who indicated that he was already aware of the matter through Saybolt. Ibid.

<sup>606</sup> Ibid.

<sup>607</sup> Ibid.

<sup>608</sup> United States official #10 interview (Feb. 10, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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On February 21, 2003, *The Wall Street Journal* ran a detailed article disclosing the crude oil liftings at Khor al-Amaya. “These shipments are huge,” said one United Nations official in the article, adding that “[u]ntil now their smuggling activities were on vessels that were about to sink, but these are ones where they have managed to dupe reputable ship owners.” A spokesman for the United States ambassador to the United Nations denounced the Khor al-Amaya shipments as “immoral.”<sup>609</sup>

By this time, a number of oil trade journals also were reporting in greater depth on the matter.<sup>610</sup> Consequently, when Mr. Shaheen met for a second time with Mr. Al-Nejm to pursue additional oil lifts, Mr. Al-Nejm complained about the publicity. Again, Mr. Shaheen assured Mr. Al-Nejm not to worry because the United States government was already informed and that no media coverage of the lifts would occur in the future.<sup>611</sup>

Mr. Shaheen also made a political proposal to Mr. Al-Nejm, the Oil Minister, during this second meeting in Baghdad. He stated that he carried a message on behalf of the United States Department of Defense and the CIA to determine if the Iraqis were willing to negotiate to avoid war (this was at a time when United States-led troops were preparing to invade Iraq). Mr. Al-Nejm replied that Iraq was interested, and he arranged for a meeting between Mr. Shaheen and the head of the Iraqi secret services, Taher Al-Takriti. Mr. Al-Nejm informed Saddam Hussein and Vice President Ramadan of Mr. Shaheen’s proposal. Saddam Hussein approved, and a meeting was soon set up between Mr. Shaheen, Taher Al-Takriti and Vice President Ramadan. It is not known what transpired at this meeting. Mr. Ramadan has recently advised the Committee that he did not meet Mr. Shaheen and did not know of a proposal to avoid the war.<sup>612</sup>

Despite the publicity, Millennium continued to lift oil at Khor al-Amaya without interference from the MIF. As noted above, in addition to the *Argosea*, more vessels were chartered by Millennium to load at Khor al-Amaya. On March 3, the Middle East Economic Survey asked, “[H]ow, despite all the publicity, [the vessels] have been able to sail down the Gulf without being apprehended by the large fleet of ships belonging to the navies of the US and its allies which are gathering for a possible attack on Iraq[?]”<sup>613</sup>

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<sup>609</sup> Alix M. Freedman and Bhusan Bahree, “Iraq Is Shipping Large Cargoes Of Crude, Violating UN Rules,” *Wall Street Journal*, Feb. 21, 2003, p. A1.

<sup>610</sup> John van Schaik, Karen Matusic and Axel Busch wrote similar articles for several Energy Intelligence Group publications, including “Jordanian/Iraqi Oil Smuggling Scheme Fails,” *Energy Intelligence Briefing*, Feb. 21, 2003; “Shipowners Scuttle Iraqi Oil Smuggling Scheme,” *International Oil Daily*, Feb. 21, 2003. More recently, the Khor al-Amaya transactions and the failure of the United States to respond have been reported in the *Financial Times*. See Claudio Gatti, “US ignored warning on Iraqi oil smuggling,” *Financial Times*, Jan. 13, 2005, p. 6.

<sup>611</sup> Samir Al-Nejm interview (Feb. 24, 2005).

<sup>612</sup> Samir Al-Nejm interview (Feb. 24, 2005); Taha Yassin Ramadan interview (Aug. 17, 2005).

<sup>613</sup> “Third Major Crude Shipment From Khor al-Amaya In Recent Days,” *Middle East Economic Survey*, Mar. 3, 2003, p. A8.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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Due to concern about the risk incurred by the owners of the vessels chartered through Odin Marine, the government of Jordan guaranteed full indemnity for any losses that might be incurred by vessels chartered to lift oil at Khor al-Amaya. Specifically, the Jordanian Minister of Finance and the Jordanian Minister of Energy and Mineral Resources jointly signed a letter of indemnity to one of the ship owners representing that one of the ships was “duly authorized to load up to full cargo of Iraqi Crude Oil at the Khor al Amaya Terminal” and that “we confirm that this cargo is legitimate, lawful and authorized merchandise according to relevant U.N. Regulations and International law.”<sup>614</sup>

According to SOMO records, Millennium paid a total of €19,783,428 (\$53,689,232) to the Government of Iraq for the oil it lifted from Khor al-Amaya.<sup>615</sup> The banking records from SOMO’s account at the Bank of Jordan show payments for each of the seven vessels that lifted oil, and they further show that this money was promptly transferred from SOMO’s account to another account at the Bank of Jordan under the name of the Central Bank of Iraq.

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<sup>614</sup> Hashemite Kingdom of Jordan letter of indemnity to Atlantis Services Limited (Mar. 16, 2003).

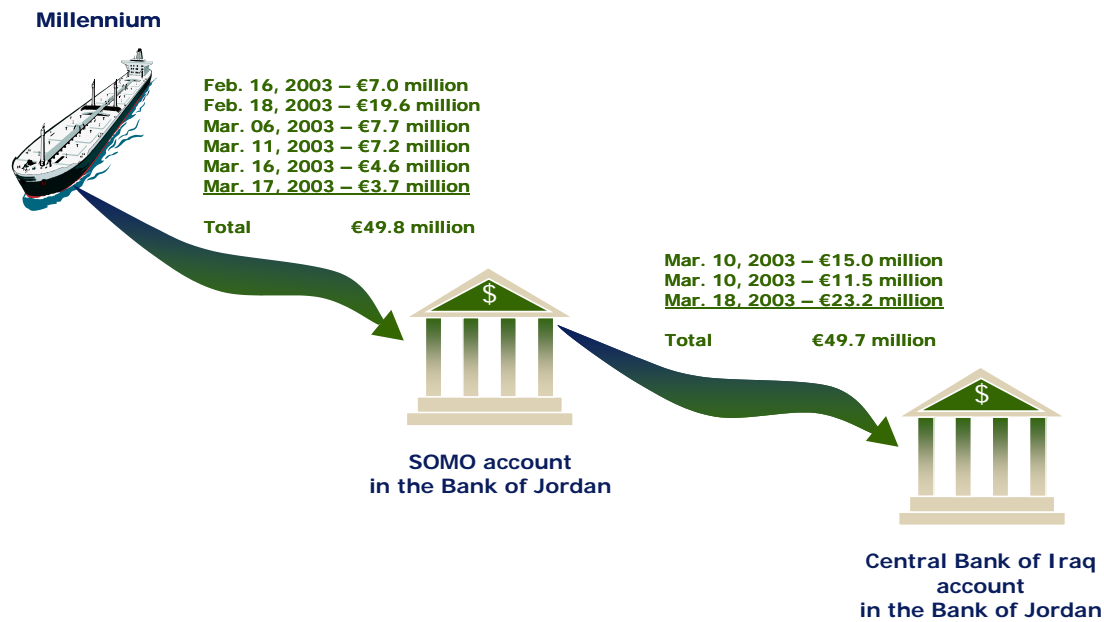
<sup>615</sup> SOMO record, Millennium payments (Feb. 16 to Mar. 18, 2003). The Bank of Jordan records confirm the payment of €19,783,428. Bank of Jordan record, SOMO account, wire transfer advices (Feb. 16 to Mar. 18, 2003). It should be noted that the SOMO Summary Report identifies the value of these transfers in USD as \$53,360,022. SOMO Summary Report, Attachment 3. The discrepancy between the SOMO records and the SOMO Summary Report is attributable to the application of different currency conversion rates.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

Chart A – Flow of Funds for the Millennium Transactions<sup>616</sup>



**Note:** On March 12, 2003, €5 million was transferred from the Central Bank of Iraq's account in the Bank of Jordan to the Central Bank of Iraq in Baghdad. On May 7, 2003, the Central Bank of Iraq's account in the Bank of Jordan was frozen and €59 million was transferred to an account for managing frozen Iraqi assets in the Bank of Jordan.

Of the seven oil tankers loaded at Khor al-Amaya, only one may have actually delivered its cargo to a Jordanian port. However, it appears that even this one vessel, the *Argosea*, may have actually discharged its cargo in Yemen.<sup>617</sup> The crude oil aboard the remaining six vessels was combined into two Ultra Large Crude Carriers and later sold in Egypt.<sup>618</sup> Sale of the cargos had been attempted by one oil trader for months, but, without United Nations approval and proper

<sup>616</sup> Bank of Jordan record, SOMO account, wire transfer advices (Feb. 16 to Mar. 18, 2003).

<sup>617</sup> Correspondence between Millennium, Tsakos and Odin Marine in early April 2003 shows that Millennium directed the *Argosea* to discharge at Aden, Yemen. This caused concern for Tsakos. Millennium promised to provide a new bill of lading indicating Aqaba, Jordan, as the discharge port. On April 10, 2003, the *Argosea* arrived at Aden. It discharged its cargo on April 18, 2003, after samples of the oil were taken on April 16, 2003. The Committee has found no records that indicate the *Argosea* actually made the voyage from Aden to Aqaba. Odin Marine e-mail to Jamil Sayegh (Apr. 1, 2003); Jamil Sayegh e-mail to Vladimir Egoshin (Apr. 1, 2003); Millennium e-mail to Odin Marine (Apr. 10, 2003); Vladimir Egoshin e-mail to Millennium (Apr. 16, 2003).

<sup>618</sup> United States Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Report on Illegal Surcharges on Oil-for-Food Contracts and Illegal Oil Shipments from Khor al-Amaya," p. 84 (May 17, 2005); Iraq official interviews.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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documentation, banks refused to provide the letters of credit, and Customs authorities denied entry.<sup>619</sup> Therefore, it has not been possible to confirm that any of the oil bought by Millennium from Khor al-Amaya was sold in Jordan.

The illegal sales of oil from Khor al-Amaya came at a staggering cost to the Programme in terms of potential revenue foregone. Millennium lifted 7.7 million barrels of oil for which it paid about \$54 million. Had this oil been sold under the Programme at fair market value it could have earned approximately \$200 million for the Programme's escrow account for the purchase of additional humanitarian goods.<sup>620</sup>

## J. RESPONSE OF JORDAN AND THE UNITED STATES

The governments of Jordan and the United States have declined the Committee's requests for interviews and information concerning the smuggling of oil from Khor al-Amaya. Specifically, the government of Jordan has declined to furnish the Committee with any documents or other substantiation for its ministers' statement that the Khor al-Amaya liftings were in accordance with "relevant U.N. [r]egulations and [i]nternational law," as claimed in the letter of indemnity signed by Jordan's ministry officials. The governments of Jordan and the United States have denied any impropriety and—despite the degree to which these transactions directly diverted oil from the Programme—they have claimed that the Khor al-Amaya transactions are not within the investigative mandate of the Committee.<sup>621</sup>

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<sup>619</sup> United States Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Report on Illegal Surcharges on Oil-for-Food Contracts and Illegal Oil Shipments from Khor al-Amaya," p. 92 (May 17, 2005) (referring to the letter dated June 12, 2003 from George T. Boggs, an attorney for Bayoil (US) Inc., to the U.S. Treasury Office of Foreign Assets Control); George T. Boggs letter to United States Treasury Office of Foreign Assets Control (June 13, 2003).

<sup>620</sup> SOMO Summary Report, Attachment 3; Iraq officials interviews. The fair market value at the time was approximately \$26 per barrel, based upon crude oil lifted from Mina al-Bakr during mid-February 2003 at the official United Nations selling price for the United States market. See SOMO sales contract M/13/75 (loaded Feb. 18, 2003) (West Texas Intermediate ("hereinafter WTI") minus \$8.40); SOMO sales contract M/13/59 (loaded Feb. 20, 2003) (WTI minus \$8.10); SOMO sales contract M/13/74 (loaded Feb. 24, 2003) (WTI minus \$7.80).

<sup>621</sup> United States Department of State letter to the Committee (Apr. 29, 2005) ("The Khor-al-Amaya loadings occurred during the immediate run-up to Operation Iraqi Freedom. We will not comment on specific military operations, but our actions were consistent with our general policy."); Jordan officials #1-2 interview (June 8, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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## III. TURKEY

The onset of sanctions against Iraq in 1990 imperiled trade of more than \$2 billion each year between Iraq and Turkey—Iraq’s neighbor to the north.<sup>622</sup> Yet despite the sanctions, trade between Iraq and Turkey continued across the mountainous border area separating the Kurdish governorates in the north of Iraq from Turkey. By the end of 1991, media reports suggested that as many as 600 trucks per day were carrying fuel from Iraq to Turkey, returning with cargos of food or even “materials distributed by U.N. agencies.” Media sources continued to report on the cross-border trade with Turkey throughout the period prior to the Security Council’s passage of Resolution 986 to create the Oil-for-Food Programme.<sup>623</sup> In 1996, when Turkey first sought Article 50 relief, it submitted a report to the United Nations acknowledging that it exported approximately \$973 million worth of goods and commodities to Iraq from 1990 to 1995.<sup>624</sup>

Local Kurdish groups in Northern Iraq played a significant role in this trade, which received extensive media coverage throughout the 1990s.<sup>625</sup> Kurdish leaders of Kurdish groups in

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<sup>622</sup> Comtrade record, Turkey trade with Iraq (1987–1989) (estimating external trade between Turkey and Iraq before the imposition of sanctions at \$2,099,272,609 in 1987, \$2,422,607,120 in 1988, and \$2,095,067,107 in 1989); Permanent Mission of Turkey note to 661 Committee Chairman (Aug. 5, 1996) (estimating the trade between Iraq and Turkey before the Gulf Crisis at \$2 billion trade per year, and stating that exports to Iraq constituted eight percent of Turkey’s total exports); Ayse Sarioglu, “Turkey chafes at U.N. sanctions on Iraq,” *Reuters News*, July 27, 1992 (stating that prior to the Gulf War, Iraq was Turkey’s third largest trade partner and supplied sixty percent of its oil needs).

