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

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

OCTOBER 5, 2004

Serial No. 108–286

Printed for the use of the Committee on Government Reform

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

TUESDAY, OCTOBER 5, 2004

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

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

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

Also present: Representative Ose.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Statement of Rep. Christopher Shays
October 5, 2004

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

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

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

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

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

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

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

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

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

Mr. WAXMAN. Thank you, Mr. Chairman.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

October 5, 2004

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman.

At this time the Chair would recognize Mr. Tierney.

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

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

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

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

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

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

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

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

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

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

Thank you. I yield back.

Mr. SHAYS. I thank the gentleman.

At this time the Chair would recognize Mr. Duncan.

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

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

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

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

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

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

Thank you, Mr. Chairman.

Mr. SHAYS. Thank the gentleman.

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

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

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

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

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

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

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

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

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

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

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

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

Thank you Mr. Chairman.

Mr. SHAYS. I thank the gentlelady.

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

Subcommittee on National Security, Emerging Threats and International Relations

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

Congresswoman Diane E. Watson
October 5, 2004

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

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

that we were managing their funds properly and not allowing graft, corruption, and mismanagement to infiltrate our mission there.

Unfortunately, Mr. Chairman, it appears that the Bush Administration has failed to live up to these commitments.

Auditors at the CPA's own Inspector General's office have issued a report that is extremely critical of the Administration's management of Iraqi funds in the Development Fund for Iraq.

In particular, the Inspector General's report criticizes actions by the Administration's "Contracting Activity" office in Iraq.

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

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

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

contracts actually awarded by the CPA Contracting Activity. This hindered the CPA Contracting Activity's ability to demonstrate the transparency required of the CPA when it awarded contracts using DFI funds."

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maintained," they "could not be relied upon to ensure compliance . . . or be used as a source for Congressional reporting."

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The Inspector General's report found that, of the contracts they analyzed, "67 percent . . . had incomplete or missing documentation."

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record.

Finally, Mr. Chairman, the Inspector General provided its fundamental conclusion about the Administration's stewardship of these Iraqi funds. The Inspector general reported:

"We do not believe that transparency can be achieved when pertinent data is unavailable or inaccurate."

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

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

Mr. SHAYS. At this time the Chair would recognize Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield back my time, Mr. Chairman.

Mr. SHAYS. Thank the gentleman.

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

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

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

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

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

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

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

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

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

I yield back.

Mr. SHAYS. I thank the gentleman.

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

Mr. LYNCH. Thank you, Mr. Chairman.

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

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

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

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

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

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

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

I yield back Mr. Chairman. Thank you.

Mr. SHAYS. I thank the gentleman very much.

And, Mrs. Maloney, you're next.

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

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

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

And I will give several examples:

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

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

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

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

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

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

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

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

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

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

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

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

Mr. SHAYS. I thank the gentlelady.

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

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

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

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

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

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

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

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

- The Security Council required the Administration to deposit all oil sale proceeds into the DFI, which is held by the Central Bank of Iraq at the Federal Reserve Bank of New York;

- The Security Council required that all deposits to, and spending from, the DFI be done "in a transparent manner;" and

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

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

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

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

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

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

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

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

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

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

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

The KPMG report concluded as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you Mr. Chairman

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

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

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

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

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

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

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

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

Mr. SHAYS. Thank the gentleman.

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

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

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

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

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

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

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

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

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

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

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

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

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

[The information referred to follows:]

Rapallo, David

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

David:

Apologies that we could not connect by phone today.

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

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

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

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

Regards,
Mike

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

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

Would you like to make a separate——

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

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

Mr. WAXMAN. If you would.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. LANTOS. I will defer.

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

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

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

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

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

[The information referred to follows:]

Ambassade de France
aux Etats-Unis

L'Ambassadeur
N° 2183

Washington, October 8, 2004

Dear Mr. Chairman,

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

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

1 - Background

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

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

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

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

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

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

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

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

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

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

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

A. France continually monitored compliance with the sanctions.

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

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

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

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

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

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

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

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

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

C. Steady Decline in French-Iraqi Trade

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

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

D. American companies involvement

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

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

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

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

4 - Additional comments

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

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

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

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

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

With my respectful regards,

Sincerely,

Jean-David LEVITTE

American participation in the Oil For Food Program

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

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

[Witnesses sworn.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Recess.]

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

Ambassador KENNEDY. Thank you, Mr. Chairman.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[The prepared statement of Ambassador Kennedy follows:]

FINAL

STATEMENT BY

AMBASSADOR PATRICK F. KENNEDY

U.S. REPRESENTATIVE FOR UN MANAGEMENT AND REFORM

UNITED STATES MISSION TO THE UNITED NATIONS

ON THE

UNITED NATIONS OIL-FOR-FOOD PROGRAM

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM,

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS

AND INTERNATIONAL RELATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

OCTOBER 5, 2004

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Recess.]

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

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

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

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

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

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

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

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

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

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

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

Ambassador KENNEDY. No, sir, I am not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ambassador KENNEDY. Absolutely not. Absolutely not.

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

Ambassador KENNEDY. That is correct.

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

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

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

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

Mr. SHAYS. You are familiar with this program?

Ambassador KENNEDY. Yes, sir.

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

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

Were they able to properly oversee this program?

It is a simple answer.

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

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

Ambassador KENNEDY. Yes, sir.

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

Ambassador KENNEDY. Yes, sir.

Mr. SHAYS. Even before this hearing, correct?

Ambassador KENNEDY. Absolutely.

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

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

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

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

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

Ambassador KENNEDY. It was their mission——

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

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

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

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

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

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

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

Ambassador KENNEDY. Absolutely. The results were not perfect.

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

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

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

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

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

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

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

Ambassador KENNEDY. No, sir.

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

Ambassador KENNEDY. No, sir.

Mr. SHAYS. Was the program working?

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

Mr. SHAYS. What were the goals?

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

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

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

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

Mr. SHAYS. And the irony is——

Ambassador KENNEDY. He priced——

Mr. SHAYS. Go on.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ambassador KENNEDY. Correct.

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

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

Mr. SHAYS. Is that yes or a no?

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

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

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

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

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

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

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

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

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

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

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

Mr. SHAYS. Or the authority?

Ambassador KENNEDY. Yes.

Mr. SHAYS. Yes, what?

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

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

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

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

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

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

Ambassador KENNEDY. I think I'm——

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

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

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

Mr. Waxman.

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

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

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

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

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

Mr. SHAYS. Thank you very much.
Mr. WAXMAN. Thank you.
Mr. SHAYS. Thank you. Thank you for being here.
Mr. SHAYS. Thank you. Mr. Murphy, you have the floor.
Mr. MURPHY. Thank you, Mr. Chairman. I just have a couple of questions here that I—and I apologize if some of these were covered while I was on the floor of the House.
But, Ambassador, I thank you for being here, and I wanted to know where do we stand with the status of gaining access to the United Nations Oil-for-Food Program documents for Congress now and—can you give me some background with where we stand right now?
Ambassador KENNEDY. The State Department has asked Chairman Volcker of the independent investigating committee for the release of the documents, and up to this point he has declined, saying that he is using the documents and he intends to conduct his investigation. And he has declined to release them, sir.
Mr. MURPHY. Those would just be documents, official U.N. documents; is that what you're saying?
Ambassador KENNEDY. Yes, sir.
Mr. MURPHY. Is anyone trying to pursue documents from any other country, too? Is there any attempt to do that?
Ambassador KENNEDY. Yes, sir. Before I left Baghdad in August, I had presented to the acting chair of the Board of Supreme Audit a proposed memorandum of understanding between the United States and Iraq to release for use of government of Iraqi documents. And I understand that work is continuing and we hope to have a resolution to that request in the very near future. I checked with Baghdad just the other day and I am expecting those——
Mr. MURPHY. So those documents are being scanned now.
Ambassador KENNEDY. We are attempting to make an arrangement between various parties to scan those documents.
Mr. MURPHY. Now, how about the reverse? We have access to the Iraqi documents. Those will be released soon.
Ambassador KENNEDY. The request has been made, sir, yes.
Mr. MURPHY. The request has been made. How about the reverse? Is there any attempts to obtain documents from some of these other countries that are part of this scandal: Russia, France, China, Syria?
Ambassador KENNEDY. I believe that the request to other nations for their documents is within the jurisdiction of the independent investigating commission, Mr. Volcker's commission.
Mr. MURPHY. Are those nations cooperating?
Ambassador KENNEDY. That is a question that would have to be posed to the independent investigating commission, sir.
Mr. MURPHY. Let me ask about another area here. When it became apparent—and it was some years ago—that the issue, the question of some corruption in this Oil-for-Food scandal began to take some legs on it, what was the responsibility of the U.N. Office of Iraqi Programs to maintain the integrity of this program, and did they act within the scope of their responsibility at that time?
Ambassador KENNEDY. That is a question, sir, that is actually part of the investigation that is going on now by the Independent Investigations Commission. We are aware of information that did

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

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

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

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

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

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

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

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

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

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

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

Ambassador KENNEDY. Other nations.

Mr. MURPHY. Which nations were they?

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

Mr. MURPHY. France.

Ambassador KENNEDY. France.

Mr. MURPHY. Germany.

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

Mr. MURPHY. Syria.

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

Mr. MURPHY. So the very nations that are——

Ambassador KENNEDY. The nations changed every year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you, Mr. Chairman.

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

Mr. HALLORAN. Thank you, Mr. Chairman.

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

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

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

Mr. HALLORAN. Thank you.

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

Could you describe those negotiations a little more, please?

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

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

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

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

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

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

Mr. HALLORAN. Thank you.

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

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

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

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

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

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

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

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

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

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

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

Mr. SHAYS. No, they didn't.

Ambassador KENNEDY. No, sir.

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

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

Mr. SHAYS. He being——

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

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

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

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

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

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

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

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

Mr. SHAYS. Who could veto.

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

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

Ms. WATSON. Yes.

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

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

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

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

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

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

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

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

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

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

Ms. WATSON. Certainly.

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

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

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

Mr. SHAYS. Thank you. Thank you.

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

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

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

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

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

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

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

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

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

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

Thank you, Mr. Chairman.

Mr. SHAYS. Thank you.

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

Ambassador KENNEDY. Absolutely.

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

Ambassador KENNEDY. Absolutely.

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

Ambassador KENNEDY. Absolutely.

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

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

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

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

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

[Witnesses sworn.]

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

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

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

Mr. SMITH. Thank you Mr. Chairman.

Mr. SHAYS. Thank you.

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

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

Mr. SHAYS. And it will, without objection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. SHAYS. Thank you, Mr. Smith.

[The prepared statement of Mr. Smith follows:]

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

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

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

1. How Was BNP Selected by the United Nations?

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

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

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

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

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

2. What Has Been the Role of the Bank?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BNP Paribas Documents

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

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

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

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

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

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

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

WHEREAS, pursuant to SCR 986 and the Memorandum of Understanding, the United Nations wishes to enter into arrangements with the Bank for the establishment of the account, and for the performance of various banking services described in this Agreement (hereinafter collectively referred to as the "Services"), such Services to be performed in conformity with the provisions of this Agreement;

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

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

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

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

PART 1: TERMS OF GENERAL APPLICATION

1.1 Applicability: The terms and conditions set forth in this Part 1 shall apply to and govern this Agreement in its entirety. In the event and to the extent of any conflict between the terms and conditions set forth in this Part 1 and any other provisions of this Agreement, the terms and conditions of this Part 1 shall prevail.

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

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

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

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

1.3 United Nations Iraq Account and Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.13 Indemnification; liability for loss of funds, etc.

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

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

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

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

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

1.14 Intellectual Property Indemnification.

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

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

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

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

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

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

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

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

1.18 Confidentiality and Nondisclosure.

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

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

United Nations which has not been made public except with the prior authorization of the United Nations; nor shall the Bank at any time use such information to private advantage. Notwithstanding the foregoing, where and to the extent necessary to carry out the operations involved in the performance of the Services, the Bank may from time to time communicate such information to the following entities or persons: relevant governmental regulatory authorities (subject to Article 1.18.4), other participants in payment systems used by the Bank in providing the Services, and other financial institutions and third parties as necessary for the Bank to provide the Services. In addition, the Bank may respond to inquiries regarding its role in, and published procedures for, implementing this Agreement from its customers or other parties interested in buying oil or selling humanitarian supplies under SCR 986, the Memorandum of Understanding and the 661 Committee Procedures.

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

(a) such information may be disclosed to such of the Bank's agents and representatives as need to know such information in connection with the Bank's performance under this Agreement;

(b) subject to the privileges and immunities of the United Nations and the provisions of Article 1.18.4, such information may be disclosed to the extent required by mandatory provisions of applicable law in a country having jurisdiction over the Bank, provided that the Bank shall give the United Nations prior advance notice of such disclosure (except where the giving of such prior notice is legally prohibited);

(c) subject to the privileges and immunities of the United Nations and the provisions of Article 1.18.4, and provided that the United Nations shall have given its consent, which shall not be unreasonably withheld, such information may be

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

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

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

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

(a) prior to disclosing such information, promptly notify the United Nations of such fact; provided, however, that the Bank shall not be obligated to notify the United Nations in the case of a subpoena served on the Bank, or where the Bank is otherwise prohibited by applicable law to which the Bank is subject, from disclosing that the information has been sought, or in the case of regular periodic inspections by bank examiners from government regulatory authorities having jurisdiction over the Bank;

(b) inform the Court or regulatory agency that such information is privileged under the Convention on the Privileges and Immunities of the United Nations, as well as, in the United States, the International Organizations Immunities Act of the United States, Public Law 79-291, 29 December 1945; and

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

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

1.19 Force Majeure; Other Changes in Conditions.

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

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

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

1.20 Fees

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

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

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

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

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

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

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

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

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

1.21 Term and Termination.

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

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

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

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

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

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

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

(a) in the event of any material adverse change in the Bank's financial condition, including without limitation, any down-grading of the Bank's individual credit rating by IBCA to lower than "C".

(b) if a trustee, conservator, committee, liquidating agent or governmental authority shall be appointed for the Bank to take possession of or any substantial part of the business or assets of the Bank or if bankruptcy or other proceedings shall be commenced for any such purpose;

(c) if the rights, privileges and franchises of the Bank shall be declared forfeited by any governmental authority or a proceeding is commenced for such purpose, and such declaration or proceedings adversely affect or could adversely affect the performance by the Bank of the Services, or any Service, under this Agreement;

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

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

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

1.21.4 The United Nations may, without prejudice to any other rights or remedy it may have under this Article 1.21 or otherwise under this Agreement, terminate this Agreement forthwith at any time, upon written notice to the Bank, pursuant to a decision to that effect by the Security Council, or should the mandate of the United Nations under SCR 986 be curtailed or terminated, or should a decision of the Security Council render the United Nations Iraq Account or the Services, in the sole opinion of the United Nations, unnecessary.

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

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

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

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

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

1.22 Non-Exclusivity.

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

1.23 Settlement of Disputes.

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

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

1.24 Privileges and Immunities.

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

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

1.25 Tax Exemption.

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

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

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

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

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

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

If to the Bank: Banque Nationale de Paris
Commodities & Trade Finance
499 Park Avenue
New York, New York
Attention: Eva Millas Russo
Fax: (212) 415-9898
or (212) 415-9707

If to the Central Bank of Iraq
(pursuant to Article 2.2): As specified in writing by the United Nations

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

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

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

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

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

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

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

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

1.32 - Miscellaneous.

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

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

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

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

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

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

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

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

PART 2: LETTERS OF CREDIT

2.1. General.

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

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

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

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

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

2.2 Purchases of Iraqi Petroleum and Petroleum Products.

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

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

(a) Provided all terms and conditions of this Letter of Credit are complied with, proceeds of this Letter of Credit will be irrevocably paid into the "United Nations Iraq Account", account number 0200-201752-001-08, with Banque Nationale de Paris, S.A., New York Branch; and

(b) All charges within Iraq are for the account of the Seller, whereas all charges outside Iraq are to be borne by the Purchaser; and

(c) This Letter of Credit is not assignable and not transferable.

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

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

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

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

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

2.2.6 The Bank shall immediately transmit a copy of the LOC received by it from the Purchaser's Bank to the Overseers of the 661 Committee, through the Deputy Treasurer of the

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

United Nations and, for information purposes only, forward a copy thereof to the Central Bank of Iraq for the purpose of advising the Iraqi State Oil Marketing Organization (SOMO).