<sup>623</sup> Jacques Charmelot, “Turkish truckers smuggle Iraqi oil into their country across Kurdistan,” *Agence France-Presse*, Dec. 13, 1991; Kurt Schork, “Barzani tells Archer Kurds need money from breaking sanctions,” *Reuters News*, Jan. 7, 1992; “Embargo breach: Turkey’s Ozal claims rise in Iraqi oil smuggling,” *Platts Oilgram News*, Jan. 24, 1992, p. 5 (reporting that one of the officials of the Turkish Government estimated that \$1.6 billion worth of oil and products were smuggled into Turkey from Iraq in 1991); Kurt Schork, “Illegal fuel trade clogs Iraqi border with Turkey,” *Reuters News*, May 1, 1992; P.V. Vivekanand, “U.N. May Allow Oil Exports Into Turkey By Iraqi Kurds,” *Mideast Markets American Banker-Bond Buyer*, May 4, 1992 (estimating that 20,000 and 25,000 barrels of petroleum were delivered daily from the Kurdistan-controlled regions of Iraq to Turkey in exchange for foodstuffs, supplies, and refined oil); Ayse Sarioglu, “Turkey chafes at U.N. sanctions on Iraq,” *Reuters News*, July 27, 1992; “Turks find way round sanctions on Baghdad,” *Financial Times*, Dec. 8, 1994; “Christopher Says US Looking At Iraqi Oil Sales Reports,” *Dow Jones News Service*, Feb. 16, 1995; Youssef M. Ibrahim, “Iraq getting around oil-trading sanctions,” *Pittsburgh Post-Gazette*, Feb. 16, 1995, p. A12; “Turkey’s oil sector strives to tackle smuggling from Iraq,” *European Energy Report*, Mar. 3, 1995, p. 8; Jonathan Lyons, “Iraqi oil drips through Turkish pipeline-on-wheels,” *Reuters News*, Mar. 19, 1995.

<sup>624</sup> Permanent Mission of Turkey note to 661 Committee Chairman (Aug. 5, 1996).

<sup>625</sup> Chris Hedges, “Zakho Journal; In the Kurdish Zone, It’s the Time of the Vulture,” *New York Times*, Dec. 13, 1991, p. A4 (quoting one of the Kurdish leaders stating that “[o]utside of smuggling there really isn’t any work in Kurdistan”); “Embargo breach: Turkey’s Ozal claims rise in Iraqi oil smuggling,” *Platts Oilgram News*, Jan. 24, 1992, p. 5 (stating that profits from smuggling were split between smugglers and Kurdish groups); “Turkey imposes a ban to stop Iraqi smuggling,” *Platts Oilgram News*, Jan. 31, 1992, p. 4 (stating that the profits from smuggling were reportedly used to “finance the activities of Kurdish separatist

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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Northern Iraq did not hide the fact of their participation in the cross-border trade, and the United Nations officials, as well as members of the 661 Committee, were aware of the Kurdish involvement.<sup>626</sup>

With the passage of Resolution 986, the Security Council sought to redress in part the adverse impact of sanctions on Turkey. It did so by requiring that the majority of oil to be sold by Iraq under the Programme be exported by means of an oil pipeline that ran from Kirkuk in northern Iraq to the Turkish port of Yumurtalik (near Ceyhan). It further provided for the right of Turkey to import Iraqi oil in an amount and value to meet the pipeline tariff charges of approximately \$48 million per 90-day period.<sup>627</sup>

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guerillas”); “U.N. May Allow Oil Exports Into Turkey by Iraqi Kurds,” *Mideast Markets American Banker-Bond Buyer*, May 4, 1992 (reporting on involvement of Kurdish groups in the cross-border trade between Iraq and Turkey); Ayse Sarioglu, “Turkey chafes at U.N. sanctions on Iraq,” *Reuters News*, July 27, 1992 (quoting a Turkish government official stating that the cross-border trade between Iraq and Turkey “helps the starving Kurds and it helps people on our side of the border too”); “Divided Kurds kill 500 in battle over the spoils of smuggling,” *The Independent*, Jan. 21, 1995 (stating that Kurdish groups were charging \$150 on each lorry crossing the border and reporting on fighting between the Patriotic Union of Kurdistan and the Kurdish Democratic Party over profits from smuggling); John Pomfret, “Iraq-Turkey Fuel Smugglers Back in Business,” *Washington Post*, Apr. 7, 1995, p. A1 (estimating the profit of Kurdish groups from cross-border trade in late 1994 at \$100,000 a day and reporting on fighting between the Kurdish Democratic Party and the Patriotic Union of Kurdistan over profits from smuggling); “Iraq diesel smuggling costs Turkey \$750 mln a year,” *Reuters News*, Aug. 28, 1997 (reporting on fighting between rival northern Iraqi Kurdish factions over the revenue from cross-border trade); Vijay Joshi, “Kurds cautious about U.S. help in toppling Saddam,” *Associated Press*, Feb. 10, 1999 (reporting on the Kurdish Democratic Party’s participation in the smuggling of Iraqi oil).

<sup>626</sup> Nechirvan Barzani letter to Tony Blair (July 5, 1999) (referring to the cross-border trade as the “sole financial source” for the Kurdish-controlled regions of Iraq); Nechirvan Barzani letter to Wim Kok (July 5, 1999); Nechirvan Barzani letter to Martin Andjaba (Sept. 19, 1999); John Pomfret, “Iraq-Turkey Fuel Smugglers Back in Business,” *Washington Post*, Apr. 7, 1995, p. A1 (quoting Mr. Abdulaziz Tayyib, the Kurdish governor of Dohuk, stating that “[n]o doubt Iraq benefits [from cross-border trade], as we do, and Turkey too”); Russia officials #3, 6-7 interview (Feb. 28, 2005) (describing the Kurdish territories as a “free trade zone” and stating that the only way to stop smuggling in the North of Iraq was to have “two .30 caliber machine guns because one would overheat”); United Kingdom official #4 interview (Dec. 6, 2004); Elkheir Khalafalla Khalid interview (Mar. 10-11, 2005); J. Christer Elfverson interview (Dec. 4, 2004) (recalling that one of the Kurdish leaders informed him that the Kurdish Democratic Party made \$1 million per day from the cross-border trade); Turkey officials #1-2 interview (Feb. 11, 2005) (stating that Iraqi Kurds benefited from the cross-border trade and recalling related discussions in the United States Department of State).

<sup>627</sup> S/RES/986, paras. 2, 6 (Apr. 14, 1995); SOMO and Botas protocol (Dec. 26, 1996) (establishing payment of about \$48 million for a 90-day period); Provisional record of 661 Committee meeting, S/AC.25/SR.148, pp. 4-7 (Jan. 23, 1997) (containing discussion of the Kirkuk-Yumurtalik pipeline payment arrangements); SOMO and Botas protocol (Sept. 16, 1997) (establishing payment of about \$96.5 million for a 180-day period); SOMO and Botas protocol (Feb. 18, 1999) (establishing payment of about \$77 million for a 144-day period); SOMO and Botas protocol (Mar. 4, 2002) (establishing payment of about \$96.5 million for a 180-day period).



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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Numerous diplomats who served on the 661 Committee during the years of the Programme acknowledged to the Independent Inquiry Committee that they were aware of the ongoing trade between Iraq and Turkey and that there was a tacit understanding that this trade would continue. For example, a United Kingdom official recalled learning that United Kingdom officials working in the region witnessed trucks crossing the Iraq-Turkey border to offload fuel. Current and former government officials from the Netherlands, Germany, France, and the United States confirmed that the 661 Committee members were aware of the ongoing cross-border trade between Turkey and Iraq. Russian officials noted that Turkey relied substantially on the revenues from trade with Iraq and stated that the issue of cross-border trade between Iraq and Turkey was not addressed by the 661 Committee. A Norwegian official suggested that there was a “tacit understanding” that Turkey would have access to oil. A Dutch official observed that the Iraq-Turkey trade was openly condoned, and a Portuguese official noted that “everyone accepted” importation of Iraqi oil to Turkey outside of the Programme for political reasons.<sup>628</sup>

#### A. REQUEST FOR ARTICLE 50 RELIEF

It was not until nearly six years after sanctions were imposed that Turkey formally sought Article 50 relief from the sanctions against Iraq. In a diplomatic note verbale of August 5, 1996 to the Chairman of the 661 Committee, Turkey asserted that it was “at the forefront of the countries which have been directly and most adversely affected by the embargo” against Iraq. An annex to the note described numerous estimates of losses to various sectors of the Turkish economy, concluding that sanctions had cost Turkey a total of about \$27.3 billion from 1990 to mid-1996. In terms reminiscent of Jordan’s request for Article 50 relief, Turkey sought approval to import Iraqi oil and suggested that the possibility that payments for oil could be in the form of “drawing upon Iraqi debt to Turkey,” albeit its note did not further substantiate or explain the nature of this debt.<sup>629</sup>

Three days after receiving Turkey’s request, the 661 Committee members decided to defer further consideration pending examination by their capitals and until their meeting at the end of the

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<sup>628</sup> United Kingdom official #4 interview (Dec. 6, 2004) (noting that the issue was not addressed by the 661 Committee); Netherlands official #2 interview (Mar. 10, 2005); France official #4 interview (Dec. 2, 2004); France official #3 interview (Dec. 2, 2004); Germany official #1 interview (Feb. 11, 2005); United Kingdom official #2 interview (Dec. 6, 2004); United States official #9 interview (Dec. 22, 2004); United Kingdom official #5 interview (Sept. 27, 2004); United States official #2 interview (Jan. 10, 2005); United States official #7 interview (Feb. 11, 2005); United States official #14 interview (Apr. 1, 2005); Russia officials #3, 6-7 interview (Nov. 16, 2004); Russia officials #3, 6-7 interview (Feb. 28, 2005); Russia officials #3, 6-7 interview (Mar. 1, 2005); Norway official #1 interview (Aug. 31, 2004); Netherlands official #8 interview (Sept. 1, 2004); Portugal official #1 interview (Sept. 23, 2004).

<sup>629</sup> Permanent Mission of Turkey note to 661 Committee Chairman (Aug. 5, 1996).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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month. This set the stage for repeated deferrals of Turkey's request, for fear of "a precedent for more generalized exceptions" to the sanctions regime.<sup>630</sup>

Throughout the remainder of 1996 and early 1997, the 661 Committee repeatedly deferred substantive consideration of Turkey's note verbale. On January 23, 1997, the Chairman of the 661 Committee invited its members to comment on the fact that the item had been on the 661 Committee's agenda since August 1996. In response, the representative of the United States stated that the position of his delegation remained unchanged and, "[s]ince the procedure under resolution 986 (1995) was proceeding smoothly, the item should continue to be deferred until that procedure was complete."<sup>631</sup>

At the 661 Committee's meeting of February 21, 1997, the United States proposed to take Turkey's request off the agenda until the 661 Committee would be prepared to consider it. The suggestion met no objections, and the 661 Committee decided to send a letter to the Permanent Mission of Turkey to the United Nations informing it of the decision to take the item off the agenda. However, Turkey objected. The 661 Committee therefore decided—without committing to taking any action on the request—that the item would be kept on the agenda "in order to show Turkey that the [661] Committee was responsive to the requests of countries."<sup>632</sup>

Thus, Turkey's request—destined for denial—lingered from month to month on the meeting agenda of the 661 Committee. At the 661 Committee's meeting on February 4, 1998, France suggested that the Secretariat prepare a report on the economic impact of the sanctions on all countries neighboring Iraq, including Turkey. However, the 661 Committee could not decide whether to assign the Secretariat with such a task. Bahrain and China joined in France's suggestion, but the United States and the United Kingdom objected. The United States maintained that "it was not clear what the [661] Committee would do with such a report, since it did not have the authority to grant a sanctions exemption to Turkey." Following a brief discussion at the 661 Committee's meeting on June 18, 1998, it was decided for lack of consensus not to take any action on the French proposal for a study of the economic impact of the sanctions on Turkey.<sup>633</sup>

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<sup>630</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.142, pp. 3-4 (Aug. 8, 1996); Provisional record of 661 Committee meeting, S/AC.25/SR.143, p. 12 (Aug. 28, 1996).

<sup>631</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.148, pp. 8-9 (Jan. 23, 1997).

<sup>632</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.150, p. 8 (Feb. 21, 1997); Provisional record of 661 Committee meeting, S/AC.25/SR.151, p. 4 (Mar. 17, 1997).

<sup>633</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.166, pp. 3-4 (Feb. 4, 1998); Provisional record of 661 Committee meeting, S/AC.25/SR.171, pp. 3-4 (May 12, 1998); Provisional record of 661 Committee meeting, S/AC.25/SR.172, p. 4 (June 18, 1998).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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## B. CONTINUED TRADE IN 1997 AND 1998

In the meantime, media sources continued to report on Turkey's importation of large amounts of Iraqi oil outside of the Programme without official approval from the United Nations. Media sources estimated that in 1997 the volume of petroleum and petroleum products smuggled into Turkey reached 50,000 barrels per day. By mid-summer of 1998, the number of Turkish trucks entering Iraq reportedly reached 850 per day, and by early 1999, about 42,000 trucks were licensed to cross the border between Turkey and Iraq from one to three times per month.<sup>634</sup>

Indeed, the trade continued well into the Programme, despite the fact that the United Nations set up an official inspection post in Zakho, a principal transit point at the Iraq-Turkey border. Some Turkish companies participated in contracts under the Programme, and these transactions were subject to inspection by United Nations inspectors in order to allow payment to be made from the escrow account.<sup>635</sup> However, the border inspectors had been told by the United Nations that their job was only to inspect goods under the Programme and not to involve themselves with other goods that crossed the border in violation of the United Nations sanctions against Iraq.<sup>636</sup>

In June 1998, *The New York Times* reported an estimate by the United States government that 50,000 to 60,000 barrels of Iraqi oil and fuel products were smuggled daily from the northern provinces of Iraq to Turkey. The article further quoted an unidentified official from the Clinton Administration who stated that the United States was not alone in failing to object to this sanctions evasion: "[T]he international community has decided not to object, not just [the United States]." A White House spokesman referred to cross-border trade between Iraq and Turkey as "inevitable" and estimated that "[t]he amount of oil leakage . . . smuggled across the border into Turkey is something like \$100 million a year."<sup>637</sup>

As with Jordan, the United States decided that Turkey's noncompliance with the sanctions did not warrant suspending Turkey from receiving United States foreign aid. Under the terms of a "memorandum of justification" that served as the basis under United States law for allowing

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<sup>634</sup> "Turkey – Oil's Share of Turkish Energy," *APS Review Oil Market Trends*, May 4, 1998; "Illicit Iraqi oil legalized," *Turkish Daily News*, June 29, 1998; Jon Hemming, "Turk diesel trade with Iraq flows on amid tension," *Reuters News*, Jan. 12, 1999.

<sup>635</sup> "First Interim Report," pp. 97-109 (describing selection of Lloyd's Register to perform inspections of humanitarian goods entering Iraq); "Second Interim Report," pp. 7-25 (describing selection of Cotecna to perform inspections of humanitarian goods entering Iraq).

<sup>636</sup> Cotecna notes of meeting with Jeremy Owen (Dec. 23, 1998). As discussed in Volume III, Cotecna was hired by the United Nations to conduct inspections of goods at the border. Mr. Owen was a Chief Customs Officer for the United Nations.

<sup>637</sup> James Risen, "Iraq is smuggling oil to the Turks under gaze of U.S.," *New York Times*, June 19, 1998, p. A1; "U.S. unruffled by Iraq oil smuggling via Turkey," *Gulf News*, June 20, 1998; The United States White House, "Transcript: White House Daily Briefing, June 19, 1998," <http://canberra.usembassy.gov/hyper/WF980619/epf501.htm>.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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Turkey to receive foreign aid, the United States Department of State acknowledged on December 21, 1998 that “[t]he Government of Turkey permits the importation of a limited amount of diesel oil from Iraq, and Turkish trucks carry goods into northern Iraq.” The memorandum suggested without elaboration that “most of these goods [entering Iraq] are humanitarian in nature” but cautioned that “others are not.” Citing other factors, including Turkey’s democratic government and assistance in enforcement of a “no fly” zone over northern Iraq, the memorandum concluded that it was in the “national interest” of the United States to transfer foreign aid to Turkey.<sup>638</sup>

### C. RENEWED REQUEST FOR ARTICLE 50 RELIEF

Not having received a response to its 1996 request for Article 50 relief, Turkey, at the behest of France, renewed its request in early 1999 for formal permission from the Security Council to import Iraqi oil. On April 23, 1999, Turkey submitted an updated note verbale that calculated Turkey’s losses from sanctions to be \$35 billion and stated that the revenues obtained from trade under the Programme were “negligible in alleviating Turkey’s losses.”<sup>639</sup>

One month later, France suggested at a meeting of the 661 Committee that Turkey’s request “deserved serious consideration” and that the Committee might want to hear comments from the Secretariat or the United Nations Development Programme on the data furnished by Turkey. The United States, however, stated that it “did not support consideration for Turkey’s request under Article 50 of the Charter,” noting that a draft resolution was under consideration in the Security Council “that would bring Turkey into the oil-for-food programme as a way to address that country’s concerns.”<sup>640</sup>

In the meantime, *Reuters News* published an article estimating that, as of 1999, the Iraq-Turkey trade outside of the Programme was approximately \$400 million a year. On August 24, 1999, France suggested inviting the Permanent Representative of Turkey to participate in a meeting of the 661 Committee. The United States representative responded that “his Government had long

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<sup>638</sup> United States Department of State, “Determination under Section 535 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999” (Dec. 21, 1998) (signed by Strobe Talbott). In the same manner, in 2002, the United States Department of State invoked the “national interest” waiver to allow foreign aid to Turkey for fiscal year 2003. United States Department of State, “Determination under Section 531 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2002,” (Oct. 17, 2002) (signed by Richard Armitage).

<sup>639</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.178, pp. 3-4 (Jan. 11, 1999). At the same meeting, France suggested that the Permanent Representative of Turkey should be invited in person to present his views to the 661 Committee. This proposal remained unaddressed by the 661 Committee during its meeting on January 11, 1999, as well as at its subsequent meetings. *Ibid.*; Turkey Permanent Representative note to 661 Committee Chairman, S/AC.25/1999/COMM.38 (Apr. 23, 1999). According to the estimates of the Government of Turkey, the cumulative losses sustained by the Turkish economy between 1990 and 2003 as a result of sanctions were between \$50 and 60 billion. Turkey officials #1-2 interview (July 12, 2005); Turkey Mission letter to the Committee (Aug. 31, 2005).

<sup>640</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.186, pp. 4-6 (May 27, 1999).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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since instructed him to oppose the Committee's consideration of Turkey's request under Article 50 of the Charter," and "[a]ccordingly, there was no reason for the [661] Committee to invite the Permanent Representative of Turkey to participate in its work."<sup>641</sup>

At two later meetings—in October 1999 and January 2000—the 661 Committee failed to reach consensus as to whether to invite a presentation from the Permanent Representative of Turkey. The United States representative recalled in one of the later meetings that, at some point in time, "a letter had been sent to Turkey to deny its request for assistance under Article 50, which explained why that item no longer appeared on the agenda."<sup>642</sup>

The 661 Committee was aware that large amounts of trade continued between Iraq and Turkey. At a meeting on March 17, 2000, the United Kingdom representative stated that an amount of "300,000 tons was exported through the north of the country to Turkey." This was followed by a comment from the Russian representative, who identified Turkey as one of the countries that "had repeatedly violated the sanctions regime" and suggested that the Secretariat should "provide information on possible violations in the north of Iraq."<sup>643</sup>

## D. THE FAILED EFFORT TO BRING TRADE BETWEEN IRAQ AND TURKEY UNDER THE PROGRAMME

While Turkey pursued relief under Article 50, a separate movement was afoot during 1999 to bring Iraq's trade with Turkey under formal United Nations control in an arrangement similar to the existing Programme. As with the grant of an Article 50 request, this proposed arrangement would have officially authorized Turkey's importation of oil from Iraq, yet it would have rendered such trade subject to official inspection and control by the United Nations.

On April 15, 1999, the Netherlands and the United Kingdom proposed a draft Security Council resolution "to permit the transport by road to Turkey of petroleum and petroleum products exported from Iraq" under the Programme subject to certain "modifications" from the procedures set forth in Resolution 986. These modifications included the establishment of a separate escrow account from the general escrow account operated under Resolution 986. The separate account would receive proceeds from Iraq's sales of oil to Turkey and, in turn, the proceeds would be used for the purchase of humanitarian goods from Turkey. The escrow account proceeds could also be spent to cover the costs of independent oil inspection monitoring and escrow account

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<sup>641</sup> Evelyn Leopold, "Britain wants Iraqi illegal oil exports stopped," *Reuters News*, Mar. 25, 1999; Provisional record of 661 Committee meeting, S/AC.25/SR.189, pp. 20-21 (Aug. 24, 1999).

<sup>642</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.190, pp. 4-6 (Oct. 12, 1999); Provisional record of 661 Committee meeting, S/AC.25/SR.192, p. 25 (Jan. 19, 2000); Provisional record of 661 Committee meeting, S/AC.25/SR.217, p. 7 (Apr. 25, 2001) (comment of United States representative). The Committee has not been able to locate the referenced letter to Turkey.

<sup>643</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.194, pp. 2-5 (Mar. 17, 2000).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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auditing, but—unlike Resolution 986—there was no requirement that thirty percent of the proceeds be used for the payment of claims stemming from Iraq’s war against Kuwait.<sup>644</sup>

According to notes of the informal consultations of the Security Council that took place on April 16, 1999, Russia voiced doubts about “the idea of bringing the oil smuggled from Northern Iraq under UN Control [which] seemed to be suggesting a mini-986 programme for the benefit of Turkey.” In apparent reference to the minority Kurdish control of northern Iraq, Russia suggested that “[t]he political reality here seemed to be establishing a 986 style programme to provide a financial basis for separating the north of Iraq from the rest of the country” and that “[t]his was an extremely serious concern.” Russia and China co-sponsored a competing resolution that did not address Iraq-Turkey trade but instead contemplated a lifting of sanctions upon report by the Secretary-General that a “reinforced” weapons inspection system had become fully operational.<sup>645</sup>

The Netherlands and the United Kingdom continued to press and revise their resolution to bring Iraq’s oil sales to Turkey within an “oil-for-food” arrangement.<sup>646</sup> However, the proposal faced considerable resistance, primarily from Turkey and the Kurdish provinces of Iraq.<sup>647</sup> On June 2, 1999, Benon Sevan wrote a note to S. Iqbal Riza, the Secretary-General’s Chef de Cabinet, noting that “[t]he Kurdish groups in the North” were “opposed to this proposal because it would deprive that group from revenues received through the export of petroleum and petroleum products by truck.” Moreover, according to Mr. Sevan, “it is our [Office of Iraq Programme] understanding that Turkey is also not happy about it.”<sup>648</sup> For lack of sufficient support, the British and Dutch

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<sup>644</sup> Draft Security Council resolution, United Kingdom and Netherlands (Apr. 15, 1999). At that time, under the terms of Resolution 986, thirty percent of escrow proceeds were designated for the payment of UNCC claims. With the passage of Resolution 1330 in 2000, this amount was reduced to twenty-five percent. S/RES/1330, para. 12 (Dec. 5, 2000).

<sup>645</sup> DPA notes of Security Council consultations, pp. 2-3 (Apr. 16, 1999); OIP notes of Security Council consultations, pp. 1-3 (Apr. 16, 1999). The Russian-Chinese draft resolution was supported by France. The United States did not oppose the British-Dutch draft, at the same time describing the Russian-Chinese draft as “fundamentally flawed in that it envisaged lifting sanctions despite noncompliance with Council resolutions.” *Ibid.*, pp. 3, 5.

<sup>646</sup> Draft Security Council resolution, United Kingdom and Netherlands (May 18, 1999) (revising previous draft to set specific numerical limits for the Turkey-Iraq trade and signal the Security Council’s “readiness” to “consider action to bring other avenues of oil trade currently outside . . . the oil-for-food programme (as with the Turkish trade) and thus to increase funds for the programme”); Draft Security Council resolution, United Kingdom and Netherlands, para. 17(c) (June 9, 1999) (further revision to the draft resolution to allow Iraq and Turkey greater flexibility by authorizing them to set the price for oil that they traded, rather than subjecting the price to the review and approval of the 661 Committee for other transactions under the Programme); DPA notes of Security Council consultations (June 22, 1999); DPA notes of Security Council consultations (June 28, 1999).

<sup>647</sup> France official #2 interview (Dec. 3, 2004); United Kingdom official #4 interview (Dec. 6, 2004); United Kingdom official #6 interview (Dec. 7, 2004).

<sup>648</sup> Benon Sevan note to S. Iqbal Riza (June 2, 1999). On July 5, 1999, Nechirvan Barzani, leader of the Kurdistan Democratic Party, complained that the draft resolution “deprive[d] our government of its sole financial source, [and] has no provision or solution to rectify that loss.” Nechirvan Barzani letter to Tony

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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proposal to bring trade with Turkey under the Programme was withdrawn during the course of negotiations leading up to the passage in December 1999 of Resolution 1284—a measure that otherwise effectuated substantial changes to the operation of the Programme.<sup>649</sup>

## E. THE ADVENT OF A FORMAL IRAQ-TURKEY BORDER TRADE PROTOCOL

After the failed effort in late 1999 to bring the border trade under United Nations control, Turkey agreed with Iraq to the terms of a formal bilateral border trade protocol in January 2000. Under the agreement, Turkey channeled seventy percent of its payments for Iraqi oil to a bank account that was used in turn to purchase Turkish goods. The remaining thirty percent was transferred to a SOMO-controlled bank account at the Saradar Bank in Lebanon, and from there to an account of the Central Bank of Iraq. These funds were potentially for the unrestricted benefit and use of Saddam Hussein.<sup>650</sup>

According to SOMO, between 2000 and 2003 Turkey purchased about \$807 million worth of oil and oil products from Iraq. The Committee has confirmed through SOMO records that Turkey eventually paid Iraq about \$767 million from April 2000 to March 2003 under the terms of the protocol. This amount does not include any payments for oil and oil products exported from Iraq prior to 2000. Although seventy percent of these payments went to a bank account that was ostensibly dedicated for the purchase of Turkish goods, the goods purchased were not subject to any kind of inspection by the United Nations to determine if they were humanitarian in nature. One senior Iraqi official has advised that some of the goods financed for import by this account were “industrial goods” that could not have been purchased by Iraq under the Programme.<sup>651</sup>

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Blair, p. 1 (July 5, 1999); Nechirvan Barzani letter to Wim Kok, p. 1 (July 5, 1999). On September 19, 1999 Barzani sent a similar letter to the President of the General Assembly, with copies to all Members of the General Assembly and Mr. Sevan. Nechirvan Barzani letter to Martin Andjaba (Sept. 19, 1999).

<sup>649</sup> Netherlands official #2 interview (Mar. 10, 2005) (discussing the progress of negotiations of Resolution 1284); Peter van Walsum, “The Iraq Sanctions Committee,” in *The UN Security Council: From the Cold War to the 21<sup>st</sup> Century* (David Malone ed., Lynne Rienner Publishers, 2002), pp. 186-187 (discussing the course of negotiations of Resolution 1284); “Saddam gets lucky,” *Weekly Petroleum Argus*, Dec. 18, 2000; “Iraq – UN stalemate,” *Energy Compass*, Apr. 23, 1999 (reporting on the lack of support for the British-Dutch resolution); S/RES/1284 (Dec. 17, 1999). Most significantly, Resolution 1284 lifted the “ceiling” on Iraq’s oil exports and streamlined the humanitarian contract review process by designating certain “green list” items to be exempt from contract-by-contract review and approval by the 661 Committee. *Ibid.*, paras. 15, 17.

<sup>650</sup> Iraq officials interviews; U.S. Treasury Department interview of Iraq official #38; U.S. Treasury Department interview of Iraq official #41. As of December 31, 2003, SOMO’s account at Saradar Bank had a remainder balance of about \$25 million. Iraq officials interview. The Committee does not have transaction records for the disposition of money transferred out of the Saradar account.

<sup>651</sup> SOMO Table on Oil Sales; SOMO record, Turkey agreement payments (Aug. 2000 to Apr. 2003); Iraq official interviews.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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The media regularly reported in 2000 and 2001 on the continued trade between Iraq and Turkey that occurred outside the Programme.<sup>652</sup> However, the issue of cross-border trade between these two countries was not addressed substantively at any of the formal meetings of the 661 Committee from 2000 to 2003, and the 661 Committee did not request from Turkey further information concerning its trade with Iraq.

## F. STATEMENTS BY TURKEY TO THE COMMITTEE

The government of Turkey has neither confirmed nor denied to the Independent Inquiry Committee the existence of a trade protocol with Iraq, although a Turkey official has acknowledged that there was trade outside of the Programme between Iraq and Turkey. The government of Turkey has not responded to the Committee's request for documentation concerning border trade with Iraq outside the Programme.<sup>653</sup>

The Committee furnished the government of Turkey with a copy of a translation of the Iraq-Turkey border trade protocol as well as tables of all alleged invoices and payments under the protocol. The government of Turkey has refused to comment on the trade arrangements, stating that it considered bilateral trade between Iraq and Turkey to be outside of the Committee's mandate to study the Programme.<sup>654</sup>

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<sup>652</sup> "Turkey takes more smuggled oil," *Global Markets*, Dec. 11, 2000, p. 3 (noting that 55,000 of 100,000 barrels transported from Iraq to Turkey on daily basis were imported under a one-year trade agreement and that the agreement stipulated that 2.75 million tons of crude oil were to be imported by truck by the end of May 2001); "Turkey smugglers get rich," *Weekly Petroleum Argus*, Dec. 18, 2000, p. 16 (estimating cross-border trade between Iraq and Turkey at 85,000 barrels per day); Douglas Frantz, "At Iraq's Backdoor, Turkey Flouts Sanctions," *New York Times*, Mar. 30, 2001, p. A1; Elif Unal, "Turkey says will abide by U.N. on Iraq sanctions," *Reuters News*, May 23, 2001; "Turkish drivers run for import permits for Iraqi diesel," *Agence France-Presse*, June 10, 2001. According to media reports, in late 2001 and early 2002 the Government of Turkey started constraining cross-border trade to cut off financial flow to the Northern provinces of Iraq in the wake of possible war. "Turkey closes Harbur gate to Iraq," *IPR Strategic Information Database*, Oct. 15, 2001. On January 25, 2003 the *Inter Press Service* reported that the Government of Turkey was afraid that the "Iraqi Kurds might establish an independent state if Saddam Hussein is defeated." The article further stated that, with the end of lucrative trade, "an estimated 50,000 abandoned trucks rust by the side of the road from Turkey to the Iraqi oilfields." Pratap Chatterjee, "Turkey: diesel smugglers lose business as war looms," *Inter Press Service*, Jan. 25, 2003.