2.2.7 Should the Bank refuse to add its confirmation to the LOC in accordance with Article 2.2.6, it shall so inform the Overseers of the 661 Committee, through the Deputy Treasurer of the United Nations (unless the Bank has been authorized by the Deputy Treasurer to communicate directly with the Overseers), giving the reasons for such refusal, at the time it transmits the copy of the LOC for their review. If so requested by the United Nations, the Bank shall consult with the United Nations regarding the reasons for such refusal. However, the Bank shall not be required to give reasons for its determination, pursuant to Article 2.2.6, that it can confirm an LOC issued by an issuing bank only if the LOC is for a maximum amount. The Bank shall not refuse to confirm an LOC if it has not so notified the Overseers of the 661 Committee. It is understood that the Bank will not transmit the LOC to the Overseers of the 661 Committee before it has determined, in accordance with Article 2.2.6, whether it will add its confirmation to the LOC; however, such determination will be made without delay.

2.2.8 The Bank may issue LOCs directly as the Purchaser's Bank on behalf of its customers who are approved purchasers of Iraqi petroleum and petroleum products. Such LOCs shall comply, mutatis mutandis with all provisions of this Agreement, including, but not limited to, the requirements relating to price review and approval by the 661 Committee of LOCs issued in connection with purchases of petroleum and petroleum products and those relating to the contents of the LOC. However, no confirmation by the Bank of such an LOC issued by it shall be necessary.

2.2.9 Documents to obtain payment of the LOC shall be presented to the Bank at the address set forth below, or at such other office of the Bank as the Bank and the United Nations may mutually agree:

Banque Nationale de Paris, S.A.
Trade Finance Services
Attn: Harold Lehmann
New York Office
200 Liberty Street
World Financial Center
Tower A
New York, New York 10281-1062.

2.2.10 The proceeds of each LOC shall be paid only into the United Nations Iraq Account and shall be held strictly in accordance with the terms and conditions of this Agreement.

2.2.11 The Bank hereby undertakes not to sell, assign or transfer any LOC to any person or entity, whether governmental or otherwise.

2.2.12 All charges within Iraq are to be borne by the seller of the Iraqi petroleum or petroleum products, and all charges outside Iraq are to be borne by the purchaser of such products, and such charges are not to be covered from the funds in the United Nations Iraq Account.

2.2.13 The provisions of this Article 2.2.13 apply in the case of an LOC for a maximum amount. In the event that the invoiced purchase price of the Iraqi petroleum or petroleum products exceeds the maximum amount of the LOC, and the bank that issued the LOC issues an amendment to the LOC to cover the excess purchase price, the Bank shall transmit a copy of such amendment to the LOC to the Overseers of the 661 Committee in accordance with Articles 2.2.6 and 2.2.7. If the Overseers approve the amendment to the LOC, the Bank shall

add its confirmation thereto, provided that the criteria set forth in Article 2.2.6 would be met. If such criteria would not be met, the Bank shall nevertheless make a good faith effort to determine that it is in a position to confirm the amendment to the LOC. If the Bank is still unable to confirm the amendment to the LOC, it shall so inform the Overseers of the 661 Committee in accordance with Article 2.2.7 at the time it transmits the copy of the amendment to the LOC to them for their review, and, if requested, consult with the United Nations as provided in Article 2.2.7. Under no circumstances shall the Bank add its confirmation to the amendment to the LOC unless the Bank has been informed by the Overseers of the 661 Committee that they have approved the amendment. When the Bank has added its confirmation to the amendment to the LOC, it shall advise the amendment directly to the United Nations and, for information purposes only, forward a copy thereof to the Central Bank of Iraq for the purpose of advising SOMO. If an amendment to the LOC is not issued or is not confirmed by the Bank, the right of the beneficiary of the LOC (the United Nations, as holder of the United Nations Iraq Account) to draw the full amount of the LOC in accordance with its terms shall not be prejudiced thereby.

2.3 Exports to Iraq of humanitarian and other supplies pursuant to SCR 986.

2.3.1 The Bank undertakes to be the issuing bank for LOCs for purchases by the Government of Iraq of humanitarian and other supplies pursuant to SCR 986. In performing such Services, the Bank shall comply with the procedures and requirements set forth in this Article 2.3. The LOCs referred to in this Article 2.3 are LOCs for such purchases of humanitarian and other supplies.

2.3.2 The Central Bank of Iraq will forward to the Bank requests from the appropriate Iraqi Government entities to open irrevocable, non-transferable, non-assignable (except to the supplier's bank for the repayment of financing for the purchase of the humanitarian supplies) LOCs for the account of the Iraqi purchaser in favour of the supplier. Such requests shall provide for payment from the United Nations Iraq Account. Only the United Nations has the

authority to give binding instructions to the Bank concerning such LOCs. When the Bank receives such a request, it shall immediately forward it to the Deputy Treasurer of the United Nations for approval. Except for LOCs described in Article 2.3.8, the approval shall contain stipulations in substance as follows: (a) approval is given to open the LOC; (b) the Bank is authorized to identify, segregate and hold in the United Nations Iraq Account as cash collateral the amount that the Bank would be required to pay under the LOC and the amount of its fees related to the LOC that are payable from the United Nations Iraq Account pursuant to this Agreement, and, if applicable, the additional amount provided for in Article 2.3.7 to cover potential currency exchange losses in the purchase by the Bank of non-United States dollar currency for the payment of LOCs denominated in such currency, and (c) the Bank shall be reimbursed from the United Nations Iraq Account, in accordance with the terms and conditions of this Agreement, for its payment under the LOC, provided that such payment has been made in full conformity with the terms and conditions of the LOC and all documents presented for payment are in conformity with the requirements of the LOC. Upon receipt of such approval in writing from the Deputy Treasurer of the United Nations or another Authorized United Nations Official having the requisite authority, the Bank shall issue the LOC in accordance with such approval.

2.3.3 The requirements set forth below shall apply to LOCs covering purchases of humanitarian and other supplies:

(a) The Bank shall be reimbursed, in accordance with the terms and conditions of this Agreement, for any payment by the Bank of LOCs issued by it only from funds in the United Nations Iraq Account;

(b) If documents presented to the Bank under the LOCs issued by the Bank are in conformity with the terms and conditions of the LOCs, the Bank shall be authorized to make payment under the LOCs;

(c) If documents are presented to the Bank which are not in conformity with the LOCs issued by it, the Bank shall request written instructions from the Deputy Treasurer of the United Nations. The Bank shall follow all such instructions issued by an Authorized United Nations Official having the requisite authority.

2.3.4 The LOC shall require as condition for payment of the LOC the submission to the Bank of the following documentation:

(a) the customary commercial documentation,

(b) a copy of the 661 Committee's letter stating that the exporter is eligible for payment from the United Nations Iraq Account,

(c) a confirmation by the Secretary-General's designee of the arrival of the exported goods in Iraq, and

(d) any required governmental license or equivalent authorizing the export.

The Bank shall effect payment under any LOC only if all the documents listed above and stipulated in the LOC are presented to it and if all other terms and conditions of such LOC are complied with. When specified in the contract and the supporting documents, partial payments can be made in the full amounts that correspond to actual instalment deliveries to Iraq, provided that arrivals of such actual deliveries are confirmed in accordance with this Agreement. Documentary discrepancies can be waived only by an Authorized United Nations Official having the requisite authority.

2.3.5 (a) As used in Article 2.3 and elsewhere in this Agreement, the term "Available Funds" means the funds in the United Nations Iraq Account at any given time net of the aggregate of the following amounts: (i) the amounts then identified, segregated and held in the

United Nations Iraq Account as cash collateral pursuant to Article 2.3.6, 2.3.7 and 2.3.8, (ii) the amount referred to in Article 1.34, subject to adjustment as provided therein, (iii) any amount of fees in dispute then identified, segregated and held in the United Nations Iraq Account pursuant to Article 1.20.2(e), (iv) any reimbursements then due to the Bank for its reasonable costs pursuant to Articles 1.16.3 and 1.25.3 and (v) any then outstanding fees payable to the Bank from the United Nations Iraq Account duly incurred under this Agreement for which amounts are not identified, segregated and held in the United Nations Iraq Account.

(b) The amounts of cash collateral identified, segregated and held in the United Nations Iraq Account pursuant to Articles 2.3.6, 2.3.7, and 2.3.8 shall be adjusted accordingly as and when an LOC expires to the extent that it is unpaid, the Bank is reimbursed pursuant to this Agreement for payments made by it under an LOC, the Bank is paid its fees related to LOCs that are payable from the United Nations Iraq Account pursuant to this Agreement or adjustments are made to the additional amounts of cash collateral referred to in Article 2.3.7. Similarly, the amounts of fees in dispute identified, segregated and held in the United Nations Iraq Account pursuant to Article 1.20.2(e) shall be adjusted accordingly as and when disputes concerning such fees are resolved and payment or refunds of such fees are made in accordance with the resolutions of such disputes.

2.3.6 LOCs will be available for payment only at the Bank and shall provide for payment only from the United Nations Iraq Account. Except in the case of LOCs described in Article 2.3.8, the Bank shall not issue an LOC unless there are sufficient Available Funds in the United Nations Iraq Account to cover such LOC and the fees of the Bank related thereto that are payable from the United Nations Iraq Account pursuant to this Agreement. Also except in the case of LOCs described in Article 2.3.8, concurrently with the issuance of an LOC, the Bank is authorized to identify, segregate and hold in the United Nations Iraq Account as cash collateral the amount that the Bank would be required to pay under the LOC and the amount of its fees related to the LOC that are payable from the United Nations Iraq Account pursuant to this Agreement. The Bank is authorized to debit from the amount identified, segregated and

held in the United Nations Iraq Account as cash collateral as hereinbefore provided the amount necessary to reimburse itself for any amount paid by it under the LOC, provided that such payment has been made in full conformity with the terms and conditions of the LOC and all documents presented for payment are in conformity with the requirements of the LOC, or an Authorized United Nations Official having the requisite authority has waived a discrepancy pursuant to Article 2.3.3(c). If such amount identified, segregated and held in the United Nations Iraq Account as cash collateral is not sufficient to provide full reimbursement to the Bank for its payment under the LOC, the Bank may, after consultation with the United Nations, debit from Available Funds such additional amount as is necessary to provide such full reimbursement. The Bank's fees related to the LOC that are payable from the United Nations Iraq Account pursuant to this Agreement shall be invoiced to and paid by the United Nations from the United Nations Iraq Account in accordance with Article 1.20.

2.3.7 LOCs provided for in this Article 2.3 will normally be denominated in United States dollars. In the event that an LOC denominated in another freely convertible currency is requested and approved pursuant to this Agreement, purchases of the non-United States dollar currency in which payment of such LOC is to be made shall be covered from funds from the United Nations Iraq Account in accordance with the provisions of this Article 2.3.7. If such purchases of non-United States dollar currencies are made by the Bank: (i) such purchases shall be made on a spot basis at the time the terms and conditions for payment of the LOC have been met, at an exchange rate mutually agreed between the United Nations and the Bank, (ii) the Bank shall be authorized to identify, segregate and hold in the United Nations Iraq Account as cash collateral, in addition to the amount identified, segregated and held in the United Nations Iraq Account referred to in Article 2.3.6, an amount, equal to five per cent (5%) of the amount that the Bank would be required to pay under the LOC, to cover potential currency exchange losses in the purchase by the Bank of the non-United States dollar currency with which payment of the LOC is to be made, and (iii) the Bank shall be authorized to debit from the amount identified, segregated and held in the United Nations Iraq Account as cash collateral pursuant to Article 2.3.6 and this Article 2.3.7 the full cost of the purchase of the non-United States dollar currency

for payment of the LOC in accordance with the provisions of Article 2.3.6 and 2.3.7. Should the aggregate cash collateral identified, segregated and held in the United Nations Iraq Account to cover reimbursement to the Bank for its payment of a particular non-United States dollar-denominated LOC be less than the amount in United States dollars necessary to purchase the non-United States dollar currency to pay the LOC, adjusted on a mark-to-market basis, by more than five per cent (5%), additional cash collateral, in an amount equal to five per cent (5%) of the amount originally identified, segregated and held as cash collateral to cover reimbursement to the Bank for its payment of the LOC, will be identified, segregated and held in the United Nations Iraq Account. For any additional five per cent (5%) increase in the amount in United States dollars necessary to purchase the non-United States dollar currency to pay the LOC, adjusted on a mark-to-market basis, the amount identified, segregated and held in the United Nations Iraq Account shall be increased by an additional five per cent (5%) increment as hereinabove provided. Conversely, such additional cash collateral shall be restored to Available Funds as and to the extent that the amount in United States dollars necessary to purchase the non-United States dollar currency to pay the LOC becomes fully covered without such additional cash collateral. The above-described mark-to-market calculations will be performed daily based on the Exchange Rate quotations for the prior business day as quoted in the Wall Street Journal. The foregoing arrangements shall be subject to such other or additional terms as may be agreed in writing between the Bank and the United Nations.

2.3.8 The Bank shall issue LOCs in respect of the purchase of parts and equipment essential for the safe operation of the Kirkuk-Yumurtalik pipeline without there being sufficient Available Funds in the United Nations Iraq Account, provided the approval of the Authorized United Nations Official having the requisite authority contains stipulations along the following lines: (a) approval is given to open the LOC; (b) upon receipt of Available Funds in the United Nations Iraq Account in an amount sufficient to reimburse the Bank for any payment to be made under the LOC and the amount of the fees relating to the LOC that are payable from the United Nations Iraq Account pursuant to this Agreement, the Bank shall identify, segregate and hold such amount in the United Nations Iraq Account as cash collateral; (c) the Bank is authorized

to debit from such cash collateral the amount necessary to reimburse itself for any payment under the LOC, provided that such payment has been made in full conformity with the terms and conditions of the LOC and all documents presented for payment are in conformity with the requirements of the LOC, and provided further that an Authorized United Nations Official having the requisite authority has approved such payment. The LOC shall include the following conditions in addition to those set forth in Article 2.3.4:

(a) the Bank shall not be required to make any payment under the LOC unless and until the United Nations Iraq Account contains Available Funds in an amount sufficient to reimburse the Bank for such payment and any fees that are payable from the United Nations Iraq Account pursuant to this Agreement relating thereto; and

(b) the Bank shall not make any payment under the LOC unless the Authorized United Nations Officials having the requisite authority approve such payment.

Upon receipt of Available Funds in the United Nations Iraq Account in an amount sufficient to reimburse the Bank for any payment to be made under an LOC described in this Article 2.3.8 and its related fees that are payable from the United Nations Iraq Account pursuant to this Agreement, the Bank shall request approval from the Deputy Treasurer of the United Nations to identify, segregate and hold such amount in the United Nations Iraq Account as cash collateral. The Bank is authorized to debit from such amount identified, segregated and held in the United Nations Iraq Account as cash collateral the amount necessary to reimburse itself for any amount paid by it payment under the LOC, provided that such payment has been made in full conformity with the terms and conditions of the LOC and all documents presented for payment are in conformity with the requirements of the LOC, or an Authorized United Nations Official having the requisite authority has waived a discrepancy pursuant to Article 2.3.3(c), and provided further that an Authorized United Nations Official having the requisite authority has approved such payment. If such amount identified, segregated and held in the United Nations Iraq Account as cash collateral is not sufficient to provide full reimbursement to the Bank for

its payment under the LOC, the Bank may, after consultation with the United Nations, debit from Available Funds such additional amount as is necessary to provide such full reimbursement. The Bank's fees related to the LOC that are payable from the United Nations Iraq Account pursuant to this Agreement shall be invoiced to and paid by the United Nations from the United Nations Iraq Account in accordance with Article 1.20.

PART 3: PROCESSING OF NON-ELECTRONIC FUNDS TRANSFER INSTRUCTIONS

3.1.1 Delivery of Non-Electronic Transfer Instructions. From time to time, two of the Authorized United Nations Officials having the requisite authority may deliver or transmit to the Bank's offices at 499 Park Avenue, New York, New York, to the attention of Eva Millas Russo, Commodities & Trade Finance, or to such other address or such other Officer of the Bank as the Bank may specify by written notice to the United Nations, non-electronic funds transfer instructions with respect to the United Nations Iraq Account in any of the following forms (each being hereinafter referred to as "Non-Electronic Funds Transfer Instructions"):

(a) one or more written funds transfer instructions, signed by two such Authorized United Nations Officials, in such form as may be mutually agreed upon in writing by such Authorized United Nations Officials and an Officer of the Bank;

(b) funds transfer instructions delivered by means of facsimile transmission confirmed by a transmittal receipt and signed by two such Authorized United Nations Officials.