<sup>653</sup> Committee letters to Turkey Permanent Representative (Feb. 11 and Apr. 29, 2005); Turkey officials #1-2 interviews (Feb. 11 and July 12, 2005); Turkey Mission letter to the Committee (Aug. 31, 2005).

<sup>654</sup> Committee letters to Turkey Permanent Representative (Feb. 11 and Apr. 29, 2005); Turkey officials #1-2 interviews (Feb. 11 and July 12, 2005); Turkey Mission letter to the Committee (Aug. 31, 2005) (stating that the Committee's mandate "is limited to the collection and examination of information relating to the administration and management of the Oil-for-Food Programme" and, "[b]ased on this clear legal and procedural premise, [the Government of Turkey] did not feel obliged to respond to certain specific questions raised by [the] Committee").



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

## IV. SYRIA

The Syrian Arab Republic lies on the western border of Iraq. Since the 1930s, a transnational oil pipeline has run east to west across the country to transport oil from Iraq's northern Kirkuk fields to the coast of Syria. By the 1980s, the pipeline system ran to a refining facility in the Syrian city of Homs, with outlet extensions to refining facilities on the Mediterranean coast—at Baniyas to the north and Tripoli (Lebanon) to the south. Before the closure of the pipeline in 1982, it was used to transport about four million tons of oil a year, or one-third of Iraq's annual production. The 600-mile pipeline was closed in April 1982 as Iraqi-Syrian relations broke down because of Syria's support of Iran in the Iran-Iraq war. Syria thereafter imported oil from Iran at concessional prices.<sup>655</sup>



Figure: Map of Syria (Jan. 2004) (showing east-west pipeline).

<sup>655</sup> Joint UNDP/World Bank Energy Sector Assessment Program, "Syria: Issues and Options in the Energy Sector, Report 5822-SYR," pp. 59, 95 (May 1986) (noting that the "pipeline" consists of two 32-inch pipelines, one 16-inch pipeline and one 12-inch pipeline); Mission Organized by the International Bank for Reconstruction and Development, "The Economic Development of Syria," pp. 14, 115 (1955); Syrian Ministry of Petroleum and Mineral Resources, "A Brief History of the Syrian Company for Oil Transport," [http://www.mopmr-sy.org/syria\\_oil%20transporting.htm](http://www.mopmr-sy.org/syria_oil%20transporting.htm); Syria officials #2-3 interview (Feb. 11, 2005) (recounting that pipeline was built in the late 1940s or early 50s and closed in 1981); Ihsan Hijazi, "Iraq abandons Syria pipeline," *New York Times*, Dec. 14, 1988, p. A10 (stating that the pipeline was shut off by Syria in April 1982 due to the Iran-Iraq war); Ihsan Hijazi, "Syria reported to discuss oil deal with Iraq," *New York Times*, Mar. 26, 1992, p. A11 (stating that at certain point Iraq had exported almost 1.25 million barrels of oil a day through the 30-inch pipeline).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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Due to Syria's backing of Iran in the Iran-Iraq war and its participation in the anti-Iraq coalition in 1990 and 1991, relations between Iraq and Syria remained hostile throughout 1980s and early 1990s.<sup>656</sup> Nevertheless, several months after the United Nations imposed its sanctions against Iraq, Syria submitted a note verbale to the United Nations "with a view to alleviating the economic difficulties with which Syria is faced."<sup>657</sup>

Accompanying Syria's note was a study prepared by a team of United Nations researchers assessing the loss and damages to Syria from Iraq's invasion of Kuwait and the imposition of United Nations sanctions. The study highlighted the disruption caused by sanctions to the plans that Iraq and Syria had "to re-open the border between them and to resume pumping Iraqi oil through the Syrian pipeline and provide Syria with certain quantities of oil at reduced prices." According to the study, the sanctions had led "to halting of work under the agreement" involving Iraq "provid[ing] Syria with 4 million barrels of oil per year at under 50 percent of market price."<sup>658</sup>

As with the request of Jordan and other countries for Article 50 relief, the 661 Committee referred the request of Syria to the President of the Security Council with a recommendation that an appeal be made to all States and major aid agencies to provide immediate technical, financial, and material assistance. The 661 Committee stated its view that there was an "urgent need to assist the Syrian Arab Republic in coping with its economic problems," "especially those losses resulting from undelivered Syrian products to Iraq and occupied Kuwait, and undelivered Iraqi oil shipments to the Syrian Arab Republic."<sup>659</sup> Although the Secretary-General communicated an appeal for assistance to all States and to the relevant United Nations financial institutions, there is no indication that Syria obtained significant assistance or relief.<sup>660</sup>

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<sup>656</sup> Syria officials #2-3 interviews (Feb. 11 and June 14, 2005); see also "Syria says more work needed to heal rift with Iraq," *Reuters News*, Jan. 19, 1988; Patrick Tyler, "Iraq resumes anti-Syrian propaganda; move signals breakdown of three-month-old truce effort," *Washington Post*, Feb. 3, 1988; "Assad presses reluctant Iran to condemn Iraq," *Financial Times*, Sept. 24, 1990, p. 3; Jonathan Randal, "Syria stands to gain from risky support of anti-Iraq coalition," *Washington Post*, Mar. 5, 1991, p. A15.

<sup>657</sup> Dia-Allah El-Fattal note verbale to Javier Pérez de Cuéllar (Jan. 31, 1991) (containing attachment entitled "Annex: Study on the Economic Damages and Losses Suffered by the Syrian Arab Republic as a Result of the Gulf Crisis" prepared by researchers from the United Nations Economic and Social Commission for Western Asia). At the time of submission of the *note verbale* Ambassador Dia-Allah El-Fattal was the Permanent Representative of the Syrian Arab Republic to the United Nations.

<sup>658</sup> *Ibid.*, Annex, pp. 11, 14, 20.

<sup>659</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.34, p. 8 (Mar. 13, 1991); 661 Committee Chairman letter to the President of the Security Council (Mar. 18, 1991); see also "Report of the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation between Iraq and Kuwait," S/1996/700, paras. 101-110 (Aug. 26, 1996) (hereinafter "1996 Report of the 661 Committee") (summarizing treatment of Article 50 requests by 21 countries).

<sup>660</sup> President of the Security Council note (Apr. 29, 1991); 1996 Report of the 661 Committee, para. 109; Syria officials #2-3 interviews (Feb. 11 and June 14, 2005).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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As noted elsewhere in this Report, when the Security Council passed Resolution 986 in 1995 to authorize the Programme, it favored Iraq's export of oil by pipeline through Turkey rather than through Syria. Resolution 986 authorized only two points of export, specifically requiring that the "larger share" of oil be exported through the Kirkuk-Yumurtalik pipeline to Turkey and that any remainder be exported through Iraq's internal pipeline to the Persian Gulf terminal at Mina al-Bakr.<sup>661</sup>

Nevertheless, Iraq still harbored ambitions to export oil through Syria. In reaching an accord with the United Nations in May 1996 on the memorandum of understanding to implement the Programme, Iraq's ambassador submitted a letter to the United Nations declaring that "the Iraqi delegation wishes to state that a third outlet for Iraqi petroleum export could be via the Syrian Arab Republic."<sup>662</sup> However, the Security Council never authorized the export of Iraqi oil through Syria.

## A. THE BORDER TRADE PROTOCOL

In the absence of United Nations authorization, Iraq and Syria took matters into their own hands. After decades of mistrust, Syria and Iraq began rebuilding economic and political ties during the second half of the 1990s.<sup>663</sup> These efforts culminated in the negotiation of a formal border trade protocol in late May 2000. An excerpt of the copy of the protocol as provided to the Committee from Iraq's State Oil Marketing Organization is reproduced below.<sup>664</sup>

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<sup>661</sup> S/RES/986, para. 6 (Apr. 14, 1995).

<sup>662</sup> A. Amir Anbari letter to Hans Corell (May 20, 1996) (attachment to Iraq-UN Memorandum of Understanding).

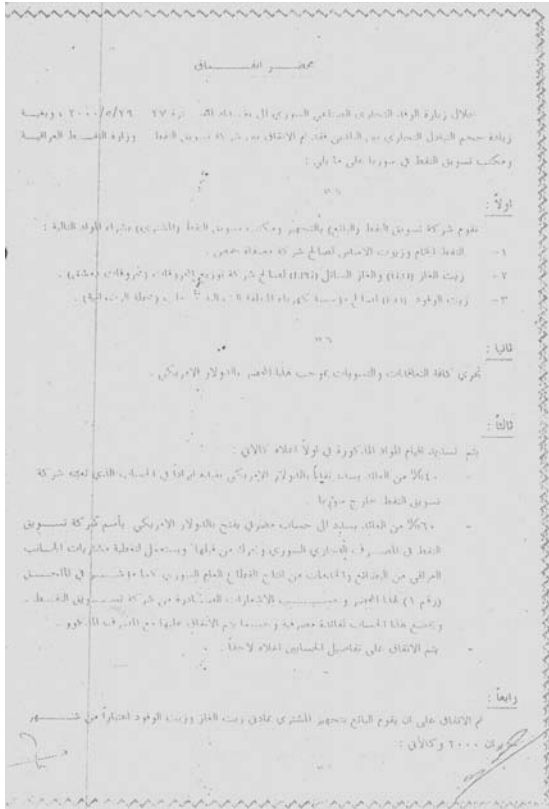
<sup>663</sup> Syria officials #2-3 interview (Feb. 11, 2005); Syria official #1 interview (July 5, 2005). This warming of relations was also documented in the media. See, e.g., "Iraq official Aziz praises relations with Jordan, Syria," *BBC Monitoring Middle East – Political*, Sept. 28, 2000; "Iraqi vice-president confers with Syria's Bashar al-Asas," *BBC Monitoring Middle East – Political*, June 13, 2000; Douglas Jehl, "Syria Sneaks Iraq's Oil Out As Old Foes Become Friends," *New York Times*, Apr. 26, 1999, p. A6; "Iraq and Syria to improve trade relations," *Reuters News*, Oct. 31, 1998; Issam Hamza, "Iraqi minister in Syria to improve relations," *Reuters News*, Aug. 27, 1997; Dilip Hiro, "Syria-Iraq: old time Arab foes prepare to mend fences," *Inter Press Service*, June 1, 1997; "Iraqi minister in Syria for first time in 17 years," *Associated Press*, Aug. 27, 1997; "Baghdad ready to renew ties with Gulf War nations," *Agence France-Presse*, May 23, 1996.

<sup>664</sup> The protocol was subsequently amended on August 30, 2000 and January 4, 2001. Iraq and Syria agreement report (Aug. 30, 2000); Iraq and Syria agreement report (Jan. 4, 2001).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING



[Translation from Arabic]

Agreement Report

During the Syrian Commercial and Industrial delegation's visit to Baghdad from 27-29/5/2000, with the aim of increasing trade exchange between the 2 countries, whereby an agreement was made between the Oil Marketing Company, the Iraqi Ministry of Oil and the Oil Marketing office in Syria on the following:

**First:**

The Oil Marketing Company (Seller) will supply while the Oil Marketing Office (Buyer) will purchase the following materials:

- 1) Crude oil and essential oils for the benefit of Hums Refinery Company.
- 2) Gas oil (G.O) and liquid gas (LPG) for the benefit of the Fuel Distribution Company (Damascus Fuel).
- 3) Fuel Oil (F.O) for the benefit of the northern region Electric Organization of Aleppo (Al-Radwaniya station).

**Second:**

All contractual agreements and settlements pertaining to this report will be in American dollars.

**Third:**

Settlement of materials mentioned in "First" above as follows:

- 40% of the revenue will be paid in cash in American dollars, registered as income in an account assigned by the Oil Marketing Company outside Syria.
- 60% of the revenue will be paid to a bank account that will be opened in American dollars in the name of the Oil Marketing Company at the Commercial Bank of Syria which will be controlled by it (referring to the Oil Marketing Company) and will be used to cover Iraqi purchases produced by the Syrian public sector including goods and services as indicated in appendix (no. 1) of this report and according to advices (or notifications) issued by the Oil Marketing Company. This account will be subject to bank interest based on an agreement with the mentioned bank.
- An agreement regarding details of both accounts will be made at a later stage.

**Fourth:**

It has been agreed that the seller will supply the buyer with both oil gas and oil fuel starting June 2000 as follows:

Signed

Signed

**Figure: First page of the Iraq-Syria border trade protocol (with English translation) (May 29, 2000).**

According to Iraqi witnesses, trade first resumed by means of oil shipments in trucks and later by means of reopening of the Syrian oil pipeline. After Syria learned how expensive it would be to affect the necessary repairs to the long-closed oil pipeline, Iraq sent a team of workers to repair it, and the workers did so in about twenty days. Oil sales under the protocol were managed by approximately six employees of SOMO, and the physical apparatus of the pipeline in Iraq was administered by the Director General of Iraq's North Oil Company.<sup>665</sup>

In addition to the pipeline traffic, SOMO kept detailed records of truck and rail shipments of oil to Syria. Below are examples of such records showing shipments of approximately 310,000 barrels of oil by trucks in January 2001 and about 384,000 barrels in June 2002.<sup>666</sup>

<sup>665</sup> Iraq official interview (stating that the oil smuggled through the pipeline was consumed in Syria, thus freeing oil produced in Syria for exports); Saddam Hassan interview (Mar. 9, 2005); Iraq official interviews.