3.1.2 Notwithstanding the foregoing, the Bank shall not accept any Non-Electronic Funds Transfer Instructions from any Authorized United Nations Officials unless there are sufficient Available Funds (as defined in Article 2.3.5) in the United Nations Iraq Account as of the date of such Instructions to cover the amount of any such transfer; provided, however, that the Bank shall accept a Non-Electronic Funds Transfer Instruction to make payments from funds

identified, segregated and held in the United Nations Iraq Account pursuant to this Agreement for purposes for which such funds have been so identified, segregated and held.

3.1.3 Upon receipt by the Bank of proper Non-Electronic Funds Transfer Instructions, as provided above, but subject to verifying the authenticity thereof in accordance with Article 3.2, the Bank shall transfer funds in the amount and manner specified in such Non-Electronic Funds Transfer Instructions to the designated payee and, thereupon, debit the United Nations Iraq Account. If such proper Non-Electronic Funds Transfer Instructions are received by the Bank (i) prior to 10:00 a.m. Eastern Time on any day on which commercial banks and foreign exchange markets settle payments in New York (hereinafter referred to as a "Business Day"), such transfer shall, subject to such verification, be made on such Business Day, or (ii) after 10:00 a.m. Eastern Time on any Business Day, the Bank shall, subject to such verification, use its best efforts to effect such transfer as of the same Business Day, but in any event no later than the next succeeding Business Day; provided that if such transfer has been designated as urgent by an Authorized United Nations Official having the requisite authority, the Bank shall use its best efforts to effect such transfer as of the same Business Day.

3.2 Security Procedures. The Bank shall verify the authenticity of all Non-Electronic Funds Transfer Instructions as follows:

(a) Upon receipt of Non-Electronic Funds Transfer Instructions at the Bank's Commodities & Trade Finance Desk, the Bank shall check all signatures and make a call-back to an Authorized United Nations Official having the requisite authority, preferably an Authorized United Nations Official who did not sign the Non-Electronic Funds Transfer Instructions, to verify the instructions given therein.

(b) The Bank shall then transmit the Non-Electronic Funds Transfer Instructions to its Collateral Control Section within the Trade Finance Services Department to verify sufficient cash balances in the United Nations Iraq Account from which payment under

the Non-Electronic Funds Transfer Instructions can be made in accordance with Article 3.1.2. The Trade Finance Services Department will set aside the required funds and notify the Commodities & Trade Finance Desk that sufficient funds exist to make the payment.

(c) The Bank shall then transmit the Non-Electronic Funds Transfer Instructions to its Funds Transfer Department for processing via its payment system.

(d) The Commodities & Trade Finance Desk will have set up a zero transaction and a zero overdraft limit on the United Nations Iraq Account. Consequently, the Funds Transfer Department will call the Commodities & Trade Finance Desk to verify again that the transfer can be released.

(e) Upon approval from the Commodities & Trade Finance Desk, the Bank will release the transfer.

(f) The United Nations will follow up by sending the original hard-copy request to the Bank as confirmation.

3.3 General Provisions Respecting Non-Electronic Funds Transfer Instructions. The United Nations shall be bound by any Non-Electronic Funds Transfer Instructions, whether or not actually authorized, if, but only if, they were issued in its name, conformed on their face with the requirements of Article 3.1, and purported to be issued by Authorized United Nations Officials having the requisite authority to give such Non-Electronic Funds Transfer Instructions and such instructions were accepted in good faith by the Bank and in compliance with the security procedures set forth in Article 3.2. The security procedures and other terms specified herein shall also apply to amendments and cancellations of Non-Electronic Funds Transfer Instructions. It is understood that these security procedures are designed to verify the authenticity of, and not to detect errors in, Non-Electronic Funds Transfer Instructions.

PART 4: INTEREST PAID ON BALANCES

4.1 Instructions. The Bank shall act on the instructions from the Authorized United Nations Officials having the requisite authority with respect to investments of funds in the United Nations Iraq Account for the purpose of earning interest. Such investments shall only be in the form of overnight or other short term interest-bearing investments and shall be specifically identified as assets of the United Nations Iraq Account. The Bank shall place the funds in sub-accounts of the United Nations Iraq Account for the purpose of such investments.

4.2 Investments of Cash Collateral. The Bank shall place amounts identified, segregated and held in the United Nations Iraq Account as cash collateral pursuant to this Agreement in an overnight investment sub-account of the United Nations Iraq Account separate from other investment sub-accounts of the United Nations Iraq Account.

[CONTINUED ON NEXT PAGE]

4.3 Interest Rates. Interest rates payable on investments of funds in the United Nations Iraq Account shall be based on the interest rate formulas set forth in Annex 6.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates hereinafter specified.

BANQUE NATIONALE DE PARIS, S.A.

By: _____

Name: Pierre Schneider

Title: General Manager and Chief Executive Officer, BNP US Eastern Group

Date: 12/9/96

THE UNITED NATIONS

By: _____

Name: Joseph E. Connor

Title: Under-Secretary-General for Administration and Management

Date: 12-9-96

By: _____

Name: _____

Title: _____

Date: _____

Annex 1

UNITED NATIONS

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Security Council

Distr.
GENERAL

S/RES/986 (1995)
14 April 1995

RESOLUTION 986 (1995)

Adopted by the Security Council at its 3519th meeting, on 14 April 1995

The Security Council,

Recalling its previous relevant resolutions,

Concerned by the serious nutritional and health situation of the Iraqi population, and by the risk of a further deterioration in this situation,

Convinced of the need as a temporary measure to provide for the humanitarian needs of the Iraqi people until the fulfilment by Iraq of the relevant Security Council resolutions, including notably resolution 687 (1991) of 3 April 1991, allows the Council to take further action with regard to the prohibitions referred to in resolution 661 (1990) of 6 August 1990, in accordance with the provisions of those resolutions,

Convinced also of the need for equitable distribution of humanitarian relief to all segments of the Iraqi population throughout the country,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of Iraq,

Acting under Chapter VII of the Charter of the United Nations,

1. Authorizes States, notwithstanding the provisions of paragraphs 3 (a), 3 (b) and 4 of resolution 661 (1990) and subsequent relevant resolutions, to permit the import of petroleum and petroleum products originating in Iraq, including financial and other essential transactions directly relating thereto, sufficient to produce a sum not exceeding a total of one billion United States dollars every 90 days for the purposes set out in this resolution and subject to the following conditions:

(a) Approval by the Committee established by resolution 661 (1990), in order to ensure the transparency of each transaction and its conformity with the other provisions of this resolution, after submission of an application by the

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S/RES/986 (1995)
Page 2

State concerned, endorsed by the Government of Iraq, for each proposed purchase of Iraqi petroleum and petroleum products, including details of the purchase price at fair market value, the export route, the opening of a letter of credit payable to the escrow account to be established by the Secretary-General for the purposes of this resolution, and of any other directly related financial or other essential transaction;

(b) Payment of the full amount of each purchase of Iraqi petroleum and petroleum products directly by the purchaser in the State concerned into the escrow account to be established by the Secretary-General for the purposes of this resolution;

2. Authorizes Turkey, notwithstanding the provisions of paragraphs 3 (a), 3 (b) and 4 of resolution 661 (1990) and the provisions of paragraph 1 above, to permit the import of petroleum and petroleum products originating in Iraq sufficient, after the deduction of the percentage referred to in paragraph 8 (c) below for the Compensation Fund, to meet the pipeline tariff charges, verified as reasonable by the independent inspection agents referred to in paragraph 6 below, for the transport of Iraqi petroleum and petroleum products through the Kirkuk-Yumurtalik pipeline in Turkey authorized by paragraph 1 above;

3. Decides that paragraphs 1 and 2 of this resolution shall come into force at 00.01 Eastern Standard Time on the day after the President of the Council has informed the members of the Council that he has received the report from the Secretary-General requested in paragraph 13 below, and shall remain in force for an initial period of 180 days unless the Council takes other relevant action with regard to the provisions of resolution 661 (1990);

4. Further decides to conduct a thorough review of all aspects of the implementation of this resolution 90 days after the entry into force of paragraph 1 above and again prior to the end of the initial 180 day period, on receipt of the reports referred to in paragraphs 11 and 12 below, and expresses its intention, prior to the end of the 180 day period, to consider favourably renewal of the provisions of this resolution, provided that the reports referred to in paragraphs 11 and 12 below indicate that those provisions are being satisfactorily implemented;

5. Further decides that the remaining paragraphs of this resolution shall come into force forthwith;

6. Directs the Committee established by resolution 661 (1990) to monitor the sale of petroleum and petroleum products to be exported by Iraq via the Kirkuk-Yumurtalik pipeline from Iraq to Turkey and from the Mina al-Bakr oil terminal, with the assistance of independent inspection agents appointed by the Secretary-General, who will keep the Committee informed of the amount of petroleum and petroleum products exported from Iraq after the date of entry into force of paragraph 1 of this resolution, and will verify that the purchase price of the petroleum and petroleum products is reasonable in the light of prevailing market conditions, and that, for the purposes of the arrangements set out in this resolution, the larger share of the petroleum and petroleum products is shipped via the Kirkuk-Yumurtalik pipeline and the remainder is exported from the Mina al-Bakr oil terminal;

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7. Requests the Secretary-General to establish an escrow account for the purposes of this resolution, to appoint independent and certified public accountants to audit it, and to keep the Government of Iraq fully informed;

8. Decides that the funds in the escrow account shall be used to meet the humanitarian needs of the Iraqi population and for the following other purposes, and requests the Secretary-General to use the funds deposited in the escrow account:

(a) To finance the export to Iraq, in accordance with the procedures of the Committee established by resolution 661 (1990), of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs, as referred to in paragraph 16 of resolution 687 (1991) provided that:

(i) Each export of goods is at the request of the Government of Iraq;

(ii) Iraq effectively guarantees their equitable distribution, on the basis of a plan submitted to and approved by the Secretary-General, including a description of the goods to be purchased;

(iii) The Secretary-General receives authenticated confirmation that the exported goods concerned have arrived in Iraq;

(b) To complement, in view of the exceptional circumstances prevailing in the three Governorates mentioned below, the distribution by the Government of Iraq of goods imported under this resolution, in order to ensure an equitable distribution of humanitarian relief to all segments of the Iraqi population throughout the country, by providing between 130 million and 150 million United States dollars every 90 days to the United Nations Inter-Agency Humanitarian Programme operating within the sovereign territory of Iraq in the three northern Governorates of Dihauk, Arbil and Sulaimaniyah, except that if less than one billion United States dollars worth of petroleum or petroleum products is sold during any 90 day period, the Secretary-General may provide a proportionately smaller amount for this purpose;

(c) To transfer to the Compensation Fund the same percentage of the funds deposited in the escrow account as that decided by the Council in paragraph 2 of resolution 705 (1991) of 15 August 1991;

(d) To meet the costs to the United Nations of the independent inspection agents and the certified public accountants and the activities associated with implementation of this resolution;

(e) To meet the current operating costs of the Special Commission, pending subsequent payment in full of the costs of carrying out the tasks authorized by section C of resolution 687 (1991);

(f) To meet any reasonable expenses, other than expenses payable in Iraq, which are determined by the Committee established by resolution 661 (1990) to be directly related to the export by Iraq of petroleum and petroleum products permitted under paragraph 1 above or to the export to Iraq, and activities

directly necessary therefor, of the parts and equipment permitted under paragraph 9 below;

(g) To make available up to 10 million United States dollars every 90 days from the funds deposited in the escrow account for the payments envisaged under paragraph 6 of resolution 778 (1992) of 2 October 1992;

9. Authorizes States to permit, notwithstanding the provisions of paragraph 3 (c) of resolution 661 (1990):

(a) The export to Iraq of the parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, subject to the prior approval by the Committee established by resolution 661 (1990) of each export contract;

(b) Activities directly necessary for the exports authorized under subparagraph (a) above, including financial transactions related thereto;

10. Decides that, since the costs of the exports and activities authorized under paragraph 9 above are precluded by paragraph 4 of resolution 661 (1990) and by paragraph 11 of resolution 778 (1992) from being met from funds frozen in accordance with those provisions, the cost of such exports and activities may, until funds begin to be paid into the escrow account established for the purposes of this resolution, and following approval in each case by the Committee established by resolution 661 (1990), exceptionally be financed by letters of credit, drawn against future oil sales the proceeds of which are to be deposited in the escrow account;

11. Requests the Secretary-General to report to the Council 90 days after the date of entry into force of paragraph 1 above, and again prior to the end of the initial 180 day period, on the basis of observation by United Nations personnel in Iraq, and on the basis of consultations with the Government of Iraq, on whether Iraq has ensured the equitable distribution of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs, financed in accordance with paragraph 8 (a) above, including in his reports any observations he may have 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 to produce the sum referred to in paragraph 1 above;

12. Requests the Committee established by resolution 661 (1990), in close coordination with the Secretary-General, to develop expedited procedures as necessary to implement the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of this resolution and to report to the Council 30 days after the date of entry into force of paragraph 1 above and again prior to the end of the initial 180 day period on the implementation of those arrangements;

13. Requests the Secretary-General to take the actions necessary to ensure the effective implementation of this resolution, authorizes him to enter into any necessary arrangements or agreements, and requests him to report to the Council when he has done so;

14. Decides that petroleum and petroleum products subject to this resolution shall while under Iraqi title be immune from legal proceedings and not be subject to any form of attachment, garnishment or execution, and that all States shall take any steps that may be necessary under their respective domestic legal systems to assure this protection, and to ensure that the proceeds of the sale are not diverted from the purposes laid down in this resolution;

15. Affirms that the escrow account established for the purposes of this resolution enjoys the privileges and immunities of the United Nations;

16. Affirms that all persons appointed by the Secretary-General for the purpose of implementing this resolution enjoy privileges and immunities as experts on mission for the United Nations in accordance with the Convention on the Privileges and Immunities of the United Nations, and requires the Government of Iraq to allow them full freedom of movement and all necessary facilities for the discharge of their duties in the implementation of this resolution;

17. Affirms that nothing in this resolution affects Iraq's duty scrupulously to adhere to all of its obligations concerning servicing and repayment of its foreign debt, in accordance with the appropriate international mechanisms;

18. Also affirms that nothing in this resolution should be construed as infringing the sovereignty or territorial integrity of Iraq;

19. Decides to remain seized of the matter.

Annex 2

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1996/356*
28 May 1996

ORIGINAL: ENGLISH

LETTER DATED 28 MAY 1996 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to submit to you, and through you to the members of the Security Council, the text of a memorandum of understanding concluded today between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995) of 14 April 1995. I am also submitting to you a letter handed over by the Head of the Iraqi delegation upon signing the memorandum.

The memorandum represents an important step in the arrangements that are required under the resolution to bring it fully into effect. Once all the necessary actions have been taken, I will be in a position to report to the Security Council as provided for in paragraph 11 of the resolution. The present letter, therefore, is submitted with a view to keeping the Council abreast of the progress achieved so far in the implementation of the resolution.

(Signed) Boutros BOUTROS-GHALI

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* Reissued for technical reasons.

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Memorandum of understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995)

Section I

General provisions

1. The purpose of this Memorandum of Understanding is to ensure the effective implementation of Security Council resolution 986 (1995) (hereinafter the Resolution).

2. The Distribution Plan referred to in paragraph 8 (a) (ii) of the Resolution, which has to be approved by the Secretary-General of the United Nations, constitutes an important element in the implementation of the Resolution.

3. Nothing in the present Memorandum should be construed as infringing upon the sovereignty or territorial integrity of Iraq.

4. The provisions of the present Memorandum pertain strictly and exclusively to the implementation of the Resolution and, as such, in no way create a precedent. It is also understood that the arrangement provided for in the Memorandum is an exceptional and temporary measure.

Section II

Distribution Plan

5. The Government of Iraq undertakes to effectively guarantee equitable distribution to the Iraqi population throughout the country of medicine, health supplies, foodstuffs and materials and supplies for essential civilian needs (hereinafter humanitarian supplies) purchased with the proceeds of the sale of Iraqi petroleum and petroleum products.

6. To this end the Government of Iraq shall prepare a Distribution Plan describing in detail the procedures to be followed by the competent Iraqi authorities with a view to ensuring such distribution. The present distribution system of such supplies, the prevailing needs and humanitarian conditions in the various Governorates of Iraq shall be taken into consideration with due regard to the sovereignty of Iraq and the national unity of its population. The plan shall include a categorized list of the supplies and goods that Iraq intends to purchase and import for this purpose on a six-month basis.