<sup>666</sup> SOMO record, crude oil export log (Sept. 2001 and Oct. 2002).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

OIL MARKETING COMPANY / SOMO SHIPPING & QUANTITIES DIV. CRUDE OIL EXPORT EX. AL - SINIYAH DURING JANUARY / 2001				
TYPE OF CRUDE TRANSPORTER	KIRKUK HOMS REFINERY CO.			
DAYS	TON	BBL	LITRE	TRUCKS
1	1410.595	10549	1877285	48
2	1440.343	10772	1712658	50
3	451.353	3355	533785	16
4	1458.293	11081	1761467	50
5	1444.654	10730	1709013	50
6	1446.428	10744	1708113	50
7	1459.849	10928	1737468	50
8	1426.271	10674	1697739	50
9	1447.876	10839	1723459	50
10	1475.434	10951	1741132	50
11	1434.778	10669	1695756	50
12	1481.591	11012	1751078	50
13	1438.907	10703	1701645	50
14	1431.217	10643	1692549	50
15	1477.640	10988	1747445	50
16	1435.811	10678	1697975	50
17	1455.825	10842	1724264	50
18	1463.884	10932	1738172	50
19	1440.164	10770	1712647	50
20	1455.985	10864	1727351	50
21	1434.421	10710	1703184	50
22	1469.709	10978	1745087	50
23	1451.139	10829	1721605	50
24	1468.492	10953	1741363	51
25	1456.985	10879	1730178	50
26	1456.575	10892	1732162	50
27	1154.751	8600	1366893	40
28	1158.791	8625	1371672	40
29	1154.941	8635	1372808	40
30	645.087	4809	764684	22
31	703.013	5233	832185	24
TOTAL	41560.372	309867	49269782	1431
Daily average	1341	9986	1589348	46
Monthly WGT. API	36.21			

OIL MARKETING COMPANY / SOMO SHIPPING & QUANTITIES DIV. CRUDE OIL EXPORT EX. AL - SINIYAH DURING JUNE / 2002				
TYPE OF CRUDE TRANSPORTER	KIRKUK HOMS REFINERY CO.			
DAYS	TON	BBL	LITRE	TRUCKS
1	1713.594	12665	2013856	58
2	1635.285	12120	1926129	56
3	1543.341	11449	1820193	51
4	1595.534	11853	1884199	54
5	1669.083	12381	1968957	57
6	1690.342	12542	1994034	56
7	1676.006	12444	1979212	57
8	1711.659	12710	2021322	56
9	1544.507	11464	1822430	54
10	1745.524	12955	2059616	57
11	1603.661	11902	1892226	55
12	1625.644	12072	1919755	55
13	1643.331	12222	1943620	55
14	1684.523	12484	1984827	57
15	1608.188	11915	1894881	53
16	1666.590	12345	1963698	58
17	1700.789	12601	2003989	56
18	1607.849	11914	1894486	55
19	1653.940	12133	1929018	55
20	1633.998	11975	1904869	55
21	1771.501	12991	2065165	60
22	2094.997	15425	2452292	70
23	1662.048	12240	1945960	56
24	1846.477	13647	2169519	62
25	1996.253	14751	2345500	68
26	1984.040	14666	2331149	16
27	1855.159	13854	2171555	63
28	1932.789	14219	2260832	65
29	1762.405	12987	2064916	60
30	2081.177	15323	2436122	70
TOTAL	51940.234	384049	61064327	1700
Daily average	1731	12802	2035478	57
Monthly WGT. API	34.86			

Figure: Sample records of oil shipped to Syria by trucks (Jan. 2001 and June 2002).

The protocol provided for a portion of oil sale proceeds to be devoted for the trade purchase of Syrian goods (sixty percent) and the remainder of proceeds to return to Iraq in cash (forty percent). The sixty percent “trade” account was maintained at the Commercial Bank of Syria in Damascus and used by SOMO to pay Syrian suppliers of goods to Iraq upon proof of delivery of the goods to Iraq. Because these Syrian goods were not provided under the Programme, they were not subject to United Nations inspection prior to entry into Iraq. The remaining forty percent of oil sales proceeds were deposited by Syria into the “cash” account—another SOMO bank account at the Commercial Bank of Syria. These funds were then transferred to a “bridge” account at the Syrian Lebanese Commercial Bank in Beirut and transferred again within twenty-four hours to a separate account controlled by the Central Bank of Iraq at the same bank in Beirut. Because of concerns that the monies could be frozen or subject to attachment, the bridge account was set up under individual Iraqi names rather than in the name of an entity of the Iraqi government. Most of the “cash” account in Syria was transferred to Beirut, but a relatively small portion—approximately \$90.5 million—was withdrawn in cash from the Commercial Bank of Syria and then sent by diplomatic pouch to the Central Bank of Iraq in Baghdad.<sup>667</sup>

<sup>667</sup> Iraq-Syria border trade protocol (May 29, 2000); Saddam Hassan interview (Mar. 9, 2005); Iraq officials interviews; U.S. Treasury Department interview of Iraq official #1 (indicating that approximately \$90.5

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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According to SOMO, Syria purchased more than \$3.13 billion worth of oil and oil products from Iraq during the last three years of the Programme. SOMO records obtained by the Committee show that from August 2000 to March 2003, Syria paid Iraq more than \$2.81 billion for oil smuggled through the Syrian pipeline, by truck or by rail.<sup>668</sup> This is a conservative estimate of the total illicit trade between Iraq and Syria because it does not account for any trade—widely reported in media sources—that occurred prior to August 2000.<sup>669</sup>

In any event, the loss to potential oil sales under the Programme was immense; the payments of \$2.81 billion were more than ten times the amount of money—\$229 million—that Iraq derived from its imposition of surcharges on all oil purchase transactions that occurred within the Programme. The Syrian payments included about \$1.3 billion in cash that was transferred to the Central Bank of Iraq, presumably for unrestricted use by the regime of Saddam Hussein.<sup>670</sup>

## B. INITIAL RESPONSE OF UNITED NATIONS TO REPORTS OF SMUGGLING BETWEEN IRAQ AND SYRIA DURING THE PROGRAMME

Long before the Iraq-Syria border trade protocol of May 2000, the news media extensively reported on Iraq's plans to resume the export of oil to Syria. In July 1998, the Gulf News reported an announcement by Iraqi Oil Minister Amer Rashid that the Iraq-Syria pipeline "would

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million from the forty percent account was withdrawn in cash and transported by diplomatic pouch to Central Bank of Iraq in Baghdad); U.S. Treasury Department interview of Iraq official #2; U.S. Treasury Department interview of Iraq official #9. As of February 28, 2003, about \$3 million remained in the forty percent "cash" account and nearly \$600 million remained unspent in the sixty percent "trade" account. U.S. Treasury Department interview of Iraq official #2.

<sup>668</sup> SOMO Table on Oil Sales; SOMO record, Syria agreement payments (Aug. 2000 to Mar. 2003).

<sup>669</sup> See, e.g., Douglas Jehl, "Syria Sneaks Iraq's Oil Out As Old Foes Become Friends," *New York Times*, Apr. 26, 1999, p. A6 (stating that "scores of Syrian trucks laden with Iraqi oil now shuttle . . . every day"); Jareer Elass, "Syria, Iraq Collude On Smuggling," *Energy Compass*, May 7, 1999 (citing unidentified "US sources" stating that "[a]s much as 150,000 tonnes a month (35,000 [barrels per day]) is now crossing several border points into Syria in tanker trucks, with Damascus supplying Baghdad with goods in return"). It appears that the pipeline stopped being used when military forces invaded Iraq beginning in March 2003. On April 2, 2003 the *World Tribune* reported that the US special forces have "blown up" the Syrian pipeline and the railroad link between Iraq and Syria. "U.S. commandos destroy Iraqi pipeline to Syria," *World Tribune*, Apr. 2, 2003. The subsequent drastic reduction in the exports of Syrian oil was viewed by the oil industry as a confirmation that Syria was, indeed, illegally importing Iraqi oil through the pipeline during the Programme. John van Schaik, "Syria Cuts Oil Exports Now That Iraqi Flows Have Dried Up," *Energy Intelligence Briefing*, Apr. 8, 2003; "Syria at Last Admits to Iraqi Oil Imports," *Oil Daily*, Apr. 9, 2003 (noting that Syria "indirectly confirmed that it has been illegally importing 200,000 barrels per day of Iraq crude" when Syria's state oil marketer advised its clients that "effective immediately" there would be a forty percent cut in exports).

<sup>670</sup> "First Interim Report," p. 42; Iraq officials interviews.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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be repaired and reopened within a ‘few months’ and would run at an initial rate of 300,000 barrels per day.” According to this same media account, the Oil Minister also announced plans to build a new pipeline between Iraq and Syria with a capacity of 1.4 million barrels per day. Other media reports in April and May 1999 suggested large-scale oil smuggling by trucks to Syria and Iraq’s use of these sale proceeds to purchase goods from Syria outside the Programme.<sup>671</sup>

In January 2000, a team of oil experts from the United Nations assembled and visited Iraq for two weeks to evaluate options for increasing Iraq’s petroleum production and export capacity in light of the passage of Resolution 1284 in December 1999, which removed the ceiling on the amount of oil that Iraq could export under the Programme. According to its “terms of reference” for this mission, the team was to “review potential alternative loading sites/installations,” including the Syrian pipeline, and to determine if the “line is operational and can handle crude” and “[w]hether product can be delivered [out of] Iraq.” The terms of reference further indicated that three members of the team were scheduled on January 21, 2000 to conduct a “de-briefing with NOC [North Oil Company] with possible en route visit on Syrian pipeline.”<sup>672</sup>

However, the experts did not visit the pipeline. Instead, as reflected in their formal report upon returning from Iraq, they relied on assurances from Iraq that the pipeline was not ready to be used. The report prepared by the experts stated that the Syrian pipeline was “presently not ready for operation” and was “not considered a priority by the Ministry of Oil.” Furthermore, the report stated that, even though, according to the Ministry of Oil, the Syrian pipeline was “mostly in working condition,” it was “unlikely to be considered for use until 2002 at the earliest.”<sup>673</sup>

These assurances from Iraq were soon cast in doubt. As noted above, Syria and Iraq entered into a formal border trade protocol at the end of May 2000. Several months later, numerous media reports emerged describing the reopening and use of the Syrian pipeline. Most prominently, on October 31, 2000, the Middle East Economic Survey (“MEES”) issued a “News Flash” stating that it had learned “from authoritative sources that Iraq and Syria have agreed to reopen the crude oil pipeline between the two countries—which has been closed since 1982—in November, probably

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<sup>671</sup> “Syria-Iraq pipeline needs UN approval,” *Gulf News*, July 15, 1998; Douglas Jehl, “Syria Sneaks Iraq’s Oil Out As Old Foes Become Friends,” *New York Times*, Apr. 26, 1999, p. A6; Jareer Ellass, “Syria, Iraq Collude On Smuggling,” *Energy Compass*, May 7, 1999 (citing unidentified “US sources” stating that “[a]s much as 150,000 tonnes a month (35,000 b/d) is now crossing several border points into Syria in tanker trucks, with Damascus supplying Baghdad with goods in return”).

<sup>672</sup> S/RES/1284, paras. 15, 30 (Dec. 17, 1999); Benon Sevan letter to Saeed Hasan (Jan. 5, 2000), Annex II, p. 2 (“Group of Experts – Terms of Reference”); Benon Sevan letter to Saeed Hasan (Jan. 5, 2000), Annex III, p. 1 (“Group of Experts – Proposed Schedule of Site Visits and Meetings,” entry for “Team A”). The expert team was headed by Graham Brett of Saybolt and included former oil overseer Arnstein Wigestrang. *Ibid.*

<sup>673</sup> Arnstein Wigestrang interview (June 16, 2005) (stating that the Iraq officials were unwilling to allow the experts to study the Syrian pipeline facilities); “Report of the Group of United Nations Experts Established Pursuant to Paragraph 30 of the Security Council Resolution 1284 (2000),” p. 3, 10, 64 (Mar. 2000) (containing travel itinerary).



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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around the middle of the month” and that “Baghdad will export around 200,000 [barrels per day] of Basrah Light crude to Syria.” The article suggested that this development was a “clear signal to the US that it cannot turn a blind eye to the violation of the sanctions regime by its friends in the region (i.e. Jordan and Turkey) while expecting others to adhere to it” and that there was “widespread anger in the Arab world at the Americans’ lack of even-handedness as far as the peace process and sanctions on Iraq are concerned.” The MEES article formed the basis for several more news articles during the first week of November 2000—copies of these articles were located by the Committee within the files of the United Nations.<sup>674</sup>

Following this initial spate of news reports, Ambassador Mikhail Wehbe, Syria’s Permanent Representative to the United Nations, requested a meeting with OIP Executive Director Benon Sevan to discuss “how Syria should proceed regarding export of oil through the Iraq/Syria pipeline.” As Mr. Sevan later recounted this meeting in a note to Deputy Secretary-General Louise Fréchette, Mr. Sevan advised the Syrian ambassador that “the decision to be taken by Syria was a political one: do they wish to comply with sanctions or not.”<sup>675</sup> An excerpt of Mr. Sevan’s note to the Deputy Secretary-General is set forth below:<sup>676</sup>

Interestingly enough, I met with Dr. Wehbe on Tuesday, 14 November. At the meeting which was held at his request, he told me that although he had no instructions, he wished to discuss with me and seek my advice, on an informal basis, how Syria should proceed regarding export of oil through the Iraq/Syria pipeline. I asked him whether the oil exported from Iraq would be for domestic consumption in Syria. He said he did not know. I responded that the decision to be taken by Syria was a political one: do they wish to comply with sanctions or not. I was sure that, I continued, should Syria request authorization by the Security Council, they would have no difficulty to receive such authorization as long as the oil exported from Iraq was monitored by the United Nations, as was done at Zakho and Mina al Bakr as well as at Ceyhan. Should the oil imported by Syria was to be used domestically, then again Syria should request the Council for authorization similar to the arrangements for oil exports to Jordan, I said.

**Figure: Note to the Deputy Secretary-General (Nov. 21, 2000) (excerpt).**

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<sup>674</sup> Axel Busch, “Iraq Said To Have Started Filling Line To Syria,” *Energy Intelligence Briefing*, Nov. 20, 2000; “Iraq starts illegal oil sales to Syria,” *Reuters News*, Nov. 21, 2000; “UK urges Syria to make Iraq oil purchases legal,” *Reuters News*, Nov. 21, 2000; Masood Farivar, “UN, US Seek to Verify Report of Iraqi Oil Sales To Syria,” *Dow Jones Energy Service*, Nov. 21, 2000; “Iraq confronts U.N. with oil sales to Syria,” *Mediafax Economic Service*, Nov. 21, 2000; “Syria said would seek UN OK for Iraq oil shipments – diplomats,” *Reuters News*, Nov. 21, 2000; “Iraq pumping 150,000 bpd crude to Syria,” *Reuters News*, Nov. 21, 2000; “Iraq and Syria Agree to Reopen Oil Pipeline in November,” *Middle East Economic Survey*, Nov. 6, 2000 (noting that the article was “text of the MEES News Flash released on 31 October”); “Iraq, Syria agree to reopen oil pipeline this month,” *Business Recorder*, Nov. 1, 2000; “Iraq-Syria Oil Deal Equation To Be Answered By Dec-End,” *Dow Jones Newswires*, Nov. 1, 2000; “The Iraqi-Syrian oil pipeline will be ready within three days,” *ArabicNews.Com*, Nov. 3, 2000; “Syria seeks breathing space through Iraqi pipeline,” *Arabia.com*, Nov. 5, 2000.

<sup>675</sup> Benon Sevan note to Louise Fréchette (Nov. 21, 2000).

<sup>676</sup> *Ibid.*



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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A week after the meeting between Mr. Sevan and Ambassador Wehbe, another flurry of news articles reported that the pipeline was up and running. On November 20, 2000, one article quoted an Iraqi oil official that “‘apart from a very few technical problems,’ [the pipeline] is ready for use.” On the same day, a second article reported that “Baghdad on Nov. 16 at 7:55 am local time started pumping Kirkuk crude oil into the pipeline running to the Syrian terminal at Banias.” Numerous media sources reported that about 150,000 barrels a day were being pumped to Syria from Iraq through the repaired Iraqi-Syrian pipeline. A Syrian oil official reportedly confirmed to *Reuters* that “Iraq started pumping on November 16 and the flow is now up to about 150,000 barrels per day of Basrah light.” As discussed in Chapter 4 of Volume III, the reopening of the Syrian pipeline was also known and discussed by many senior officials of the United Nations.<sup>677</sup>

### C. THE 661 COMMITTEE AND THE SYRIAN PIPELINE

On November 21, 2000, the United Kingdom’s representative to the 661 Committee wrote to the Chairman of the 661 Committee about the news reports on the Syrian pipeline. The United Kingdom representative attached copies of news reports on the issue and requested an “urgent meeting” of the 661 Committee to discuss the matter and to authorize the Chairman to write to the Permanent Representative of Syria to seek “clarification” of this matter.<sup>678</sup>

The UK Mission is aware of media reports that Iraq is pumping oil through the Syrian-Iraqi pipeline. These reports state that the pipeline is expected to have filled up by 23 November, at which time Syria will have the ability to start taking oil from the line to run through its own refineries. I attach some of the media reports that have carried the story.

The UK Mission should like to request that an urgent meeting of the 661 Committee be convened to discuss the matter further. The objective of the meeting would be that the Chairman of the 661 Committee write to the Permanent Representative of Syria to the United Nations seeking clarification on the media reports that a pipeline with Iraq has become operational outside of the relevant UN resolutions.

**Figure: United Kingdom letter to 661 Committee Chairman (Nov. 21, 2000) (excerpt).**

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<sup>677</sup> See also “Return of the Iraq-Syria pipeline,” *Weekly Petroleum Argus*, Nov. 20, 2000, p. 14; Axel Busch, “Iraq Said to Have Started Filling Line To Syria,” *Energy Intelligence Briefing*, Nov. 20, 2000; “Iraq starts illegal oil sales to Syria,” *Reuters News*, Nov. 21, 2000; “UK urges Syria to make Iraq oil purchases legal,” *Reuters News*, Nov. 21, 2000; Masood Farivar, “UN, US Seek To Verify Report of Iraqi Oil Sales To Syria,” *Dow Jones Energy Service*, Nov. 21, 2000; “Iraq confronts U.N. with oil sales to Syria,” *Mediafax Economic Service*, Nov. 21, 2000; “Syria said would seek UN OK for Iraq oil shipments – diplomats,” *Reuters News*, Nov. 21, 2000; “Iraq pumping 150,000 bpd crude to Syria,” *Reuters News*, Nov. 21, 2000; “Iraq starts illegal oil sales to Syria,” *Reuters News*, Nov. 21, 2000 (further noting that “the crude was moving into storage tanks at Syria’s Homs and Banias refineries but had not yet been processed”).

<sup>678</sup> United Kingdom Mission letter to 661 Committee Chairman, S/AC.25/2000/COMM.215 (Nov. 21, 2000).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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Despite the urgency of the United Kingdom's request, the 661 Committee convened four times over the next month without discussing the Syrian pipeline question.<sup>679</sup> In the meantime, the Security Council was embroiled in discussions concerning a resolution to extend the Programme for another 180-day phase, especially in light of revelations (as discussed in the preceding Chapter of this Report) that Iraq had imposed a new illegal surcharge policy for buyers of Iraqi oil under the Programme. The United Kingdom proposed a draft resolution that would have requested the Secretary-General to prepare a report by March 31, 2000 concerning "smuggling" of petroleum and other goods and to make "recommendations for further steps that may be taken to prevent all such smuggling" and also make "proposals for the use of additional export routes" for oil subject to the Programme, "in particular a pipeline from Iraq to Syria."<sup>680</sup>

The United Kingdom furnished a draft of its proposal to Benon Sevan, who in turn sent it to Deputy Secretary-General Louise Fréchette and the Secretary-General's Chef de Cabinet S. Iqbal Riza. In a cover note describing the British proposal, Mr. Sevan suggested that it was "a tall order to ask from the Secretary-General" and that he had his "doubts" that the proposal would "fly" in its "present form." His doubts were confirmed as the Security Council passed a new resolution to extend the Programme on December 5, 2000 without including any new measures to study or target smuggling.<sup>681</sup>

The new resolution, however, contained a request addressed to the Secretary-General to prepare a report with "proposals for the use of additional export routes for petroleum and petroleum products." Furthermore, Resolution 1330 explicitly requested that the Secretary-General address "the possible pipelines that might be utilized as additional export routes." On December 22, 2000, Mr. Sevan sent a letter to Saeed Hasan, Permanent Representative of Iraq to the United Nations, requesting his assistance in arranging for an expert mission to Iraq "to assist the Secretary-General in the preparation of a report containing proposals for the use of additional export routes." Mr. Sevan's request was rejected by the Government of Iraq, which stated that "the establishment of additional export routes for petroleum and petroleum products is not among

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<sup>679</sup> The 661 Committee met in formal session on December 13, 2000, and in informal sessions on November 28, November 30, and December 14, 2000. Provisional record of 661 Committee meeting, S/AC.25/SR.209 (Dec. 13, 2000); DPA notes of informal 661 Committee meeting (Nov. 28, 2000); DPA notes of informal 661 Committee meeting (Nov. 30, 2000); DPA notes of informal 661 Committee meeting (Dec. 14, 2000). The Syrian pipeline was also not discussed at the informal consultations of the Security Council on December 4, 2000. DPA notes of Security Council consultations (Dec. 4, 2000).

<sup>680</sup> Draft Security Council resolution, United Kingdom and Netherlands, para. 19 (Nov. 29, 2000). In light of newly raised concerns about Iraq's oil surcharge policy, the draft resolution would also have required the Secretary-General to report on "the potential for manipulation of oil contracts" under the Programme. *Ibid.*, para. 19(a).

<sup>681</sup> Benon Sevan note to Louise Fréchette (Nov. 29, 2000); S/RES/1330 (Dec. 5, 2000).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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Iraq's current priorities" and that there was "no need for a special delegation to be sent by the United Nations to address this topic."<sup>682</sup>

In the meantime, on December 21, 2000, the 661 Committee met in formal session to address the pipeline issue and specifically the request of the United Kingdom that a letter of inquiry be sent to the government of Syria. Mr. Sevan noted at the outset of the meeting that Syria had advised the Secretariat that "the pipeline had not been reopened, but that the pipes were being tested in case a decision was made to allow oil exports from Iraq." He added that this same answer "had been provided in late November" and that "the current situation was unknown."<sup>683</sup>

The United Kingdom—joined by the United States—spoke in favor of sending a letter of inquiry to Syria. Russia, however, demurred for fear of giving offense to Syria: "[W]hile the question was neutral, merely raising it would seem political, since a question was halfway to an accusation." France joined Russia stating that sending a letter "would be political," and adding that "[a]ny questions should be raised by a neutral party, such as the Secretary-General." Canada replied that it "was alarmed to learn that France believed the [661] Committee could not be neutral, even in simply requesting information."<sup>684</sup>

Nevertheless, France and Russia raised concerns that Syria alone was singled out for examination. According to France, "[t]he Secretary-General should be asked to prepare a report on all violations of the sanctions regime." Russia remarked that "[t]he whole picture of sanctions busting and smuggling must be assessed, in order to avoid the use of a double standard." France also expressed concern about acting merely on the basis of media reports.<sup>685</sup>

After China seemed to second the concerns of Russia and France, the 661 Committee Chairman expressed his frustration that the 661 Committee could not agree simply on making a request for more information. "Three of the five permanent members of the Security Council were objecting to the [661] Committee requesting information on an occurrence that had been described by the media as a breach of the sanctions regime," suggested the 661 Committee Chairman, and "the five permanent members of the Security Council were supposed to be supreme guardians of legality in the United Nations."<sup>686</sup>

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<sup>682</sup> S/RES/1330, para. 18 (Dec. 5, 2000); Benon Sevan letter to Saeed Hasan (Dec. 22, 2000); Mohammed Al-Humaimidi letter to Benon Sevan (Jan. 23, 2001); "Report of the Secretary-General pursuant to paragraph 5 of resolution 1330 (2000)," S/2001/186, para. 21 (Mar. 2, 2001) (discussing the Secretary-General's inability to submit the report requested in paragraph eighteen of Resolution 1330, due to the position taken by the Government of Iraq).

<sup>683</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.210, p. 2 (Dec. 21, 2000).

<sup>684</sup> *Ibid.*, pp. 2-3.

<sup>685</sup> *Ibid.*

<sup>686</sup> *Ibid.*, p. 3. China consequently clarified that it did not oppose asking for more information. *Ibid.*, p. 4.

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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Disagreement also arose about whether OIP could or should conduct its own investigation of the matter. On the one hand, the United States proposed “that the Secretariat and the oil overseers should be requested to investigate the matter and to report back to the [661] Committee within two weeks.” However, Mr. Sevan interjected that “the [661] Committee should not try to shift responsibility onto the Secretariat” and that “[t]he Secretariat did not undertake investigations, unless it received specific instructions from the Security Council.” Mr. Sevan added that “his Office had no mandate to investigate” and that “such an investigation would undermine the sensitive and complex activities of his Office in other areas.” He did not, however, explain how enforcing sanctions would undermine his official obligations.<sup>687</sup>

The United Kingdom stated its contrary view that “the Office of the Iraq Programme did have a mandate to gather that information” about the pipeline. However, the Russian representative immediately replied that “if the [661] [C]ommittee were to provide instructions and a mandate, his delegation would have to await instructions from Moscow” and that the Russian delegation “therefore reserved its decision on that matter.”<sup>688</sup>

Despite the presence of hundreds of OIP staff in Iraq, OIP was never requested to report on whether Iraq was operating the Syrian pipeline in violation of the United Nations sanctions. Instead, as described below, the members of the 661 Committee continued to quarrel over the next two years about what, if anything, to do about the Syrian pipeline. The 661 Committee ended up doing nothing.

On January 8, 2001, the new Chairman of the 661 Committee stated that “his predecessor had made inquiries with the representative of Syria, who had replied that no oil had been imported.” Mr. Wan, the 661 Committee’s Secretary, added that the Syrian ambassador had said that if the Chairman of the 661 Committee required more information, then “the [661] Committee should write to the Mission, although that would imply a certain lack of trust on its part.” In response, the United Kingdom suggested that the “Chairman should request clarifications from the representative of Syria” and requested that the United Nations, particularly the oil overseers, “submit . . . its official and informal observations on that matter.”<sup>689</sup>

Ten days later, the United Kingdom once again raised the issue of sending an information request letter to the government of Syria. France responded that it would consider agreeing to send such a letter only on the basis of an “independent and impartial report” on smuggling, adding that it was “common knowledge that in some cases smuggling received wide support, while in others it was semi-legal and in yet others it was illegal.” When the 661 Committee met on February 26, 2001, France and Russia objected again to sending a letter of inquiry to Syria unless it was part of a more comprehensive inquiry of Iraq’s trade with its neighbors. Russia insisted that sending a

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<sup>687</sup> Ibid., pp. 3-4.

<sup>688</sup> Ibid., p. 4.

<sup>689</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.211, p. 7 (Jan. 8, 2001).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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letter to Syria alone would “simply be hypocritical.” In the meantime, the Secretariat distributed more media reports about the use of the Syrian pipeline.<sup>690</sup>

The pipeline dispute rose to the level of the Security Council with a proposal in May 2001 by the United Kingdom and the United States to bring all of Iraq’s border trade—including trade with Jordan, Turkey, and Syria—under the control of the United Nations. Specifically, on May 20, 2001, the United States Deputy Permanent Representative to the United Nations met with Secretary-General Kofi Annan to discuss this new proposal. The United States ambassador confirmed during the meeting that the United States, “in close consultation with the UK and France,” was elaborating a new approach that envisaged “specific oil export arrangements for the countries bordering Iraq.” According to the United States ambassador, both Syria and Jordan were “under heavy pressure from Baghdad,” but the United States was working with them to ensure that oil exports outside the Programme were halted. Both the United States ambassador and Secretary-General seemed to agree, however, that it was doubtful that the oil exports to Syria and Jordan would stop completely.<sup>691</sup>

Two days later, on May 22, 2001, the United Kingdom submitted a draft resolution incorporating the following elements for such a plan:

- Iraq would be authorized to export to each border state up to 150,000 barrels per day of oil through border crossing authorized by the 661 Committee and subject to monitoring by United Nations personnel;
- Iraq and each border state could set the price of oil, subject to reporting the price to the Secretary-General and the 661 Committee;
- Each border state could pay for oil received by barter of goods and commodities or by depositing the proceeds due to Iraq into a “national escrow account” to be established by the Secretary-General in consultation with the importing States;

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<sup>690</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.212, pp. 5-6 (Jan. 18, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.213, pp. 8-9 (Feb. 26, 2001); 661 Committee Secretariat letter to Members of the 661 Committee, S/AC.25/2001/INF.1 (Jan. 29, 2001); 661 Committee Secretariat letter to Members of the 661 Committee, S/AC.25/2001/INF.2 (Feb. 6, 2001); 661 Committee Secretariat letter to Members of the 661 Committee, S/AC.25/2001/INF.4 (Feb. 7, 2001). All of these communications stated that the attached media reports were circulated to 661 Committee members “at the request of a member of the [661] Committee.” Ibid.

<sup>691</sup> Benon Sevan note to Louise Fréchette (May 17, 2001); “Note of the Secretary-General’s meeting with Ambassador James Cunningham Chargé d’affaires of the U.S. Mission held at UN Headquarters on 20 May 2001 at noon” (May 21, 2001). The notes reflect that Ambassador Cunningham also spoke to Kofi Annan about another broader “smart sanctions” aspect of this proposal under which “restrictions on non-military goods would end” and “Iraq would be able to spend money on everything but military equipment and technology.” Ibid.