7. The part of the Distribution Plan related to the three northern Governorates of Arbil, Dihouk and Sulaimaniyah shall be prepared in accordance with Annex I, which constitutes an integral part of this Memorandum.

8. The Distribution Plan shall be submitted to the Secretary-General of the United Nations for approval. If the Secretary-General is satisfied that the

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plan adequately ensures equitable distribution of humanitarian supplies to the Iraqi population throughout the country, he will so inform the Government of Iraq.

9. It is understood by the Parties to this Memorandum that the Secretary-General will not be in a position to report as required in paragraph 13 of the Resolution unless the plan prepared by the Government of Iraq meets with his approval.

10. Once the Secretary-General approves the plan, he will forward a copy of the categorized list of the supplies and goods, which constitutes a part of the plan, to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait (hereinafter the 661 Committee) for information.

11. After the plan becomes operational, each Party to the present Memorandum may suggest to the other for its consideration a modification to the plan if it believes that such adjustment would improve the equitable distribution of humanitarian supplies and their adequacy.

Section III

Establishment of the escrow account and audit of that account

12. The Secretary-General, after consultations with the Government of Iraq, will select a major international bank and establish there the escrow account described in paragraph 7 of the Resolution, to be known as "the United Nations Iraq Account" (hereinafter the "Iraq Account"). The Secretary-General will negotiate the terms of this account with the bank and will keep the Government of Iraq fully informed of his actions in choosing the bank and opening the account. All transactions and deductions mandated by the Security Council under paragraph 8 of the Resolution shall be made from the "Iraq Account", which will be administered in accordance with the relevant Financial Regulations and Rules of the United Nations.

13. The Iraqi authorities might designate a senior banking official to liaise with the Secretariat of the United Nations on all banking matters relating to the "Iraq Account".

14. In accordance with the United Nations Financial Regulations, the "Iraq Account" will be audited by the Board of Auditors who are external independent public auditors. As provided for in the Regulations, the Board of Auditors will issue periodic reports on the audit of the financial statements relating to the account. Such reports will be submitted by the Board to the Secretary-General who will forward them to the 661 Committee and to the Government of Iraq.

15. Nothing in this Memorandum shall be interpreted to create a liability on the part of the United Nations for any purchase made by the Government of Iraq or any agents acting on its behalf pursuant to the provisions of the Resolution.

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Section IV

Sale of petroleum and petroleum products originating in Iraq

16. Petroleum and petroleum products originating in Iraq will be exported via the Kirkuk-Yumurtalik pipeline through Turkey and from the Mina al-Bakr oil terminal. The 661 Committee will monitor the exports through these outlets to ensure that they are consistent with the Resolution. Transportation costs in Turkey will be covered by an additional amount of oil, as foreseen in the Resolution and in accordance with procedures to be established by the 661 Committee. The arrangement between Iraq and Turkey concerning the tariffs and payment modalities for the use of Turkish oil installations has been provided to the 661 Committee.

17. Each export of petroleum and petroleum products originating in Iraq shall be approved by the 661 Committee.

18. Detailed provisions concerning the sale of Iraqi petroleum and petroleum products are contained in Annex II, which constitutes an integral part of this Memorandum.

Section V

Procurement and confirmation procedures

19. The purchase of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs of the Iraqi population throughout the country, as referred to in paragraph 20 of resolution 687 (1991), will, subject to paragraph 20 below, be carried out by the Government of Iraq, will follow normal commercial practice and be on the basis of the relevant resolutions of the Security Council and procedures of the 661 Committee.

20. The purchase of humanitarian supplies for the three northern Governorates of Arbil, Dihouk and Sulaimaniyah, as provided for in the Distribution Plan, will be carried out in accordance with Annex I.

21. The Government of Iraq will, except as provided for in paragraph 26, contract directly with suppliers to arrange the purchase of supplies, and will conclude the appropriate contractual arrangements.

22. Each export of goods to Iraq shall be at the request of the Government of Iraq pursuant to paragraph 9 (a) of the Resolution. Accordingly, exporting States will submit all relevant documentation, including contracts, for all goods to be exported under the Resolution to the 661 Committee for appropriate action according to its procedures. It is understood that payment of the supplier from the "Iraq Account" can take place only for items purchased by Iraq that are included in the categorized list referred to in Section II of the present Memorandum. Should exceptional circumstances arise, applications for the export of additional items may be submitted to the 661 Committee for its consideration.

23. As noted above, the 661 Committee will take action on applications for the export of goods to Iraq in accordance with its existing procedures subject to future modifications under paragraph 12 of the Resolution. The 661 Committee will inform the Government of Iraq, requesting States, and the Secretary-General of the actions taken on the requests submitted.

24. After the 661 Committee has taken action on the applications for export in accordance with its procedures, the Central Bank of Iraq will request the bank holding the "Iraq Account" to open irrevocable letters of credit in favour of the beneficiaries. Such requests shall be referred by the bank holding the "Iraq Account" to the United Nations Secretariat for approval of the opening of the letter of credit by the latter bank, allowing payment from the "Iraq Account" upon presentation of credit-conform documents. The letter of credit will require as condition of payment, inter alia, the submission to the bank holding the "Iraq Account" of the documents to be determined by the procedures established by the 661 Committee, including the confirmations by the agents referred to in paragraph 25 below. The United Nations, after consultations with the Government of Iraq, shall determine the clause to be inserted in all purchase orders, contracts and letters of credit regarding payment terms from the "Iraq Account". All charges incurred in Iraq are to be borne by the applicant, whereas all charges outside Iraq are for the account of the beneficiary.

25. The arrival of goods in Iraq purchased under the plan will be confirmed by independent inspection agents to be appointed by the Secretary-General. No payments can be made until the independent inspection agents provide the Secretary-General with authenticated confirmation that the exported goods concerned have arrived in Iraq.

26. The independent inspection agents may be stationed at relevant Iraqi entry points, customs areas or other locations where the functions set out in paragraph 27 of this Section can be performed. The number and location of the stationing points for the agents will be designated by the United Nations after consultations with the Government of Iraq.

27. The independent inspection agents will confirm delivery to Iraq of shipments. They will compare the appropriate documentation, such as bills of lading, other shipping documents or cargo manifests, and the documents issued by the 661 Committee, against goods actually arriving in Iraq. They will also have the authority to perform duties necessary for such confirmation, including: quantity inspection by weight or count, quality inspection including visual inspection, sampling, and, when necessary, laboratory testing.

28. The inspection agents will report all irregularities to the Secretary-General and to the 661 Committee. If the problem is related to normal commercial practice (e.g., some shortlanded goods), the 661 Committee and the Government of Iraq are informed, but normal commercial resolution practices (e.g., claims) go forth. If the matter is of serious concern, the independent inspection agents will hold the shipment in question pending guidance from the 661 Committee.

29. As regards the export to Iraq of parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, the requests will be submitted to the 661 Committee by the national Government of the supplier. Such requests will be considered for approval by the Committee in accordance with its procedures.

30. If the 661 Committee has approved a request in accordance with paragraph 29, the provisions of paragraph 24 shall apply. However, since the supplier can expect payment against future oil sales, as stated in paragraph 10 of the Resolution, the proceeds of which are to be deposited in the "Iraq Account", the bank holding the "Iraq Account" will issue an irrevocable letter of credit stipulating that payment can only be effected when at the time of drawing the "Iraq Account" has sufficient disposable funds and the United Nations Secretariat approves the payment.

31. The requirement of authenticated confirmation of arrival provided for in this Section shall apply also to the parts and equipment mentioned in paragraph 29.

Section VI

Distribution of humanitarian supplies purchased under the Distribution Plan

32. The distribution of humanitarian supplies shall be undertaken by the Government of Iraq in accordance with the Distribution Plan referred to in Section II of the present Memorandum. The Government of Iraq will keep the United Nations observation personnel informed about the implementation of the plan and the activities that the Government is undertaking.

33. The distribution of humanitarian supplies in the three northern Governorates of Arbil, Dihouk and Sulaimaniyah shall be undertaken by the United Nations Inter-Agency Humanitarian Programme on behalf of the Government of Iraq under the Distribution Plan with due regard to the sovereignty and territorial integrity of Iraq in accordance with Annex I.

Section VII

Observation of the equitable distribution of humanitarian supplies and determination of their adequacy

GENERAL PROVISIONS

34. The United Nations observation process will be conducted by United Nations personnel in Iraq under the overall authority of the Department of Humanitarian Affairs at United Nations Headquarters in New York in accordance with the provisions described below. Such observation shall apply to the distribution of humanitarian supplies financed in accordance with the procedures set out in the Resolution.

35. The objectives of the United Nations observation process shall be:

(a) to confirm whether the equitable distribution of humanitarian supplies to the Iraqi population throughout the country has been ensured;

(b) to ensure the effectiveness of the operation and determine the adequacy of the available resources to meet Iraq's humanitarian needs.

OBSERVATION PROCEDURES

36. In observing the equitable distribution and its adequacy, United Nations personnel will use, inter alia, the following procedures.

Food items

37. The observation of the equitability of food distribution will be based on information obtained from local markets throughout Iraq, the Iraqi Ministry of Trade, the information available to the United Nations and its specialized agencies on food imports, and on sample surveys conducted by United Nations personnel. The observation will also include the quantity and prices of food items imported under the Resolution.

38. To provide regular updated observation of the most pressing needs, a survey undertaken by United Nations agencies in cooperation with the appropriate Iraqi ministries will serve as a baseline for the continuing observation of nutritional status of the population of Iraq. This information will take account of public health data generated by the Ministry of Health (MOH) and the relevant United Nations agencies.

Medical supplies and equipment

39. Observation regarding distribution of medical supplies and equipment will focus on the existing distribution and storage system and will involve visits to hospitals, clinics as well as medical and pharmaceutical facilities where such supplies and equipment are stored. Such observation will also be guided by health statistics data from MOH and surveys by relevant United Nations agencies.

Water/sanitation supplies and equipment

40. Observation of distribution of water/sanitation supplies and equipment will focus on the determination that they are used for their intended purposes. Confirmation will be carried out by collecting data on the incidence of water-borne diseases and by water quality control checks by visits to water and sanitation facilities by representatives of relevant United Nations agencies. In this regard the United Nations will rely on all relevant indicators.

Other materials and supplies

41. With reference to materials and supplies which do not fall within the three areas indicated above, in particular, those needed for the rehabilitation of infrastructures essential to meet humanitarian needs, observation will focus on confirmation that such materials and supplies are delivered to the predefined destinations in accordance with the Distribution Plan and that they are used for their intended purposes, and on the determination of whether these materials and supplies are adequate or necessary to meet essential needs of the Iraqi population.

COORDINATION AND COOPERATION

42. The United Nations observation activities will be coordinated by the Department of Humanitarian Affairs at United Nations Headquarters in New York. Observation will be undertaken by United Nations personnel. The exact number of such personnel will be determined by the United Nations taking into account the practical requirements. The Government of Iraq will be consulted in this regard.

43. The Iraqi authorities will provide to United Nations personnel the assistance required to facilitate the performance of their functions. United Nations personnel will coordinate with the Iraqi competent authorities.

44. In view of the importance of the functions which United Nations personnel will perform in accordance with the provisions of this Section of the Memorandum, such personnel shall have, in connection with the performance of their functions, unrestricted freedom of movement, access to documentary material which they find relevant having discussed the matter with the Iraqi authorities concerned, and the possibility to make such contacts as they find essential.

Section VIII

Privileges and Immunities

45. In order to facilitate the successful implementation of the Resolution the following provisions concerning privileges and immunities shall apply:

(a) officials of the United Nations and of any of the Specialized Agencies performing functions in connection with the implementation of the Resolution shall enjoy the privileges and immunities applicable to them under Articles V and VII of the Convention on the Privileges and Immunities of the United Nations, or Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies to which Iraq is a party;

(b) independent inspection agents, technical experts and other specialists appointed by the Secretary-General of the United Nations or by heads of the Specialized Agencies concerned and performing functions in connection with

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the implementation of the Resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities accorded to experts on mission for the United Nations or for the Specialized Agency under Article VI of the Convention on the Privileges and Immunities of the United Nations or the relevant Annexes of the Convention on the Privileges and Immunities of the Specialized Agencies respectively;

(c) persons performing contractual services for the United Nations in connection with the implementation of the Resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities referred to in sub-paragraph (b) above concerning experts on mission appointed by the United Nations.

46. In addition, officials, experts and other personnel referred to in paragraph 45 above shall have the right of unimpeded entry into and exit from Iraq and shall be issued visas by the Iraqi authorities promptly and free of charge.

47. It is further understood that the United Nations and its Specialized Agencies shall enjoy freedom of entry into and exit from Iraq without delay or hindrance of supplies, equipment and means of surface transport required for the implementation of the Resolution and that the Government of Iraq agrees to allow them to, temporarily, import such equipment free of customs or other duties.

48. Any issue relating to privileges and immunities, including safety and protection of the United Nations and its personnel, not covered by the provisions of this Section shall be governed by paragraph 18 of the Resolution.

Section IX

Consultations

49. The Secretariat of the United Nations and the Government of Iraq shall, if necessary, hold consultations on how to achieve the most effective implementation of the present Memorandum.

Section X

Final clauses

50. The present Memorandum shall enter into force following signature, on the day when paragraphs 1 and 2 of the Resolution become operational and shall remain in force until the expiration of the 180 day period referred to in paragraph 3 of the Resolution.

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11. Pending its entry into force, the Memorandum shall be given by the United Nations and the Government of Iraq provisional effect.

SIGNED this 20th day of May 1996 at New York in two originals in English.

For the United Nations

(Signed) Hans CORELL
Under-Secretary-General
The Legal Counsel

For the Government of Iraq

(Signed) Abdul Amir AL-ANBARI
Ambassador Plenipotentiary
Head of the Delegation of Iraq

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Annex I

1. In order to ensure the effective implementation of paragraph 8 (b) of the Resolution, the following arrangements shall apply in respect of the Iraqi Governorates of Arbil, Dihouk and Sulaimaniyah. These arrangements shall be implemented with due regard to the sovereignty and territorial integrity of Iraq, and to the principle of equitable distribution of humanitarian supplies throughout the country.

2. The United Nations Inter-Agency Humanitarian Programme shall collect and analyze pertinent information on humanitarian needs in the three northern Governorates. On the basis of that information, the Programme will determine the humanitarian requirements of the three northern Governorates for discussion with the Government of Iraq and subsequent incorporation in the Distribution Plan. In preparing estimates of food needs, the Programme will take into consideration all relevant circumstances, both within the three northern Governorates and in the rest of the country, in order to ensure equitable distribution. Specific rehabilitation needs in the three northern Governorates shall receive the necessary attention.

3. Within a week following the approval of the Distribution Plan by the Secretary-General, the Programme and the Government of Iraq will hold discussions to enable the Programme to determine how the procurement of humanitarian supplies for the three northern Governorates can be undertaken most efficiently. These discussions should be guided by the following considerations. The bulk purchase by the Government of Iraq of standard food commodities and medicine may be the most cost-effective means of procurement. Other materials and supplies for essential civilian needs, specifically required for the three northern Governorates, may be more suitably procured through the United Nations system in view of technical aspects related to their proper use.

4. To the extent that purchases and deliveries are made by the Government of Iraq in response to the written communication of the Programme, an amount corresponding to the cost of the delivered goods will be deducted from the amount allocated to the Programme from the "Iraq Account".

5. Humanitarian supplies destined for distribution in the three northern Governorates shall be delivered by the Programme to warehouses located within these Governorates. Such supplies can also be delivered by the Government of Iraq or the Programme, as appropriate, to warehouses in Kirkuk and Mosul. The warehouses shall be managed by the Programme. The Government of Iraq shall ensure the prompt customs and administrative clearances to enable the safe and quick transit of such supplies to the three northern Governorates.

6. The Programme shall be responsible in the three northern Governorates for the storage, handling, internal transportation, distribution and confirmation of equitable distribution of humanitarian supplies. The Programme will keep the Government of Iraq informed on the implementation of distribution.

7. Whenever possible and cost-effective, the Programme shall use appropriate local distribution mechanisms which are comparable to those existing in the rest

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of Iraq in order to effectively reach the population. Recipients under this arrangement will pay a fee for internal transportation, handling, and distribution as in the rest of the country. The Programme shall ensure that the special needs of internally displaced persons, refugees, hospital in-patients and other vulnerable groups in need of supplementary food are appropriately met, and will keep the Government of Iraq informed.

8. The Programme will observe that humanitarian supplies are used for their intended purposes, through visits to sites and by collecting relevant data. The Programme will report to the Department of Humanitarian Affairs at United Nations Headquarters in New York and the Government of Iraq any violation observed by the Programme.

Annex II

1. The State concerned or, if the 661 Committee so decides, the national petroleum purchaser authorized by the 661 Committee, shall submit to the Committee for handling and approval the application, including the relevant contractual documents covering the sales of such petroleum and petroleum products, for the proposed purchase of Iraqi petroleum and petroleum products, endorsed by the Government of Iraq or the Iraqi State Oil Marketing Organization (hereinafter SOMO) on behalf of the Government. Such endorsement could be done by sending a copy of the contract to the 661 Committee. The application shall include details of the purchase price at fair market value, the export route, opening of a letter of credit payable to the "Iraq Account", and other necessary information required by the Committee. The sales of petroleum and petroleum products shall be covered by contractual documents. A copy of these documents shall be included in the information provided to the 661 Committee together with the application for forwarding to the independent inspection agents described in paragraph 4 of this Annex. The contractual documents should contain the following information: quantity and quality of petroleum and petroleum products, duration of contract, credit and payment terms and pricing mechanism. The pricing mechanism for petroleum should include the following points: marker crude oil and type of quotations to be used, adjustments for transportation and quality, and pricing dates.

2. Irrevocable confirmed letters of credit will be opened by the oil purchaser's bank with the irrevocable undertaking that the proceeds of the letter of credit will be paid directly to the "Iraq Account". For this purpose, the following clauses will have to be inserted in each letter of credit:

"- Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be irrevocably paid into the "Iraq Account" with ..... Bank."

"- All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the purchaser."

3. All such letters of credit will have to be directed by the purchaser's bank to the bank holding the "Iraq Account" with the request that the latter adds its confirmation and forwards it to the Central Bank of Iraq for the purpose of advising SOMO.

4. The sale of petroleum and petroleum products originating in Iraq will be monitored by United Nations independent oil experts appointed by the Secretary-General of the United Nations to assist the 661 Committee. The monitoring of oil exports will be carried out by independent inspection agents at the loading facilities at Ceyhan and Mina al-Bakr and, if the 661 Committee so decides, at the pipeline metering station at the Iraq-Turkey border, and would include quality and quantity verification. They would authorize the loading, after they receive the information from the United Nations oil experts that the relevant contract has been approved, and report to the United Nations.

5. The United Nations will receive monthly reports from SOMO on the actual volume and type of petroleum products exported under the relevant sales contracts.

6. The United Nations Secretariat and SOMO shall maintain continuing contact and in particular United Nations oil experts shall meet routinely with SOMO representatives to review market conditions and oil sales.

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Letter dated 20 May 1996 from the Head of delegation of Iraq addressed to the Legal Counsel

In reference to the memorandum of understanding signed today and as I advised you during the discussion that a letter would be sent to you concerning the position of Iraq as to the cost of production and transportation of oil inside Iraq, I state below Iraq's position, which I request that you include in the official record of our discussion:

The Iraqi delegation explained during the discussion that the cost of production and transportation of petroleum excluding expenses in local currency, is currently estimated at US$ 2.00 per barrel. Such cost had to be deducted from the sale price or recovered through the production and export of extra quantity of petroleum and petroleum products. In either case the amount referred to above would be deposited in the "Iraq account" to be utilized for the import of spare parts and other items necessary for the maintenance and sustaining of production and transportation operations as is the established practice in the oil industry, otherwise production and transportation operations would be hindered and eventually come to a halt.

Nevertheless, and in order to facilitate the conclusion of this memorandum of understanding, the Iraqi delegation agreed not to insist on the acceptance of its position by the United Nations Secretariat delegation at this stage and agreed to have it included in a separate letter addressed to the Head of the delegation of the United Nations Secretariat for consideration in any future discussion.

Although the matter is not discussed, the Iraqi delegation wishes to state that a third outlet for Iraqi petroleum export could be via the Syrian Arab Republic.

(Signed) Ambassador A. Amir ANSARI
Head of the delegation of Iraq

BNP PARIBAS

M E M O R A N D U M

Date: May 9, 2003

To: Dominique Remy

From: Pierre Veyras

Copy: Lincoln Payton

Re: Chronology of Oil For Food Program Banking Events

Please find attached here below a synopsis of events that were significant for BNP/BNP Paribas:

June 3, 1996	Request for Proposal of this date sent to BNP.
June 7, 1996	BNP response to RFP sent to UN Treasury under competitive bidding procedure.
June 18, 1996	Notification that BNP won the bid sent to Pierre Schneider by UN Controller.
Sept. 12, 1996	Agreement For Banking Services (ABS) signed by UN and BNP after six weeks of negotiation. Valid until March 26, 1997. Along with BNP Paribas, Chase has managed the various accounts which represented 47% of the funds at that time (now it is 41%)
Dec. 10, 1996	Phase I begins, first oil cargo loaded.
Dec. 27, 1996	UN allows BNP to sell risk participations in confirmations of oil L/Cs opened by Turkish banks.
Jan. 17, 1997	Amendment no. 1 to ABS signed changing authorized signatories.
Feb. 14, 1997	First humanitarian L/C issued by BNP.
Several amendments to ABS and renewal of several phases in between.	
Dec. 12, 1999	Phase VII begins. Extension to ABS signed by UN with validity until Sept. 27, 2000.
During 2000	Diversification of funds at banks selected by UN begins (Deutsche Bank, HypoVereinsbank, BBVA, CAI).
June 9, 2000	Phase VIII begins.
Sept. 27, 2000	Extension to ABS signed by UN with validity until March 26, 2001.

Nov. 13, 2000	Amendment no. 4 to ABS signed adding Euro Sub-Account and format of oil L/Cs, now to be denominated in Euros.
Dec. 6, 2000	Phase IX begins.
Dec 18 2000	Letter from the Permanent Representative of Iraq to the UN Security Council raising some operational issues and insisting on a diversification of the banking activities
Jan 9, 2001	Letter from the Iraqi Ministry of Foreign Affairs to the UN General Secretary alerting him about serious operational issues
Jan 18, 2001	Letter from the UN Under Secretary General to the Iraqi Minister of Foreign Affairs explaining the operational situation and suggesting to Iraq to deploy in NY a representative of CBI in order to resolve practical issues
Mar. 28, 2001	Extension to ABS signed by UN with validity until Sept. 24, 2001.
Mar. 30, 2001	Request for Proposal of this date sent to BNPP for diversification of letter of credit business and new pricing. Sent by Joseph Connor, Under-Secretary-General, Department of Management.
Apr. 27, 2001	RFP bid for diversification of letters of credit sent to UN with validity of June 30, 2001.

In between extensions of phase, amendment to our ABS, renewals of our bid under the RFP

Oct. 26, 2001	Letter received from UN Procurement Division rejecting all proposals and indicating that the UN would enter into negotiated agreements directly with each of the invited banks, the pricing to be matched being in practice the one submitted by BNP Paribas in the 1st round (meaning BNPP's pricing was likely the lowest one).
Nov. 16, 2001	RFPS-311 and RFPS-312 regarding diversification of oil and humanitarian letters of credit sent to BNPP. Sent by UN Procurement Division.
Nov. 29, 2001	RFPS bids sent to UN with validity of Jan. 31, 2002 (after clarification and re-adjustments by the UN of several points that were not properly addressed by the UN in its RFP).
Dec. 1, 2001	Phase XI begins.
Jan. 9, 2002	RFPS-330 for "best and final offer" regarding diversification of humanitarian L/Cs sent to BNPP by UN Procurement Division. It was stated that one of the intended recipients did not receive the solicitation RFPS-312.
Jan. 22, 2002	Response to RFPS-330 sent to UN with a validity of April 23, 2002.
Jan 2002	BNP Paribas informed (unofficially) that several banks short-listed for the 1st round have either decided not to bid finally or have been not retained by the UN after round 1 or 2.
Feb. 6, 2002	Letter from UN regarding RFPS-311, 312 and 330 indicating that the UN intends to enter into direct negotiations for award of contracts for both Oil letters of credit and Humanitarian letters of Credit, respectively.
Feb 2002	Several meetings between UN and CBI in Baghdad regarding the banking side of the Program, this leading to some changes decided by the UN as for the handling of discrepant documents presented for payment, notably expired LCs

Feb. 25, 2002	Extension to ABS signed by UN with validity until Dec. 31, 2002.
May 2002	BNP Paribas informed by the UN that the oil LCs will be split on an equal basis between 2 banks (BNPP and CS) whilst humanitarian LCs will be shared, going forward, between 4 banks (BNPP, CS, DB and BBVA) on an basis that had to be defined; all this was going to be implemented gradually by May and June 2002 subject to an agreement between the UN and the Iraqi Government on the practical implementation of the diversification
May 30, 2002	Phase XII begins.
October, 2002	Deutsche Bank had finalized the documentation in order to start the issuance of humanitarian LCs with the upcoming start of Phase XIII ; DB credit rating downgraded by Fitch IBCA and informed by the UN it could not issue LC as long as its "individual rating" would be C or below.
Dec. 5, 2002	Phase XIII begins.
Apr. 2, 2002	Extension to ABS signed by UN with validity until Dec. 31, 2003.
Apr. 4, 2003	Amendment no. 5 to ABS signed covering changes resulting from Resolution 1472 (and 1476), UN now assuming the role of the applicant, i.e. Iraqi buyers, for an interim period until June 3rd.

May 14th

BNP Paribas and the UN Oil for Food Program

1) How was BNP selected by the United Nations ?.

Resolution 986 of the UN Security Council gave the responsibility of establishing an escrow account to the Secretary-General of the U.N. The Secretary-General was to select an international bank and negotiate the terms of the account under the Memorandum of Understanding Between the Secretariat of the U.N. and the Government of Iraq.

According to the Secretary-General's report, dated November 26, 1996, the selection process for the holder of the escrow account began with the preparation of a "working list of major banks in all parts of the world with the necessary credit quality ratings, strong capital positions, and the capabilities to provide the services necessary for the account." After consulting with the Government of Iraq, a short-list of those banks were asked in June 1996 via a Request for a Proposal ("RFP"), BNP being one of these banks, to submit written proposals to the U.N. outlining their services and prices. The RFP requested, among other objective criteria, pricing and inquired into the bank's capabilities to handle business of the program's size. According to the UN, only 4 banks made a formal offer : Chase Manhattan, BNP, Credit Suisse and UBS.

In 1996, The Secretary-General reported "after careful consideration of the proposals received, Banque Nationale de Paris was selected as the holder of the escrow account, and the account was subsequently opened." BNP's large international network, notably in Middle-East which was one of the criteria for the UN, and high credit ratings gave it a competitive edge over the other banks, including Credit Suisse which was the only bank who had made a lower bid than BNP. At that time (and still today), BNP had a much larger international network and a strong commodities business than Credit Suisse. Most importantly BNP was able to commit with regards to the confirmation risk on all the buyers' banks whilst Credit Suisse was not willing to do so. Therefore, BNP was a natural choice for the 59 % account (59 % of the funds derived from Iraqi Oil sales are managed on one account whilst the balance is allocated by the UN to the Compensation Commission and the Iraq Northern Governorates. Along with BNP, Chase Manhattan controlled since the inception of the OIF those other accounts, i.e. 41 % of the total funds and, particularly, the 13% allocated to the Iraq Northern Governorates.

After six weeks of negotiations, on September 12, 1996, an agreement for banking services for the Oil-for-Food Program was signed by the U.N. and BNP.

It should be noted that the U.N. has repeatedly confirmed that the selection of BNP was based on a competitive bidding process (See Benon V. Sevan, Exec. Dir. Oil-For-Food Program, Oil-For-Food, the U N. View, N.Y. Times, Apr. 24, 2003).

There has been one story linking one of Paribas' largest private shareholder, an Iraqi-born businessman named Nadhmi Auchi, to the Hussein government, which drives speculation that BNP Paribas was selected because of Iraqi persistence (N.Y. Times, Apr. 30, 2003). Mr. Auchi was indeed a shareholder of Paribas in 1996 but it does not make any sense to imagine that he could have played any part in helping a competitor of Paribas win the account, i.e. BNP. The 2 banks were totally

independent at that time and until 2000 when BNP and Paribas merged, after an aborted proposed merger in 1999 between Paribas and Société Générale. Currently, Mr. Auchi has no involvement in BNP Paribas other than an indirect passive investment in less than one-half of one percent of the bank's outstanding stock.

2) Role of BNP Paribas under Oil for Food.

The role of BNP Paribas consists strictly of delivering banking services to the UN General Secretary / Treasury Department, its client. The bank intervenes only when contracts have been signed between the Iraqi entity and their counterparts, oil traders or exporters of humanitarian goods, these contracts being then approved by the relevant UN departments which report in that respect to the members of the Security Council.

In practice, applications for export of goods to Iraq under SC Resolution 986, for which payment is to be made from the United Nations Iraq account, are submitted to the UN Office of Iraq Programme ("OIP") by relevant National Missions and UN agencies. The applications are reviewed by UN Office of the Iraq Programme ("OIP") experts and provided the application is in compliance with all the requirements of the Memorandum of Understanding between Iraq and the UN, the application is then forwarded for further processing to United Nations Monitoring, Verification and Inspection Commission ("UNMOVIC") and The International Atomic Energy Agency ("IAEA"). The Head of the OIP reports on a regular basis to the UN Security Council about the situation of the Program. From a more practical standpoint, the approval process of the contracts is under the supervision of the UN 661 Committee where all members of the Security Council are represented.

Once all the U.N. paperwork is completed, the Central Bank of Iraq requests the issuance of the LC which is processed by BNP Paribas, once the UN has given its approval. Generally, the goods are then shipped by the exporter. Once the goods arrive in Iraq, they are inspected by independent experts of a Swiss company Cotecna, appointed by the U.N. The payment of these goods can then be processed by BNP Paribas under 3 conditions: i) the shipping documents are compliant with the UN LC, ii) the UN has produced a certificate based on the inspection's report from Cotecna on a case-by-case basis iii) and the UN has approved the specific payment. The pre-requisites i) and ii) are not standard banking practices and have been implemented due to the unique profile of the Program, which allows the UN to be certain about the nature/destination of the goods as well as the payment to the exporter. In other terms this also allows the members of the Security Council, members of the UN 661 Committee, to enforce the global conformity of the transactions with the relevant procedures.

In the same vein, the oil transactions under Oil for Food do comply with the standard industry practice but several additional "control" steps have to be executed in order to complete a transaction : i) each contract between the Iraqi official exporter (SOMO) and a buyer has to be approved by the UN Oil Overseers, two independent experts coming from Oil majors who report to the UN, ii) the loading of the oil is supervised by an independent Dutch company (Saybolt, well known in the oil industry) who has been appointed by the UN, iii) at the stage of the payment all shipping documents are reviewed by the UN Oil Overseers and the oil price is established by the UN 661 Committee before the bank can process the transaction.

3) The management of the Oil for Food funds

BNP Paribas has *no control over how money is spent under the Oil-for-Food Program.* As explained above, BNP Paribas neither approves the supplies being purchased, nor the list of suppliers, nor the contracts themselves. In addition, BNP Paribas has no involvement in arranging the relationship between the suppliers and Iraq, nor between oil buyers and the SOMO. So the directions of the funds, either incoming or outgoing, is at the sole discretion of the UN General Secretary which reports to the

Security Council members. BNP is not responsible for monitoring or auditing moneys that leave the bank. BNP Paribas' role is to pay the exporter of goods upon confirmation by U.N. inspectors, credit the account, divide the funds and transfer them pursuant to U.N. instructions, and invest the balance pursuant to U.N. Treasury requests. As part of the additional tight controls, Oil for Food LCs are nontransferable and payable only to the named beneficiary. BNP Paribas is audited internally by its audit department, and externally by PriceWaterhouse. In addition, various Federal and State agencies audit the bank. As far as BNP Paribas is aware, no issues have been raised as to improper use of Oil-for-Food funds.

BNP Paribas is not the only bank holding funds for the United Nations Oil-for-Food Program; other banks also holds these funds, particularly Chase since inception..