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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- The funds in a national escrow account could be used only to purchase goods from “the State maintaining the escrow account,” and the escrow account would be “subject to the inspection and oversight of the Secretary-General”; and
- Goods and commodities other than weapons materials exported from a border state to Iraq would be subject to notification and approval by the Secretary-General.<sup>692</sup>

In short, “[t]he United Kingdom draft resolution, if approved, would change the nature of the programme, in that the flow of civilian goods into the country would be unimpeded, while monitoring would be imposed along the borders, which would control both imports of goods not authorized under the programme and illegal exports of oil.”<sup>693</sup>

Iraq opposed this effort to regulate its border trade. Reportedly, in the first half of June 2001, the Under-Secretary of the Turkish Foreign Ministry was told by Iraq’s Deputy Prime Minister Tariq Aziz that Turkey would “suffer severe consequences if it implemented the new resolution” proposed by the United Kingdom and supported by the United States. Similar pressure was put on Jordan and Syria, both of which subsequently voiced concerns about the negative effects that the proposed draft resolution could cause if adopted.<sup>694</sup>

On June 14, 2001, the Prime Minister of Jordan met with the Secretary-General to suggest that the draft resolution posed serious challenges to Jordan’s national security. On the same day, President Assad of Syria passed a message to the Secretary-General stating, in part, that Syria would not agree with violations of its sovereignty, such as checkpoints. President Assad stated that, if the position of Syria would not be taken into consideration, “the United Nations could be certain that the new sanctions regime would not be implemented.” The positions of both Jordan and Syria were conveyed to the Security Council during informal consultations on June 15, 2001.<sup>695</sup>

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<sup>692</sup> Draft Security Council resolution, United Kingdom, para. 4 (May 22, 2001); see also Draft Security Council resolution, United Kingdom, para. 4 (May 24, 2001) (containing minor revisions of draft resolution dated May 22, 2001); Draft Security Council resolution, United Kingdom, para. 6 (June 8, 2001) (revised resolution proposing to allow national escrow accounts to operate free from inspection and oversight by the Secretary-General); Benon Sevan note to Louise Fréchette (June 24, 2001) (noting U.S. agreement to allowing “small” escrow accounts under the control of states bordering Iraq).

<sup>693</sup> J. Christer Elfverson note to S. Iqbal Riza (June 11, 2001).

<sup>694</sup> Vladimir Grachev briefing (June 11, 2001); Nathalie Fustier note to J. Christer Elfverson (June 13, 2001); Prime Minister of Jordan memorandum (June 14, 2001); S. Iqbal Riza note to Anwarul Karim Chowdhury (June 14, 2001); Hassan Hafidh, “Ex-UN officials attack U.S.-British plan on Iraq,” *Reuters News*, June 17, 2001; Elif Unal, “Turkey says will abide by U.N. on Iraq sanctions,” *Reuters News*, May 23, 2001.

<sup>695</sup> Prime Minister of Jordan memorandum (June 14, 2001); S. Iqbal Riza note to Anwarul Karim Chowdhury (June 14, 2001); Elisabeth Lindenmayer code cable to S. Iqbal Riza (June 14, 2001); DPA notes of Security Council consultations, pp. 2-3 (June 15, 2001).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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The Security Council met in formal sessions on June 26 and 28, 2001 to discuss a number of the key features of the United Kingdom's draft resolution, including its provisions relating to trade between Iraq and Iraq's neighbor states. Although Norway, Singapore, and the United States voiced support for these provisions, Russia, France, and China expressed strong reservations about regulating Iraq's border-trade in the absence of support from neighboring countries. Jordan and Turkey were invited to address the Council and spoke against the proposal.<sup>696</sup>

In the face of this opposition, the United Kingdom dropped its proposal before it could be brought to a vote.<sup>697</sup> On July 3, 2001, the Security Council adopted Resolution 1360 extending the existing Programme and omitting any provisions regulating the cross-border trade between Iraq and its neighbors. For the remainder of the Programme, the Security Council did not pursue the issue of bringing the cross-border trade under the control of the United Nations.<sup>698</sup>

The 661 Committee did not revisit the issue of the Syrian pipeline for the rest of 2001. By 2002, the prospects for addressing the Syrian pipeline issue grew more remote when Syria itself was elected to join the Security Council. This development meant, as noted to the Independent Inquiry Committee by a Russian diplomat, that discussions on the Syrian pipeline would be "doomed" and, effectively, a non-issue.<sup>699</sup>

But the United Kingdom raised the issue again, citing media reports reflecting Syria's increased level of oil exports. Syria's representative responded by asserting that "[t]here was no oil flowing through the pipeline and his country was not exporting Iraqi oil through its ports" and that the "singling out of the Syrian Arab Republic was an attempt to force the [661] Committee to apply double standards." In a later meeting, the Syrian representative assured the 661 Committee that, if the pipeline was operating, it would be under the supervision of the United Nations. He stated that "[s]muggling existed in various forms and there was no justification for accusing his country, which had not paid a single cent to Iraq and always cooperated fully with the [661] Committee." The Syrian representative suggested that the pipeline issue should not be raised again.<sup>700</sup>

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<sup>696</sup> Provisional record of Security Council meeting, S/PV.4336, pp. 3, 8-9, 11, 14, 22, 29 (June 26, 2001); Provisional record of Security Council meeting, S/PV.4336 (Resumption 1), p. 4 (June 28, 2001).

<sup>697</sup> United Kingdom official #7 interview (Jan. 12, 2005); "What Russia Plans To Do Next On Iraq," *Mideast Mirror*, July 6, 2001. It should be noted that, even within the Government of the United Kingdom, there was no comprehensive strategy on the ways for the Security Council to address the issue of cross-border smuggling, including that between Iraq and Turkey. United Kingdom official #6 interview (Dec. 7, 2004).

<sup>698</sup> S/RES/1360 (July 3, 2001); United States official #13 interview (Feb. 11, 2005).

<sup>699</sup> Russia officials #1-2, 4 interview (Oct. 13, 2004).

<sup>700</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.229, p. 10 (Jan. 28, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.230, pp. 2, 5 (Feb. 1, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.231, p. 5 (Feb. 8, 2002) (emphasis added).

**MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME****VOLUME II - CHAPTER 4****SMUGGLING**

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Nevertheless, discussions continued. From February to July 2002, the Secretariat transmitted to the members of the 661 Committee several compilations of media reports about the use of the Syrian pipeline.<sup>701</sup> In August 2002, the United States argued in a meeting of the 661 Committee that “Syria represented the largest single destination for Iraq’s illicit oil exports.”<sup>702</sup> The United States representative described how from 180,000 to 200,000 barrels of oil were shipped daily through the Iraq-Syria pipeline, resulting in an annual loss of \$1.3 billion for the Programme. The United States pointed out that about 25,000 barrels per day were shipped via the recently reopened Syria-Iraq railroad, which amounted to a loss of \$170 million for the Programme. Syria responded by reiterating that the Iraq-Syria pipeline was not in use and that “Iraq had received absolutely no payment for the experimental operationalization of the pipeline, which had been without result.” Syria also expressed surprise at the information on the use of the railroad for transportation of Iraqi oil to Syria.<sup>703</sup>

In late September 2002, Syria defended its position on the pipeline during informal consultations of the Security Council. Syria compared the discussions in the 661 Committee about the pipeline to a “dialogue of the deaf,” and it urged members not to focus “on unfounded allegations about a pipeline that was not operational.”<sup>704</sup>

The Syrian pipeline issue arose for the last time in the 661 Committee in mid-October 2002. Citing trade statistics showing that Syria was exporting more than 200,000 barrels per day more than physically allowed by its internal production and internal consumption, the United States insisted that Syria’s oil imports from Iraq be brought under the Programme. Syria dismissed the United States’ statistics as coming from the mass media. Similarly, Russia stated that “the only reliable information before the [661] Committee was that provided by the Syrian side” and that “[u]ntil there was credible evidence of wrongdoing it would be pointless for the [661] Committee to pursue the matter further.” China agreed that the 661 Committee had dealt with the issue of the Syrian pipeline for a long time and that the government of Syria “had supplied satisfactory answers to the questions that had arisen.” The representative of France, once again, expressed his

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<sup>701</sup> 661 Committee Secretariat letter to Members of the 661 Committee, S/AC.25/2002/INF.3 (undated); United Kingdom Mission letter to 661 Committee Chairman (Feb. 26, 2002); 661 Committee Chairman letter to 661 Committee members (Feb. 26, 2002); United Kingdom Mission letter to 661 Committee Chairman (Mar. 20, 2002); 661 Committee Secretariat letter to Members of the 661 Committee, S/AC.25/2002/INF.1 (undated); United Kingdom Mission letter to 661 Committee Chairman (Mar. 25, 2002); 661 Committee Secretariat letter to Members of the 661 Committee, S/AC.25/2002/INF.2 (undated); United Kingdom Mission letter to 661 Committee Chairman (May 30, 2002); United Kingdom Mission letter to 661 Committee Chairman (July 29, 2002).

<sup>702</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.237, p. 5 (Aug. 19, 2002).

<sup>703</sup> *Ibid.*, pp. 5-7; see also Provisional record of 661 Committee meeting, S/AC.25/SR.238, pp. 9-10 (Sept. 6, 2002) (further debate about pipeline issue).

<sup>704</sup> OIP notes of Security Council consultations, p. 2 (Sept. 25, 2002).



# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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delegation's support for taking a "consistent and uniform approach to reports of sanction violations," which would make the 661 Committee's work "more effective."<sup>705</sup>

#### D. STATEMENTS BY SYRIA TO THE COMMITTEE

When the United Kingdom and the United States raised their concerns from 2000 to 2002 about the Iraq-Syria pipeline, they cited only numerous reports in the media. The Independent Inquiry Committee, in contrast, has had the benefit of interviews with numerous Iraqi and Syrian witnesses and has received extensive documentation from Iraq, including a signed copy of the border trade protocol and SOMO's internal business records reflecting payments made by Syria under the protocol.

Syria has acknowledged to the Committee the existence of the trade protocol, but it has contradictorily claimed that "Syria fully respected all measures imposed by 661 Committee with regards to Iraq."<sup>706</sup> The Committee has furnished the government of Syria with copies of the trade protocol, tables of all alleged invoices and payments under the protocol, SOMO documents reflecting the transport of 9.9 million barrels of oil by truck from Iraq to Syria from 2000 to 2002, and information on the specific bank accounts used for the receipt and disbursements of protocol payments.<sup>707</sup> During the Committee's visit to Damascus, Syrian officials refused to comment on the authenticity of these specific documents, stating that the Committee was not authorized to study issues of trade outside of the Programme. However, a Syrian official whose signature appears on the Iraq-Syria border trade protocol confirmed the authenticity of his signature on the protocol in the possession of the Committee.<sup>708</sup>

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<sup>705</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.240, pp. 2-4 (Oct. 11, 2002). Although it is not clear from the minutes of the meeting where the United States derived its information on the volume of trade, a few weeks before this meeting, the Coalition for International Justice—an international, non-profit organization based in the United States—issued a detailed report discussing the discrepancy in Syrian trade figures, as well as smuggling involving other Iraqi border countries, and noting that "[c]riticism of Syria has been mild from the UN Sanctions Committee and its hard-line members, the US and UK." Coalition for International Justice, "Sources of Revenue for Saddam & Sons," pp. 40-42 (Sept. 18, 2002).

<sup>706</sup> Syria Mission letter to the Committee (June 1, 2005) (attaching "Official response of the respective Syrian Authorities"); Syria officials #2-3 interviews (Feb. 11 and June 14, 2005); Syria officials #4-6 interview (July 5, 2005); Commercial Bank of Syria official interview (July 6, 2005); Syria official #1 interview (July 5, 2005); Syria Mission letter to the Committee (Aug. 30, 2005) (stating that "the Iraqi-Syrian Protocol was the last among those that were signed by several countries with Iraq during the period of the program"). The Government of Syria stated to the Committee that "the goal of the Protocol was to provide food and humanitarian materials to the Iraqi people" and that "the Protocol was a result of the unique and discriminatory treatment of the Syrian contracts by the 661 Committee." Ibid.

<sup>707</sup> Syria officials #2-3 interview (Feb. 11, 2005); Committee letters to Syria Permanent Representative (Feb. 15 and Apr. 29, 2005).

<sup>708</sup> Syria officials #4-6 interview (July 5, 2005); Commercial Bank of Syria official interview (July 6, 2005); Syria official #1 interview (July 5, 2005).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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The Committee was unable to obtain the details of protocol-related financial arrangements from the government of Syria and the state-owned Commercial Bank of Syria. Syrian officials, as well as an official with the Commercial Bank of Syria, stated that they perceived trade between Iraq and Syria as a bilateral issue outside of the Committee's mandate to investigate the Programme. Syrian officials further informed the Committee that the government of Syria and the Government of Iraq are currently negotiating the settlement of outstanding protocol-related trade issues. When asked to confirm whether the Syrian pipeline was used for importation of Iraqi oil into Syria during the Programme, the Syrian officials stated that it "was not used," but was "tested."<sup>709</sup> Syrian officials refused to provide any further details on the alleged use of the Syrian pipeline.

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<sup>709</sup> Syria officials #2-3 interview (Dec. 27, 2004); Syria officials #4-6 interview (July 5, 2005); Commercial Bank of Syria interview (July 6, 2005); Syria official #1 interview (July 5, 2005).

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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## V. SMUGGLING BY SEA

In addition to exporting oil overland to neighboring states, Iraq also smuggled gas oil, diesel fuel, and other petroleum products through the Persian Gulf. For instance, the MIF estimated that in 2001 alone, nearly 1.4 million metric tons of petroleum products were smuggled through the Persian Gulf.<sup>710</sup> For this illegal trade, Iraq employed hundreds of barges, tankers, dhows and other marine vessels operating both on the high seas and within the territorial waters of regional states in the Persian Gulf. Although this form of smuggling persisted to some degree throughout the history of the Programme, the Security Council took aggressive steps to stop smuggling by sea, and its approach presents a sharp contrast to the Security Council's equivocation with respect to smuggling overland to Jordan, Turkey, and Syria.

### A. SMUGGLING ROUTES AND QUANTITIES

Vessels seeking to smuggle Iraqi oil through the Persian Gulf could follow several routes. Most voyages began at the Iraqi port of Abu Flus on the Shatt al-Arab waterway (a river between Iraq and Iran that feeds into the Persian Gulf) or at the port of Khor al-Zubayr on the Khor Abd Allah waterway (between Iraq and Kuwait). From there, smuggling vessels could travel out of Iraqi waters into international waters or the territorial waters of states of the Persian Gulf region ("Gulf States"). Most vessels chose to avoid international waters because of a greater risk of interdiction. As a result, most vessels departing from Abu Flus or Khor Abd Allah sailed directly into Iranian waters, passing through the Arvand One checkpoint controlled by the Iranian Revolutionary Guards and proceeded to the Southern Gulf or to the high seas via the Strait of Hormuz. Smuggling vessels occasionally discharged in India, Yemen, and the Horn of Africa, but the most common destinations were the major ports of the United Arab Emirates such as Dubai, Sharjah, Ajman, and Fujairah.<sup>711</sup>

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<sup>710</sup> Vice Admiral Timothy J. Keating presentation, "Multinational Interception Force Operational Update," (Nov. 5, 2002).