Other banks have been involved in holding Oil-for-Food funds from the outset of the Program. Although, 100% of the proceeds from the sale of oil flow through BNP Paribas, only 59% remains in its custody for purchasing humanitarian supplies. Upon the receipt of oil proceeds, BNP Paribas is given strict instructions by the UN Treasury Department regarding the division and transfer of funds according to the scheme defined by the UN Secretary-General in 1995. Moreover, in 1998, the Secretary-General reported that the allocation of proceeds of Iraqi oil sales were divided amongst "seven funds."

Not knowing the full capacity of the Program, it made sense in the beginning to limit the investment to 53% (later on this number has been increased bythe UN Security Council up to 59%) in the U.N. Iraq Account and the issuance of supply LCs to one bank. In the beginning of the Program, the Government of Iraq rejected diversification, Iraq's view being at that time that U.N. sanctions were only temporary and there was no need to complicate the situation by involving numerous banks. Once Iraq accepted the reality that sanctions were remaining for a longer than expected period of time, a debate ensued between Iraq and the U.N. on how the funds should be diversified. One reason for not keeping the funds mainly with BNP Paribas, as expressed in the Financial Times in 2002, was that it would be "easier for Iraqis to play games and abuse the system after the diversification than" with a single bank managing the LCs and a majority of investments (Financial Times, Feb. 2, 2002). As a matter of fact the Iraqi Government pushed actively and publicly in 2000 for a banking diversification of the Program.

By end of 2000 BNP Paribas put together scenarios of how to best diversify; however, the U.N. never seriously entertained BNP Paribas' suggestions. In 2000, other banks were however brought in to "manage" approximately 15-20% of the funds (cf. above mentioned), BNP Paribas finally managing approximately 60% of the total funds. Going forward, the U.N. continued to instruct BNP Paribas as to how, where, and when to transfer these funds. Pursuant to U.N. instructions, three institutions, namely Crédit Agricole, Credit Suisse First Boston, and BBVA, each took a piece of the 59% account for investment purposes. Between 2000 and 2002, Deutsche Bank and HypoVereinsbank had some deposits too that they no longer hold due to various reasons, Deutsche Bank because of the downgrading of its credit rating. BNP Paribas requires a larger portion of the 59% account to remain in its custody as collateral for the supply LCs it issues under the Program. Along with these banks, Chase Manhattan continued to hold several accounts representing a combined 41%.

In March 2001, the UN launched a Request For Proposal for the issuance of LCs. In late 2002 the last step of this series of three RFPs resulting in an order to execute a deal for overall diversification (LCs and investments) between the U.N. and Deutsche Bank, this however collapsed because Deutsche's Fitch-IBCA credit rating dropped below the U.N.'s threshold (to "C"). As a result, even though the U.N. made an attempt to diversify the entire Oil-for-Food Program, the supply LC business remains with BNP Paribas.

In practice UN gives instructions to BNP Paribas to invest every penny in the account, the UN benchmarking on a daily basis BNP market rates with its other banks (notably Chase and CBFB). All interest earned is reinvested in fact in the fund to purchase humanitarian supplies, as publicly attested to by Mr. Benon Sevan, Executive Director of the Oil-for-Food Program (Fox New Channel, Apr. 28, 2003).

4) Impact of Oil for Food on BNP Paribas

All fees received by BNP Paribas are commercially reasonable and its remuneration is made by either the exporter of humanitarian supplies (15 bps flat) or by the oil buyer (11bps flat). This is rather modest compared to normal commercial rates, considering these LCs are not typical and do involve much more paper work and time than normal, notably due to the reconciliation between the Cotecna proof of inspection at the delivery point and the other documents of the LC.

There is, in general, an enormous amount of work involved in issuing or confirming and negotiating LCs under the Program. As an order of magnitude, for the approximately OIP 5000 LCs per year BNP Paribas issues it requires the attention of a 95 person staff whilst normally, in similar BNP Paribas departments, a similar staff process over 20,000 LCs within the year. In the same vein, there were several significant additional costs that the bank had to bear such as telex systems due to the particular situation of Iraq. This extraordinary burden we also due to the change in the nature of the program over the time, from short-term standard transactions at the inception (food and medecine mostly) to fairly long and complicated LCs for spare parts for the Iraqi Ministers of Electricity, Transportation or Oil Ministers. For example, the number of negotiations under one LC has been up to 100 over 2 years, some of them consisting of more than 1,500 pages of documents produced by UN/ Cotecna, for which the bank has got nothing but the initial 15 bps up-front fees. BNP personnel had to go through these reports line by line, item by item to confirm the values of goods shipped.

BNP Paribas had originally charged a "cash management" fee to the U.N. but this has been waived when the paper work required to bill the U.N. became more burdensome than the modest fee was actually worth. At the same time the U.N.'s treasury department is sophisticated and deals with multiple banks on a daily basis (see the comment above). For that reason alone, BNP Paribas is forced to stay competitive with interest and foreign exchange rates

From a more global standpoint, BNP Paribas is the worldwide leader bank in the oil business, its operations in the main marketplaces being significant. The OIP has certainly brought an additional expertise into the bank as well as more knowledge of oil players, nevertheless it represents a small part of the activity of the business line and less than one tenth of a percent of the bank's total revenues.

A Brief History and Update on the Banking Side of the United Nations Oil for Food Program

What is the historical involvement of the banks in the United Nations Oil for Food Program?

The UN Oil for Food Program was established by the UN in 1996. It was established out of the desire to alleviate the suffering of the Iraqi people arising from the sanctions that were imposed on Iraq immediately after Iraq's invasion of Kuwait. The Program permitted Iraq to sell oil but only so long as the proceeds of such sales were used to purchase authorized humanitarian goods and for other purposes permitted by the UN (described below). These goods were originally limited to food and medicine. As the Program progressed, the list of authorized humanitarian goods was expanded to include other goods approved by the UN.

All oil revenues arising from the sale of Iraqi oil under the Program were to be directed to a UN bank account to be established by the UN at an international bank. Of these revenues, 59% were dedicated to the purchase of food, medicine and other humanitarian goods by the Iraqi Government under the control of the UN. The remaining 41% of the oil revenues was allocated to the UN Compensation Funds for damages from the first Gulf War (25%), to supplies for the Northern Part of Iraq under the direct management of UN agencies and departments (13%), as well as to the UN for its management fees and weapons inspection expenses (3% of overall oil sales). Under the Program, the UN Security Council - through its specific "Sanctions 661 Committee" - had to approve each and every oil and humanitarian contract, any disagreement by any member state blocking a transaction.

In connection with the Program, BNP was selected in 1996 by the UN to hold the escrow account and issue or confirm the letters of credit related to the import/export contracts within the OIP Program through a competitive bidding process involving (to our knowledge) approximately 50 banks, four of them being short-listed on the basis of qualitative criteria (credit rating, international network, capacity in trade finance, etc) and pricing.

The UN opened an escrow account at BNP into which the proceeds of the oil sales under the Program were deposited and selected BNP to handle the documentary credit requirements of the Program. From the Program's inception, 41% of the oil proceeds were immediately transferred by the UN to the UN's account at JPMorganChase; the remaining 59% balance was held at BNP to secure BNP's issuance of humanitarian letters of credit under the Program. Any amount of the 59% not then needed as collateral was held (prior to diversification- see below) by BNP pending issuance of humanitarian letters of credit by BNP.

For the documentary part, the role of the selected bank was twofold: i) confirm LC's issued by the banks of the oil buyers and ii) issue humanitarian LC's on behalf of the UN in favor of suppliers of goods to Iraq. BNPP handled the first transaction in December 1996.

It must be noted that BNPP has never been involved in the commercial discussion/negotiations between Iraqi counter-parties and buyers of oil or suppliers of goods. BNPP was not aware of the terms of the humanitarian contracts, the bank dealing exclusively with letters of credit, which remain an operating tool distinct and independent from the underlying commercial contract according to UCP 500 rules (which have been applied by the UN to the OfF Program).

In late 2000, when the Iraqi government agreed with the UN to switch from USD to EUR for the oil sales, it was also decided that the custody of the 59% escrow account funds (in excess of the amount needed to secure outstanding humanitarian letters of credit) should be diversified. Deutsche Bank, HypoVereinsbank, BBVA, and Credit Agricole have participated over time to the 59% side of this Program. The 41% account remained with JPMorganChase since the inception of the Program. All in all, BNPP held over time, between 50% and 59% of the total funds managed by the UN under the Program

In terms of cash-management, the bank has indeed been in competition with top players in the industry; the UN has bench-marked our interest rates consistently and then made investment decisions. The interests generated by the deposits on the escrow account have been re-invested by the UN in the OfF funds. Foreign Exchange transactions were also concluded at the discretion of the UN (the oil revenues were in EUR since the end of 2000, whilst a large portion of the OfF expenses were USD-based), BNP Paribas being one of the banks dealing FX with the UN.

Subsequently the UN Treasury Department launched a Request for Proposal early 2001 in order to diversify the documentary part of the Program. In April 2002, after three successive rounds of competition, four banks (CSFB, Deutsche, BBVA, and BNPP) were finally selected for the documentary part of the OfF Program, BNPP being best bidder and "virtually" retained for approximately half of the total operation. The UN then started to re-negotiate agreements with banks but, for reasons unknown from us, never implemented that second step of the diversification.

> *In short, under a competitive bidding process organized by the UN, BNP was selected by the UN in 1996 to handle the documentary transactions involving Iraq under OfF. During the Program, a large part of the OfF funds was held by other banks.*

Which measures were implemented in order to control the Program?

As a general comment, all actions by BNPP took place within a framework designed by the UN General Secretariat on behalf of the Security Council and formalised via the banking contract binding the UN and BNPP.

In addition to the fact that the bank, as is usual in the trade business, was not privy to the commercial negotiations between Iraq and its counterparties, as well as to the contracts approval process within the UN organization, the OfF Program was tightly controlled on the banking side. Indeed the lengthy and cumbersome banking process set up by the UN has been a consistent complaint over time from traders and exporters from all over the world, the bank being under the spotlight due to the application of these rules designed by the UN.

In order to execute and process any banking transaction—any oil L/C confirmation, any oil L/C negotiation, any issuance, amendment, or payment of any humanitarian L/C—BNPP systematically required formal approval from the UN. Any other specific request from the Central Bank of Iraq was systematically submitted to the UN for instruction. In addition, the UN L/C's were not transferable and the possibility of assignments of proceeds was significantly restricted.

As mentioned above, all transactions were governed by UCP 500 documentary rules but there were also some extra requirements:

i) the price of the oil was established by the UN Sanctions Committee in NY after recommendation from UN Oil overseers; this was stated in a formal approval,
ii) on the ground, the lifting of the oil was controlled by Saybolt (an independent company, well known in the industry, which was appointed by the UN), which had to issue a certificate stating volumes and grade notably,
iii) any set of documents presented by an exporter of goods for payment had to include two specific documents:
   - a letter from the UN Sanctions Committee approving the contract
   - a Confirmation of Arrival issued by the UN on the basis of an inspection report upon the delivery of the goods at the Iraqi border by an independent company appointed by the UN (for some categories of goods a sample was also sent to an independent lab for double-checking).

Finally, all decisions in terms of cash-management were made by the UN Treasury Department.

From a US regulatory standpoint, all OfF transactions were screened through the Office for Foreign Assets Control filter (OFAC).

> *To summarize, the banking side of the OfF was isolated from the contract negotiation and UN approval process and was very strictly designed by the UN, notably due to some additional checks on the ground. It placed at its center the UN Treasury Department, which was the decision-maker overall and on a daily basis, this being in addition to, the usual US tight regulatory context.*

Our commitment of BNP Paribas NY

Up until 2000, the bank had dedicated some Front-Office and Back-Office resources to the OfF Program. Following a sharp increase in the volume of transactions since mid-2000 (from 7,000 transactions per year in 1999 up to 25,000 in 2001), the bank massively re-organized and invested in order to meet the challenge: new managers, additional staff (from 25 up to 90 in 12 months), and IT systems.

This allowed the bank to deliver a good quality of service to exporters and to the UN. In particular, the commitment of the bank was to quick turnaround of transactions, a crucial point for all players. Meanwhile the bank expanded their Customer Service Unit, up to 14 employees, in order to handle inquiries from exporters. This has been appreciated in the market.

Our relationship with the UN

Over the last seven years, under the OfF Program, BNPP has overall enjoyed a relatively good relationship with the UN, its client. This was achieved in spite of the "construction of the Program" which at times left the bank in the middle among political and commercial players with divergent interests. In addition, the complexity of the UN organization has to be taken into account .

There were some frictions at times, notably in 2000 for various reasons. Since then, the relationship with the UN and its decision-makers has significantly improved, the UN appreciating the high level of service we have consistently delivered to them. And all this in a context of high volumes.

In the post-war context, in particular, given the sense of emergency and the involvment of many new players such as different UN agencies (UNICEF, UNDP, WHO...etc), the role of the UN Treasury has been more complicated and decisive than in the past. Once again our bank has been pro-active and has efficiently supported our counterparts at the UN, especially during the last several months when assisting the UN with numerous LC issuances and amendments.

➢ *A challenging but overall good relationship with the UN.*

Current situation of the Oil for Food Program and its upcoming evolution

The OfF Program was officially terminated on November 21, 2003. Though the deadline has passed, the Program has continued to operate under the joint control of the UN and the Coalition Provisional Authority (CPA). As far as the bank is concerned, it has continued to issue and amend humanitarian Letters of Credit related to priority contracts selected by the tri-partite group consisting of the UN, the CPA and the new Iraqi Ministries in order to meet the urgent needs of the Iraqi population. On the other side, the activity on the oil export side ceased right after the war in April.

The level of cash in the UN's account with BNP amounts to $6.5Bn as of today, the amount of collateral being $6Bn. There are some 2,500 humanitarian L/C's on the books, $4.8Bn of those $6Bn expiring between now and the end of this year. The bulk of the remaining transactions should expire in 2005 ($1Bn) although we cannot exclude some further extensions of L/C's due to the situation on the ground. Our current headcount is 30 staff (vs. 90 prior to the war).

Currently and until those L/C's are fully drawn, the exporters will continue to ship goods to Iraq in order to execute those "priority contracts and the related L/C's". The precise timelins for the practical wind-down of the Program and the exact rules that will apply from an operational standpoint—notably the way the new authorities in Iraq will gradually replace the UN and CPA after June 30, 2004, along with some UN agencies—are particularly uncertain. The bank has pro-actively cooperated with the UN as a whole and with the US agencies involved in order to find practical solutions going forward.

Recent Fed requests for information

The New York Fed has recently requested specific information relating to the Oil for Food Program and we are in the process of complying with those requests.

➢ *In conclusion, BNP Paribas has brought a positive and decisive contribution to the banking side of the OfF Program. The commitment and the performance of the bank have helped the UN Treasury Department, our client, to meet its challenges over the past seven years, particularly in the difficult post-war context of this year. We are now at a crossroads in light of the (slow) winding-down of the Program and up-coming handover of the political power in Iraq.*

Pierre VEYRES

BNP PARIBAS

M E M O R A N D U M

Date: May 7, 2003

To:

From: Eva Milias Russo

Copy:

Re: Chronology of Oil For Food Program Banking Events

Under the United Nations Office of the Iraq Programme website (www.un.org/depts/oip/background/chron.html) is a chronology of the Oil For Food Program Events. In addition to that chronology, below is a synopsis of events that were significant for BNP/BNP Paribas:

June 3, 1996	Request for Proposal of this date sent to BNP.
June 7, 1996	BNP response to RFP sent to UN Treasury under competitive bidding procedure.
June 18, 1996	Notification that BNP won the bid sent to Pierre Schneider by UN Comptroller.
Sept. 12, 1996	Agreement For Banking Services signed by UN and BNP after six weeks of negotiation. Valid until March 26, 1997.
Dec. 10, 1996	Phase I begins, first oil cargo loaded.
Dec. 27, 1996	UN allows BNP to sell risk participations in confirmations of oil L/Cs opened by Turkish banks.
Jan. 17, 1997	Amendment no. 1 to ABS signed changing authorized signatories.
Feb. 14, 1997	First humanitarian L/C issued by BNP.
May 13, 1997	Amendment nos. 2 and 3 to ABS signed changing authorized signatories and oil L/C pricing. (Signed by BNP July 28, 1997).
	Extension to ABS signed by UN with validity until Sept. 26, 1997.
June 8, 1997	Phase II begins.
Aug. 26, 1997	Extension to ABS signed by UN with validity until March 26, 1998.
Dec. 5, 1997	Phase III begins.
Mar. 26, 19987	Extension to ABS signed by UN with validity until Sept. 26, 1998.
May 30, 1998	Phase IV begins.
Aug. 23, 1998	Extension to ABS signed by UN with validity until March 26, 1999.
Nov. 26, 1998	Phase V begins.
	Extension to ABS signed by UN with validity until Sept. 27, 1999.
May 25, 1999	Phase VI begins.
Sept. 30, 1999	Extension to ABS signed by UN with validity until March 27, 2000.
Dec. 12, 1999	Phase VII begins.
	Extension to ABS signed by UN with validity until Sept. 27, 2000.
During 2000	Diversification of funds at banks selected by UN begins.
June 9, 2000	Phase VIII begins.
Sept. 27, 2000	Extension to ABS signed by UN with validity until March 26, 2001.
Nov. 13, 2000	Amendment no. 4 to ABS signed adding Euro Sub-Account and format of oil L/Cs, now to be

	denominated in Euros.
Dec. 6, 2000	Phase IX begins.
Mar. 26, 2001	Extension to ABS signed by UN with validity until Sept. 24, 2001.
Mar. 30, 2001	Request for Proposal of this date sent to BNPP for diversification of letter of credit business and new pricing. Sent by Joseph Connor, Under-Secretary-General, Department of Management.
Apr. 27, 2001	RFP bid for diversification of letters of credit sent to UN with validity of June 30, 2001.
June 28, 2001	Extension of RFP bid sent to UN with validity of July 31, 2001.
July 4, 2001	Phase X begins.
July 31, 2001	Extension of RFP bid sent to UN with validity of August 31, 2001.
Aug. 31, 2001	Extension of RFP bid sent to UN with validity of Sept. 30, 2001.
Sept. 24, 2001	Extension to ABS signed by UN with validity until March 28, 2001.
Sept. 28, 2001	Extension to RFP bid sent to UN with validity of November 30, 2001.
Oct. 26, 2001	Letter received from UN Procurement Division rejecting all proposals and indicating that the UN would enter into negotiated agreements directly with each of the invited banks.
Nov. 16, 2001	RFPS-311 and RFPS-312 regarding diversification of oil and humanitarian letters of credit sent to BNPP. Sent by UN Procurement Division.
Nov. 29, 2001	RFPS bids sent to UN with validity of Jan. 31, 2002.
Dec. 1, 2001	Phase XI begins.
Jan. 9, 2002	RFPS-330 for "best and final offer" regarding diversification of humanitarian L/Cs sent to BNPP by UN Procurement Division. It was stated that one of the intended recipients did not receive the solicitation RFPS-312.
Jan. 22, 2002	Response to RFPS-330 sent to UN with a validity of April 23, 2002.
Feb. 6, 2002	Letter from UN regarding RFPS-311, 312 and 330 indicating that the UN intends to enter into direct negotiations for award of contracts for both Oil letters of credit and Humanitarian letters of Credit, respectively.
Feb. 25, 2002	Extension to ABS signed by UN with validity until Dec. 31, 2002.
May 30, 2002	Phase XII begins.
Dec. 5, 2002	Phase XIII begins.
Apr. 2, 2002	Extension to ABS signed by UN with validity until Dec. 31, 2003.
Apr. 4, 2003	Amendment no. 5 to ABS signed covering changes resulting from Resolution 1472, UN now assuming the role of Iraqi buyers for an interim period.

3/21/03

In light of recent anti-French sentiment arising from the Iraqi situation and an unflattering and misleading NBC story on BNP Paribas and its role in the UN Oil for Food Program, we have prepared the following statements which may be used for employee inquiries and conversations with concerned clients.

Anti-French sentiment

- BNP Paribas employs over 10,000 people in the U.S.
- BNP Paribas provides a broad range of financial products and services to a significant number of US corporations, including some of the largest and most profitable US corporations. By doing so, BNP Paribas provides financing and other support to the US economy.
- BNP Paribas is a publicly traded company operating in the private sector whose shareholders reside in locations across the globe.

UN Oil For Food Program

- The United Nations Oil for Food Program is an established humanitarian aid program for the Iraqi people created by the unanimous action of the UN Security Council, and thus specifically endorsed by the United States, one of the five permanent members.
- BNP Paribas was chosen by the UN to provide banking services for the Oil for Food Program through a competitive bidding process. There are several other banks involved in the Program.
- BNP Paribas' participation in the United Nations Oil for Food Program was authorized by the US Government. (If asked - through the US Department of Treasury Office of Foreign Assets Control - OFAC).
- The United Nations approves and monitors any and all purchases made for humanitarian aid for the people of Iraq under the Oil for Food Program.
- [If asked - BNP Paribas' role is limited to providing financial services to its client, the United Nations, and has no role in the selection, approval or distribution of the products or goods that are delivered to Iraq under the Program.]
- Today (3/20/03), the US has reiterated its endorsement of the UN Oil for Food Program as a means to provide humanitarian relief to the Iraqi people.
- For further information on the UN Oil For Food Program, please visit the UN's website at:

  http://www.un.org/Depts/oip/background/fact-sheet.html

Mr. SHAYS. Mr. Boks.

Mr. BOKS. Mr. Chairman and distinguished members of the subcommittee, my name is Peter Boks. I am an executive of Saybolt International which is headquartered in The Netherlands, just outside of Rotterdam. Thank you for inviting me to discuss with the subcommittee today the role of Saybolt International in the administration of the United Nations Oil-for-Food Program. Having submitted a more complete statement for the record, I will discuss my brief oral remarks on our principal responsibilities; namely, the monitoring of oil exports under the Oil-for-Food Program.

Mr. Chairman, please bear with me that English is not my native language. So excuse me if things are unclear.

Mr. SHAYS. Let me assure you that we hear you very well, and we appreciate you are speaking in English.

Mr. BOKS. Thank you. Saybolt won its contract with the United Nations in 1996 through a competitive bid process. Under that contract and multiple extensions, Saybolt deployed teams of inspectors selected on the basis of their prior experience in the industry. Oil inspectors were screened by Saybolt, approved by the United Nations, trained and briefed for this assignment and required to certify compliance with Saybolt's code of conduct.

Under its contract with the United Nations, Saybolt's responsibility was to monitor the quality and quantity of oil exports from the two authorized Oil-for-Food export points, the offshore platform in Al-Bakr and the port of Ceyhan in Turkey, along with the remote monitoring station on the Iraq-Turkey pipeline near Zakho, close to the northern border with Turkey.

The monitoring procedures follow: First, the United Nations oil overseers would review and approve contracts and letters of credit negotiated between the Iraqi oil company SOMO and the buyers of Iraqi oil. Coordinating through a common data base shared by Saybolt and the United Nations, Saybolt would monitor the quantity and quality of oil, pursuant to the approved contracts at the two authorized export points and report confirming figures to the United Nations.

Also important were the limits of Saybolt's responsibilities. Saybolt had no responsibility, for example, with respect to the underlying contracts which were negotiated directly between the seller and buyer and reviewed by the United Nations. Saybolt had no control over the moneys that were involved in the underlying transactions—that was a matter for the sellers, buyers, and the United Nations—nor did Saybolt itself buy or sell Iraqi oil.

Finally, from time to time, we reported irregularities that we observed to the United Nations or the Multilateral Interception Force. Saybolt had no responsibility for monitoring oil exports from any locations other than the three locations specified in its contract. In performing their responsibilities, Saybolt inspectors typically operated in remote locations in inhospitable work environments. Some days, for example, the isolated Mina Al-Bakr platform was without electricity or water and sometimes during heat that exceeded 110 degrees. U.N. audits and reports confirmed the harsh working conditions and risk to personal safety. The entire program was also characterized by highly charged, political interests and sensitivities.

The simultaneous operation of the humanitarian Oil-for-Food Program and a comprehensive U.N.-imposed sanctions regime created a variety of practical and logistical complications affecting everything from obtaining visas to paying for basic necessities.

The job of monitoring authorized oil exports was also made more challenging by the poor state of the oil industry infrastructure and the deficiencies in equipment and technology in Iraq. Even before the program began, Saybolt informed the United Nations of problems with the metering equipment at each of the three sites. At Mina Al-Bakr, the Iraqi failure to install, repair, or calibrate metering equipment meant there were no counterpart measurements to cross-check against ship measurements at the point of loading on the Mina Al-Bakr platform.

In the absence of calibrated metering equipment, Saybolt used the best alternative techniques accepted and widely used in the industry. Specifically, in the absence of metering, inspectors relied on calibration charts, vessel experience factors, and shipboard measurements to determine the quantity of oil loaded onto vessels, a methodology that the United Nations expressly accepted.

Monitoring loadings without access to reliable meters is accepted industry practice but is less accurate than metering at loading points. Although falsification of calibration charts and VEF data is rarely an issue, the possibility exists. To avoid such a problem, Saybolt originally recommended that the volume of oil be measured at the foreign point offloadings, as well as at the loading points of Mina Al-Bakr and Ceyhan. For whatever reasons, his recommendation was not adopted.

In January 1999 following discussions with the United Nations, Saybolt began requiring that each master sign a statement certifying the accuracy of the records provided to Saybolt. The United Nations was informed of this procedure and supported its recommendation. Over 7 years, Saybolt inspectors monitored more than 2,600 loadings involving a total of approximately 3.4 billion barrels of crude oil. Over that period of time, very few irregularities occurred. Two instances of loading excess quantities of oil, the unauthorized topping off, occurred in 2001, both involving the same vessel, the same vessel charter. Saybolt promptly investigated these incidents, made written and personal reports to the United Nations, and put in place additional safeguards to prevent any similar abuses in the future. Thereafter, Saybolt encountered no recurrences of the incidents experienced in 2001.

Looking back on the program and the variety of challenges it faced, we can now identify the ways that the monitoring of oil exports under the Oil-for-Food Program might have been strengthened. These include requiring accurate metering equipment, the continued presence of at least one U.N. official at each loading location, incorporating from the outset various safeguards that Saybolt developed during the course of the program, and monitoring mechanisms for detecting unauthorized exports from other than the two U.N.-approved export points. More broadly, it now appears in hindsight that the ability for Iraq to contract directly with buyers of oil and sellers of goods introduced a significant opportunity for abuse. And to the extent that the member states of the United Nations disregarded or systematically violated the U.N. embargo against

Iraq, that conduct obviously undercut fundamentally the objectives of the Oil-for-Food Program which was conceived to be an exception to the embargo.

Saybolt and its professionals performed a difficult job under very difficult circumstances in Iraq. While not without blemishes, the monitoring of oil was done professionally over an extended period of time. I am happy to discuss that project with you today and to help extract from their experience any lessons which may be of value in conducting humanitarian programs in the future.

Mr. SHAYS. Thank you, Mr. Boks.

[The prepared statement of Mr. Boks follows:]

Testimony of Peter W. [redacted], Managing Director, Saybolt International B.V.
Before the House Committee on Government Reform Subcommittee on National Security, Emerging Threats, and International Relations
October 5, 2004

Mr. Chairman, distinguished members of the Subcommittee,

Thank you for inviting me to speak before the Subcommittee today on the role of Saybolt International B.V. ("Saybolt") in the administration of the United Nations Oil-for-Food Program ("the Program") that operated in Iraq between 1996 and 2003. As a senior executive and manager of Saybolt, now and during that time, I am familiar with our role in the Program, which included monitoring the export of oil from specified locations in Iraq and, to a lesser extent, monitoring spare parts and equipment imported into Iraq for use in the oil industry. In addition, Saybolt coordinated studies that oil industry experts conducted on Iraqi oil production and infrastructure.

I will focus my remarks on the areas that your invitation asked me to address. The first area is Saybolt's contracts with the United Nations. I will discuss how Saybolt won the contracts, the scope of the contracts, and how they compare with other contracts into which Saybolt typically enters. The second area is the legal, ethical, and due diligence procedures that Saybolt followed. The third area is the challenges that Saybolt faced in carrying out contractual obligations. I will discuss those challenges, and how both Saybolt and the United Nations addressed them. Finally, I will discuss what steps could have been taken, in my opinion, to make the Program as a whole more effective at preventing manipulation by the Iraqi government.

I. BACKGROUND ON SAYBOLT'S CONTRACTS WITH THE UNITED NATIONS

How Saybolt Won the Oil-for-Food Contract

Saybolt was selected as the independent oil inspection agent of the United Nations through a competitive bid process that was initiated by a request-for-proposal ("RFP"). The sixth paragraph of U.N. Security Council Resolution 986 (1995) directed the U.N. Secretary General to appoint agents to assist the Committee established by U.N. Security Council Resolution 661 (the "661 Committee") with the task of monitoring the quantity and quality of exports of Iraqi oil under the U.N. Oil-for-Food Program. Pursuant to that authority, on June 11, 1996, the Commodity Procurement Section of the U.N. Procurement and Transportation Division issued a RFP, which included a request for provision of independent oil inspection agents.

We viewed the U.N. RFP as a good business opportunity to apply our almost 100 years of experience in inspection and analytical testing of petroleum products to a prestigious international project. We were also pleased that we would be contributing our know-how to a major program designed to serve the urgent humanitarian needs of the Iraqi people. Accordingly, on June 17, 1996, we submitted our Proposal to provide oil export inspection services. After some discussion of our proposal and a preliminary fact-finding mission, on November 29, 1996, Saybolt and the United Nations entered into a contract (the "First Contract" or "1996 Contract") with an initial term of six months, subject to extensions of six-months each, at the sole discretion of the United Nations.

After the First Contract was extended for a total of slightly more than three years, another RFP process was initiated. In that process, we submitted our Proposal on February 11, 2000, and on May 29, 2000, the United Nations formally accepted that proposal and entered into a new contract with Saybolt that governed Phases VII through XIII of the Program (the "Second Contract" or "2000 Contract").

Unique Features of the Oil-for-Food Contract

The contract under which Saybolt provided inspection services to the United Nations was in many respects a standard commercial contract, with a few notable differences.

First, our role was substantially different than the role we play in most of our commercial contracts. It is standard industry practice, and common practice for Saybolt, to be retained jointly by both buyers and sellers of oil. In this instance, however, we acted as independent inspectors verifying the quantity and quality of oil on behalf of a third party. Though we acted as monitors for the United Nations, I should point out that we were never involved in the transfers of funds related to oil purchased in the Program.

Second, there were significantly more third parties that had institutional or political interests or sensitivities in the performance of our contract with the United Nations than we encounter in other transactions. We were monitored and reviewed by the U.N. Security Council, other organs of the United Nations, and U.N. member states, most notably Iraq. As a result, the professionalism of our inspectors was particularly important to the performance of our duties.

Third, the negotiation process for this contract was different than what we encounter in other contexts. Saybolt typically negotiates the specific terms of contracts with clients. However, in this instance, the terms of the contract were dictated by the United Nations. Because of the importance of the project and our desire to ease the humanitarian crisis in Iraq, we were willing to agree to the terms specified by the U.N.

The Role of Saybolt in the Oil-for-Food Program

Saybolt performed two functions in the Program. First, Saybolt acted as a monitor. This monitoring role initially applied only to exports of crude oil from two export points authorized under the Program. Our monitoring responsibilities were later extended to include monitoring of imports of oil industry spare parts. Second, Saybolt coordinated three studies of the Iraqi oil industry by a group of experts called for under resolutions of the U.N. Security Council. Saybolt carried out each of these activities pursuant to contracts with the Untied Nations.

Saybolt was responsible for monitoring the quantity and quality of Iraqi crude oil loaded onto vessels from the Mina Al-Bakr offshore terminal in southern Iraq and from the port of Ceyhan in Turkey. These two locations were the only locations where Saybolt was asked to monitor the export of Iraqi oil to buyers, and they were the only authorized ports for export of oil under the Program. Saybolt was also responsible for monitoring the flow of oil near Zakho, along the Iraq-Turkey pipeline by which Iraqi oil was delivered to the Ceyhan port. Saybolt

began monitoring in 1996, after it received a Request to Commence Mobilization from the United Nations dated November 29, 1996.

Almost a year-and-a-half after Saybolt began monitoring oil exports from these locations, the United Nations awarded Saybolt a contract for additional inspection work related to the Program. Saybolt was asked to submit a proposal to monitor the storage, delivery, and utilization of spare parts that Iraq began to import for the purpose of maintaining and developing the Iraqi oil industry. Saybolt's proposal was accepted in a June 1998 amendment to the First Contract.