<sup>711</sup> This information is drawn from communications by officials of the United States Government and MIF to the 661 Committee. Provisional record of 661 Committee meeting, S/AC.25/SR.132, pp. 4-5 (Feb. 1, 1996); Provisional record of 661 Committee meeting, S/AC.25/SR.143, pp. 2-11 (Aug. 28, 1996); Provisional record of 661 Committee meeting, S/AC.25/SR.149, pp. 3-8 (Feb. 3, 1997); Provisional record of 661 Committee meeting, S/AC.25/SR.163, pp. 2-13 (Nov. 18, 1997); "Remarks Made by Rear Adm. Bordy to the UN Iraq Sanctions Committee in New York" (Nov. 18, 1997); Vice Admiral Thomas Fargo letter to 661 Committee Chairman (June 14, 1998); Provisional record of 661 Committee meeting, S/AC.25/SR.196, pp. 2-6 (Mar. 23, 2000); Provisional record of 661 Committee meeting, S/AC.25/SR.225, pp. 2-7 (Nov. 6, 2001); Vice Admiral Charles W. Moore, Jr. presentation, "Multinational Interception Force Operational Update" (Nov. 6, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.241, pp. 2-5 (Nov. 5, 2002); Vice Admiral Timothy J. Keating presentation, "Multinational Interception Force Operational Update," (Nov. 5, 2002). Smuggling in the Persian Gulf was also reported in the press. See, e.g., Steven Swindells, "Smuggling of Iraqi diesel widespread in Gulf," *Reuters*, July 23, 1997; "U.S./Iraqi Oil Smuggling -2: Iranian Crackdown Ends," *Dow Jones Energy Service*, May 21, 1998; Sarah Lloyd, "Smuggled Iraqi Oil Lets Iran Boost Exports," *Platts Oilgram News*, Aug. 27, 1999, p. 1;

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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The volume of oil smuggled from Iraq by sea fluctuated considerably from month to month in conjunction with a number of factors, including the effectiveness of multinational patrolling, the enforcement efforts of Gulf States, and the price of oil. In certain periods, such as the months following Iran's closure of the Shatt al-Arab waterway in 1998 and a period in 1999 when oil cost as little as \$12 per barrel, very little smuggled oil passed successfully through the Gulf. At other times, such as January 2000, ships traveling through Iranian waters carried an average of around 100,000 barrels per day. Unlike overland smuggling, which mostly involved trade in crude oil, sea smugglers transported considerable volumes of gas oil, a valuable petroleum derivative that could be used to fuel virtually any ship.<sup>712</sup>

## B. THE MULTINATIONAL INTERCEPTION FORCE

Shortly after Iraq's invasion of Kuwait, the Security Council authorized United Nations member states with naval forces in the Persian Gulf to "use such measures . . . as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping, in order to inspect and verify their cargos and destinations and to ensure strict implementation" of the sanctions against Iraq. As discussed in Part II above, the result was a joint naval operation known as the Multinational Interception Force that systematically patrolled the Persian Gulf between 1991 and 2003. Although the United States played a prominent role in the activities of the MIF, the MIF included contributions from as many as twenty-one countries. The MIF was not a single military force acting as an agent of, or under the control of, the United Nations; rather, it denoted a collaborative effort by United Nations member states to enforce the embargo against Iraq.<sup>713</sup>

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"Iraq resumes oil smuggling through Iran, Gulf: trader," *Agence France-Presse*, Dec. 19, 1999; Robin Wright, "Iran Reportedly Allows Iraqi Oil in Its Sea Lanes," *Los Angeles Times*, June 6, 2000, p. A1; Richard Beeston, "Gulf help to smugglers sustains Saddam," *The Times*, July 5, 2000, p. 15.

<sup>712</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.225, p. 3 (Nov. 6, 2001); Vice Admiral Charles W. Moore, Jr. presentation, "Multinational Interception Force Operational Update" (Nov. 6, 2001) (with chart: "Maritime Smuggling Trends"); Vice Admiral Thomas Fargo letter to 661 Committee Chairman (June 14, 1998) (noting that Iran's closure of the Shatt al-Arab waterway, combined with anti-smuggling measures by the MIF and United Arab Emirates, contributed to an eighty-seven percent decline in illegal maritime oil exports); Provisional record of 661 Committee meeting, S/AC.25/SR.196, p. 3 (Nov. 6, 2001) (noting a statement by Vice Admiral Moore that "[f]or much of 1999, there had been virtually no smuggling. During that period, the price of a barrel of oil had in fact stood at between \$9 and \$12, which was not enough for smugglers to make sufficient profit"); United States Mission letter to 661 Committee Chairman, S/AC.25/2000/COMM.18 (Feb. 22, 2000) (noting that "[i]n January, Iraq smuggled an average of 100,000 barrels of [gas oil] per day through the Gulf, the highest level ever"); Provisional record of 661 Committee meeting, S/AC.25/SR.149, p. 5 (Feb. 3, 1997) (attributing a statement to Vice Admiral Thomas Fargo that "since June 1996, there had been a large increase in gasoil exports, which [by then] amounted to 60,000-70,000 metric tons per month" and that "[g]as oil was a very valuable commodity because it could be used to fuel practically any ship").

<sup>713</sup> S/RES/665, para. 1 (Aug. 25, 1990); Provisional record of 661 Committee meeting, S/AC.25/SR.132, pp. 3-4 (Feb. 1, 1996); Provisional record of 661 Committee meeting, S/AC.25/SR.225, p. 2 (Nov. 6, 2001) (noting that 21 nations contributed to MIF); Vice Admiral Charles W. Moore Jr., presentation,

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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Under the procedures set forth by the MIF, if a vessel of the MIF observed a ship passing through the northern area of the Persian Gulf, it would attempt communication with the ship in order to request information about its cargo and route. If a response to this communication proved unsatisfactory, MIF forces intercepted and searched the ship. If the ship was found to be carrying prohibited goods, or if its shipping and customs documentation appeared to be fraudulent, it was detained until a regional government agreed to accept the delinquent vessel. If smuggled oil was found, it was confiscated and sold at market rate, with all proceeds credited to the escrow account. In addition, any evidence relating to sanctions-busting was provided to the government that had accepted the vessel for possible disciplinary action under domestic law.<sup>714</sup>

Between 1990 and 1996, MIF vessels queried approximately 22,000 ships, boarded and inspected around 10,000, and diverted approximately 500. After the establishment of the Programme, the MIF continued its anti-smuggling operations. In 2000 alone, the MIF conducted more than 1,270 inspections and diverted more than 90 vessels. In 2001, the MIF confiscated nearly 150,000 tons of oil.<sup>715</sup>

In briefings to the 661 Committee, the MIF generally reported a high degree of success in curbing smuggling in international waters. For example, in March 1996, it described its efforts as “a complete success” and reported that exports of Iraqi oil had “practically ceased” without the need of the MIF to resort to force in carrying out its interdiction efforts.<sup>716</sup> Later briefings to the 661 Committee acknowledged the persistence of smuggling, at the same time noting the degree to which the MIF’s constant presence discouraged potential smuggling of even more oil from Iraq.<sup>717</sup>

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“Multinational Interception Force Operational Update” (Nov. 6, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.149, p. 7 (Feb. 3, 1997) (noting the MIF commander’s statement that “although MIF was multinational in nature, it was not a ‘Blue Helmets’ force”); Hans Corell memorandum to Chinmaya Gharekhan, paras. 9-10 (Mar. 22, 1994) (discussing legal status of MIF). As noted in Section II.F above, the MIF also conducted patrols in the Gulf of Aqaba during the early 1990s to monitor goods potentially entering Iraq through Jordan’s port at Aqaba.

<sup>714</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.132, pp. 4-5 (Feb. 1, 1996).

<sup>715</sup> Ibid., p. 5; Provisional record of 661 Committee meeting, S/AC.25/SR.225, p. 3 (Nov. 6, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.241, p. 2 (Nov. 5, 2002); Vice Admiral Charles W. Moore, Jr. presentation, “Multinational Interception Force Operational Update” (Nov. 6, 2001); MIF letter to the 661 Committee Chairman, S/AC/2002/COMM.149 (Feb. 6, 2002).

<sup>716</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.132, pp. 5-6 (Feb. 1, 1996).

<sup>717</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.225, pp. 2-4 (Nov. 6, 2001); Vice Admiral Charles W. Moore, Jr. presentation, “Multinational Interception Force Operational Update” (Nov. 6, 2001) (noting possibility that Iraq could export up to 2.5 million barrels per day of crude oil from its Persian Gulf oil loading terminals in absence of MIF); Provisional record of 661 Committee meeting, S/AC.25/SR.241, p. 2 (Nov. 5, 2002) (noting a statement by Vice Admiral Keating that loadings of smuggled oil onto naval vessels had fallen to approximately twelve percent of their pre-2000 levels and a remark that 2002 had been “the most successful [year] to date” in terms of the number of inspections and diversions”).

# MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

## VOLUME II - CHAPTER 4

### SMUGGLING

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#### C. IRAN AND THE UNITED ARAB EMIRATES

The MIF and United States frequently complained about Iran's role in allowing sea smuggling along its coast en route to harbors in the United Arab Emirates ("UAE"). Iran countered that it had made efforts to interdict smugglers and that the parties involved in the smuggling were not from Iran. After 1997, these communications drew particular attention to activities of the Iranian Revolutionary Guard at a strategic checkpoint to extort fees from smugglers in exchange for guarantees of safe passage and, in some instances, the provision of fraudulent Iranian shipping documents.<sup>718</sup>

In most instances, the Chairman of the 661 Committee communicated the concerns that were raised to the Permanent Representative of Iran. This action was typically met with strong denial from Iranian officials, who stated their government's intent to fully comply with sanctions.<sup>719</sup> According to MIF officials, these demarches by the Chairman helped provoke highly effective (if not always lasting) crackdowns on smuggling by the Gulf States. In particular, it led Iran to shut down temporarily the Shatt al-Arab waterway on several occasions between 1998 and 2002. By 2002, the MIF was reporting that Iran was becoming "an increasing cooperative partner" in sanctions enforcement.<sup>720</sup>

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<sup>718</sup> Iran Mission letter to the Committee (July 21, 2005) (stating that Iran undertook steady efforts to counter smuggling and asserting that it incurred "heavy expenses as a result of the related operations and proceedings, which were never compensated"); United States Mission letter to 661 Committee Chairman, S/AC.25/1994/COMM.6293 (Dec. 7, 1994) (contending that oil smuggling in the Persian Gulf had "grown steadily" over the previous year and that Iran was "undermin[ing] the international community's efforts to compel Iraqi compliance" with sanctions); S/AC.25/1995/COMM.669, Iran Mission letter to 661 Committee Chairman (Jan. 30, 1995) (noting interdiction by Iran of smuggling ships and non-Iranian background of captains of these vessels); Provisional record of 661 Committee meeting, S/AC.25/SR.196, p. 2 (Mar. 23, 2000) (noting a statement by Vice Admiral Moore that "[v]essels using the Shatt al-Arab would depart from [Abu Flus], immediately enter the Iranian part of the waterway and call in at the Iranian checkpoint Arvand One, where they would pay a fee of approximately 50 dollars per tonne of oil to the Iranian revolutionary guards. The latter would issue them with certification enabling them to use Iranian territorial waters, as well as false papers certifying that the oil being carried had originally been purchased in Iran.").

<sup>719</sup> See, e.g., 661 Committee Chairman letter to Iran Permanent Representative, AC.25/1996/OC.5198 (Dec. 13, 1996); Provisional record of 661 Committee meeting, S/AC.25/SR.150, p. 20 (Feb. 21, 1997) (noting that the Permanent Representative of Iran had informed the Chairman that "Iran was complying with the sanctions regime" and had offered to "appear before the Committee to provide more information"); Provisional record of 661 Committee meeting, S/AC.25/SR.164, pp. 26-27 (Dec. 9, 1997) (noting that the Permanent Representative of Iran had assured the Chairman of his country's "intent to cooperate fully" with sanctions); Provisional record of 661 Committee meeting, S/AC.25/SR.175, p. 18 (Oct. 3, 1998) (noting that the Chairman viewed his meeting with the Permanent Representative of Iran as "fruitful").

<sup>720</sup> Vice Admiral Thomas Fargo letter to the Chairman of the 661 Committee (June 14, 1998); MIF letter to 661 Committee Chairman, S/AC.25/2000/COMM.87 (June 25, 2000); Provisional record of 661 Committee meeting, S/AC.25/SR.241, p. 2 (Nov. 5, 2002) (noting a statement by Vice Admiral Keating that "Iran had become an increasingly valuable contributor to the success of MIF operations"); see also

## MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

### VOLUME II - CHAPTER 4

#### SMUGGLING

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The United States and MIF occasionally requested that the 661 Committee send letters to all the Gulf States.<sup>721</sup> However, they did not ask the Committee to take specific action against the UAE, despite repeated acknowledgements from MIF representatives that most Iraqi oil ended up in Emirati ports and a suggestion by one MIF admiral in 2002 that it was a “contradiction” that the UAE could actively support MIF operations and at the same time be the “primary destination” of smuggling vessels.<sup>722</sup>

In short, sea smuggling persisted throughout the duration of the Programme but was the subject of constant attention by the Security Council through the extensive interdiction efforts of the MIF. The 661 Committee also took effective action to persuade Iran to curb smuggling traffic along its coastline. Accordingly, unlike with the smuggling by land between Iraq and its neighbors, smuggling by sea was the subject of generally effective and coordinated action by the Security Council and the 661 Committee.

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Provisional record of 661 Committee meeting, S/AC.25/SR.225, p. 2 (Nov. 6, 2001) (noting a statement by Vice Admiral Moore that “Iran had recently closed off the Shatt al-Arab, one of the two waterways that flowed into the Arabian Gulf”).

<sup>721</sup> See, e.g., United States Mission letter to 661 Committee Chairman, S/AC.25/1994/COMM.6298 (Dec. 14, 1994); Provisional record of 661 Committee meeting, S/AC.25/SR.194, p. 4 (Mar. 17, 2000) (noting that the representative of the United States did not oppose the sending of letters to Gulf States other than Iran); Provisional record of 661 Committee meeting, S/AC.25/SR.201, pp. 2-3 (June 1, 2000) (noting that the 661 Committee agreed on sending a letter to the Gulf States reminding them of their obligations to transfer the proceeds from the sale of confiscated oil to the United Nations escrow account).

<sup>722</sup> Provisional record of 661 Committee meeting, S/AC.25/SR.196, p. 3 (Mar. 23, 2000) (noting a statement by Vice Admiral Moore that “the United Arab Emirates was the preferred destination for [smuggling] vessels”); Provisional record of 661 Committee meeting, S/AC.25/SR.225, p. 3 (Nov. 6, 2001) (noting a statement by Vice Admiral Moore that “[i]n late 2000, 248 of 275 diverted vessels had some connection with the United Arab Emirates”); Provisional record of 661 Committee meeting, S/AC.25/SR.241, p. 2 (Nov. 5, 2002) (noting a statement by Vice Admiral Keating that “it was a contradiction that while the United Arab Emirates Navy and Coast Guard actively supported MIF operations, at the same time, that country was the primary destination of smuggled Iraq oil”).