Beginning in 1998, Saybolt also coordinated the preparation of expert reports on the Iraqi oil industry called for by U.N. Security Council resolutions. The United Nations hired Saybolt to coordinate a study by a group of experts under U.N. Security Council Resolution 1153 (1998). The purpose of this study was to assess Iraqi oil production and transportation capacity, and necessary monitoring. In 2000, Saybolt was hired to coordinate another group of experts study, as called for under U.N. Security Council Resolution 1284 (1999). The purpose of this study was to review plans to import spare parts and equipment for the Iraqi oil industry, and their possible impact on production of Iraqi oil. In 2001, Saybolt was hired a third time to coordinate a study of the Iraqi oil industry by a group of experts under U.N. Security Council Resolution 1330 (2000). The purpose of this study was to evaluate in further detail proposed expenditures on equipment and spare parts for the Iraqi oil industry.

In 2003, following the overthrow of Saddam Hussein, the oil monitoring program ended. At that point, Saybolt had acted as the United Nations monitor for almost seven years, and had monitored more than 2600 loadings totaling approximately 3.4 billion barrels of oil over the life of the Program. As the program was being dismantled, the Second Contract was partially suspended on April 17, 2003, and was formally terminated by the United Nations on June 4, 2003.

II. DUE DILIGENCE PROCEDURES FOLLOWED BY SAYBOLT

Saybolt instituted several procedures to ensure fulfillment of our contract with the United Nations. These include the screening of inspectors, the sharing of information in real time with the United Nations, and ongoing internal monitoring of Saybolt operations in Iraq.

Employee Screening and Training

Saybolt inspectors were experienced in monitoring, and they received training designed to assist them in carrying out their duties as inspectors for the United Nations. As required by contract, individuals nominated to work as inspectors for Saybolt were approved by the United Nations. The United Nations reviewed their credentials. Before being deployed, the inspectors received extensive briefings in Rotterdam. They received comprehensive materials detailing their responsibilities. In addition, each member of Saybolt's team in the Program was required to certify that he had read and understood Saybolt's code of conduct.

Databases to Share Information with United Nations

Throughout the Program, Saybolt, like the United Nations, utilized a commercially-available electronic online database to ensure that each vessel loading was supported by a contract and a letter of credit that were approved by the Oil Overseers of the United Nations. Through this database, we provided information to the United Nations regarding each loading on a real-time basis.

On-site Monitoring by Saybolt Management

Our office in Rotterdam communicated directly with the team members stationed in Iraq and Turkey, as well as with the United Nations, on a daily basis. Through the database, our office in Rotterdam could ensure that actions taken in the field conformed to the terms of the contracts and letters of credit approved by the U.N. Overseers. There was an overall project coordinator located in our office in Rotterdam who carefully reviewed each contract and letter of credit approved by the U.N., and he instructed the inspectors as to which loadings were authorized and for what amount.

On several occasions, the Saybolt contract administrator in Rotterdam made visits to Iraq to coordinate and monitor the inspection activities. He made visits to the Ceyhan operation and later, as the Team Leader on three projects in 1998, 2000, and 2001, visited all Saybolt operations in Iraq. As the volume of oil export operations increased, and Saybolt began monitoring imports of spare parts, Saybolt also appointed a country manager, based in Baghdad, to oversee both the oil and spare parts monitoring operations. This manager routinely visited Saybolt operations at Zakho in the north of Iraq and the Saybolt operations at Mina Al-Bakr.

III. ADDRESSING CHALLENGES SAYBOLT FACED IN IRAQ

Facing Operational Difficulties Within Iraq

In performing their duties, Saybolt inspectors were often subjected to personal risks. Nearby military operations and violent attacks were not uncommon. As we have all seen in news reports from that time, Iraq did not always welcome the United Nations or its contractors. Iraq initially resisted the very idea of an Oil-for-Food Program. This political friction between Iraq and the outside world made our task especially delicate, because we were associated with the United Nations in the eyes of Iraqis. Coping with these physically and mentally challenging working conditions required courage and professionalism on the part of inspectors.

Difficult living conditions in Iraq often made performing daily tasks quite a challenge. The state of the Iraqi infrastructure was far worse than even we expected from our preliminary fact-finding missions. At the isolated, remote locations where our inspectors carried out their mission, it was often difficult to achieve the basic necessities -- food, electricity, water, transportation, and housing. Telecommunications equipment was primitive. Some days, we had neither electricity nor water at the Mina Al-Bakr terminal. The harsh conditions in Iraq were noted in the reports to the United Nations and were confirmed by a United Nations Iraq-Kuwait Observation Mission ("UNIKOM") safety audit of the Mina Al-Bakr operations in April 1999. On some occasions, our inspectors at Mina Al-Bakr were stranded at the terminal without

electricity and without water. Mina Al-Bakr also had frequent air conditioning outages, leaving inspectors exposed to heat that sometimes reached 130 degrees for long periods at a time. Because of the high cost of placing telephone calls from Iraq, communications between our inspectors and their families were limited.

On the subject of difficulties we encountered in Iraq, I should note that we also struggled to arrange reliable, affordable transportation to and from the Mina Al-Bakr terminal, as we were dependent on aged transportation vessels to go to and from that terminal. Standard tasks became complex because we were operating in an environment subject to multilateral sanctions. It was not a simple process to obtain travel visas for our personnel going into Iraq, to clear our equipment through customs without unreasonable delay, to provide transportation within Iraq, or to arrange the means for our employees to pay for their basic living expenses while in Iraq.

Development of Method to Calculate Loading Quantities In Absence of Reliable Meters

The poor state of the Iraqi infrastructure not only impacted our employees, but it impacted our monitoring methods. As explained above, Saybolt's principal responsibility was to monitor the quality and quantity of oil loaded onto vessels at Mina Al-Bakr and Ceyhan. From the very beginning of the Program, Saybolt encountered difficulties in persuading the Iraqis to install and repair metering equipment at the Ceyhan and Mina Al-Bakr sites. When we arrived in Iraq, neither location had metering equipment calibrated to accurately measure how much oil was loaded onto the vessels. We informed the United Nations of this problem even before the Program began through our preliminary fact-finding report.

In the absence of metering equipment, Saybolt applied the best alternative method. This method, which is commonly used within the industry, used the capacity and calibration charts of the vessel in order to determine how much oil was loaded into the vessel. To determine how much oil was loaded onto a vessel, a Saybolt inspector would, prior to loading, measure the on-board quantity ("OBQ") of the vessel. Then, after loading, Saybolt would measure the ullage (the amount by which the vessel tank falls short of being full) and the temperature of the oil. Saybolt inspectors compared this data with the calibration tables to determine how much oil had been loaded onto the vessel.

The vessel calibration charts, however, sometimes were not accurate. For example, if a vessel hull had been scraped and dented inwards, the overall capacity of the vessel would be reduced. Repairs to the vessel could likewise change the overall capacity of the vessel. In addition, vessels sometimes accumulate residue from previous loadings, which changes the capacity of the vessel. Each vessel keeps a record of the variances from its calibration tables, when compared with the volume measured when the oil was offloaded. This record becomes the "vessel experience factor" ("VEF"). The VEF for a vessel is based on the average comparison between ship measurement and shore measurement for the last 10 voyages. The use of a vessel calibration chart and the VEF is an internationally recognized method for determining the quantity of oil loaded onto a vessel in the absence of calibrated shore tanks and/or meters. We followed the procedures set forth by the American Petroleum Institute and the Institute of Petroleum.

A weakness in using the calibration tables and the VEF of a vessel is that inspectors must rely on the records provided by the master of each vessel. Such records could possibly be manipulated without the knowledge of the inspectors.

At Ceyhan, any significant manipulation of the system was detectable because of the ability to compare the shore-tank measurement with the amount of oil reportedly loaded onto the vessel. Although the shore-tank measurements were not sufficiently accurate to be used as the primary means of measurement, they were a cross-check making it possible to uncover major inaccuracies.

At Mina Al-Bakr, the infrastructure deficiencies made it more difficult to detect manipulation. Shore tank measurements were not available. The shore tanks were severely damaged during the Iran-Iraq War, and then further damaged during the first Gulf War. The shore tanks that existed were not re-calibrated. The metering system at the loading site was not repaired sufficiently to ensure accurate measurements. Therefore, the inspectors were necessarily dependent upon the calibration tables and VEF data provided by vessel masters.

Saybolt attempted to address this problem in several ways. When the contract with the United Nations was first negotiated, Saybolt recommended that the volume of oil loaded onto vessels be measured with reference to the volume of oil measured at the port of discharge in addition to the loading port. This suggestion was not implemented. In addition, at the outset of the Program, Saybolt requested that the metering facilities at Ceyhan and Mina Al-Bakr be repaired and recalibrated. However, the meters, which were owned by the Iraqis, were not recalibrated. The contract between the United Nations and Saybolt specified the method of using the VEF of the vessel in order to determine the measurements, which, as noted, is the industry standard for measuring loadings of oil in the absence of calibrated metering equipment and/or shore tanks.

In January 1999, following discussion with the United Nations, Saybolt instituted a procedure to attempt to address the potential inaccuracy of the VEF based measurement system. The master of each vessel was required to sign a statement certifying the accuracy of the records provided to Saybolt. The United Nations was informed of this procedure and supported its implementation.

Adapting Inspection Procedure to Enhance Ability to Detect Topping Off

As noted above, the absence of meters was one of the most significant challenges Saybolt faced during the Program, inhibiting our ability to detect measurement discrepancies or unauthorized loadings at those locations. Despite our close monitoring of oil exports at Mina Al-Bakr, in early October 2001, we learned that the captain of the vessel Essex had alerted the U.N. and U.S. authorities that there had been two incidents of unauthorized "topping off" of the Essex at the Mina Al-Bakr terminal after Saybolt inspectors had completed their inspections of the Essex. Documents subsequently provided to Saybolt by the United Nations and others indicate that in May and August 2001, the State Oil Marketing Organization of Iraq ("SOMO") arranged to load on board the Essex vessel additional amounts of oil above and beyond that which was

approved by the SOMO contract with Ibex Energy France, the buyer of the oil loaded onto the Essex.

Saybolt immediately undertook an internal investigation to learn what happened and why, and it cooperated fully with other investigations of these incidents, providing extensive documentation to investigators. I headed our internal investigation. With respect to both incidents, we conducted extensive interviews of our staff, including our Team Leader on the Mina Al-Bakr platform, and reviewed all available documentation. Our investigation found no evidence that any of our employees were aware of the additional unauthorized loadings prior to the report by the Essex captain. We detailed our findings and the bases for our conclusions in a report that I personally presented in mid-October 2001 to the U.N. 661 Committee. That report is included in the documents previously provided to this Subcommittee. Our investigation of these incidents also attempted to determine whether there might have been incidents of topping off in addition to the two reported by the Essex captain. For all of the reasons detailed in our report, we concluded that it was extremely unlikely that this occurred.

Immediately after learning of the Essex captain's report, Saybolt put in place additional procedures to minimize the likelihood that such incidents could recur. As an interim measure, I instructed all team members at Mina Al-Bakr to remain on board vessels until they left port to ensure that there were no additional loadings. After further review, we put in place a procedure under which Saybolt employees sealed the valves on the vessel after loading was complete whenever the vessel did not leave the port immediately after loading for whatever reason. The seals contained numbers, which we noted. Before the vessel left the port, we returned to the vessel to inspect that the seal was still in place and that it was the same seal number. We are unaware of any topping off incidents that happened after we instituted these additional procedures.

Staffing for Spare Parts Monitoring

We also faced significant challenges in implementing our monitoring role in the spare parts side of the Program. Saybolt's contract with the United Nations authorized the employment of six monitors in the country who worked to verify the arrival and end-use of the spare parts that were purchased. Given the number of spare parts imported into Iraq under the Program, and the distance between locations to be monitored, it was impossible to closely monitor all spare parts at all locations. We communicated to the U.N. that we were not able to physically inspect all spare parts that arrived, and we informed them that additional staff would be required in order to be able to monitor the end-uses of the parts effectively. We also requested that our monitors be stationed throughout the country. However, the Iraqi government insisted that the monitors be stationed only in Baghdad, and the U.N. relented to this pressure.

IV. HOW THE PROGRAM COULD HAVE BEEN CONSTRUCTED DIFFERENTLY

Your invitation to testify today asked for our insights as to how the Program might have been constructed to better prevent Iraqi manipulation. I understand that others far more expert than I in the structuring of multilateral sanctions regimes have testified before you on this very point. Please allow me to preface my response by explaining that Saybolt is in the oil inspection business, and not the business of second-guessing the architects of the Oil-for-Food Program.

From first-hand experience, I know how complex and tumultuous the environment was in Iraq, and I can assure you that we collaborated with the United Nations, the U.S.-led Multilateral Interception Force ("MIF"), and Iraqi authorities to implement the best possible monitoring system, given the state of the infrastructure we encountered in Iraq. Nonetheless, in the spirit of joining a good faith dialogue, and with the benefit of hindsight, I can offer a few suggestions.

First, obtaining commitments to repair the necessary infrastructure could have strengthened the program. At various times during the Program, problems with the metering systems at Mina Al-Bakr, Zakho, and Ceyhan were brought to the attention of Iraqi authorities. Yet the meters were never brought into working condition. I do not know whether this is because Iraq was not permitted to import the necessary spare parts, or because Iraq was not forced to make the repairs as a condition of participating in the Program. Had these meters become functional and reliably accurate, our monitoring process would have been much less cumbersome and complex, and incidents such as the two 2001 Essex additional loadings could have been more easily detected.

Second, any attempt to monitor unauthorized exports of oil would have necessitated having monitors at other than the three export points authorized under the Program. As you know, Security Council Resolution 986 refers only to monitoring of oil exports through the Mina Al-Bakr terminal and the Iraq-Turkey pipeline. These were the only locations at which Saybolt was contracted to monitor oil exports. From prior testimony before this Subcommittee, we have heard reports of smuggling by roadways into Turkey, other offshore terminals in Iraq, or other cross-border pipelines. Had the scope of the monitoring mandate from the Security Council been broader, the United Nations and its inspection agents could have set up inspection checkpoints to detect illicit oil exports from these other locations.

Third, I think some U.N. official presence at the loading locations may have enhanced the likelihood of compliance with the Program. Saybolt is not a security organization and, in any event, represented a small fraction of those present at authorized export points. For example, at Mina Al-Bakr, there were some 80 Iraqis on the platform, and only a handful of Saybolt inspectors. Our role was as a monitor. When ships were loaded, our duty was to give the United Nations our best calculation as to how much oil was loaded onto the ship. When something went wrong, our duty was to tell the United Nations. Thus, rather than searching for smuggling, our role was to inform the United Nations of quantities leaving Iraq at the designated monitoring sites.

Thank you for your important work, and for the opportunity to address you today.

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

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

Saybolt B.V. Documents

FAX

SAYBOLT

TO: UNITED NATIONS, NEW YORK
FAO: THE OVERSEERS

UNITED NATIONS, NEW YORK
FAO: MR BENON SEVAN

FROM: Graham Brett
Direct Line (31)-10-4609236
Direct Fax (31)-10-4609238

DATE: 29th May 1998

COPIES: MR P BOKS

REFERENCE: RESOLUTION 986 - "OIL FOR FOOD"
SUMMARY REPORTS:-

tv "Eco Africa" at Ceyhan
tv "Kraka" at Mina al-Bakr

TOTAL PAGES: *4 (three)*

Please find attached our Summary Report covering the following loading:-

1) tv "Eco Africa" which completed loading at Ceyhan at 07:48 hrs 29/05/98 for the account of API Oil.

2) tv "Kraka" which completed loading at Mina al-Bakr at 08:55 hrs 29/05/98 for the account of Trafigura and Tatneft. The overall quantity loaded was paper-split by SOMO into two Bills of lading as follows:-

	Trafigura	Tatneft	Total
Gross barrels	1,894,942	285,143	2,180,085
Nett barrels	1,893,995	285,000	2,178,995

Please note the loading of the vessel was stopped by shore requirement/SOMO. The overall quantity loaded is outside the combined L/C approval of 2,300,000 barrels -5% = 2,185,000 barrels. This was advised to the terminal when vessel was stopped, who took no further action. The Tatneft "split" is for 300,000 nett barrels -5% exactly, and the Trafigura "split" of 1,893,995 nett barrels is 6,005 nett barrels short of 2,000,000 nett barrels -5% = 1,900,000.

Full details of the above loadings are now entered on to the UN Database.

Kindest regards,

Graham Brett

Graham Brett

Saybolt International B.V

Independant Inspectors
Chemical Laboratories.

P.O.Box 151,
3000 AD Rotterdam
The Nederlands
Tel: (31) 10 4609911
Fax: (31) 10 4333600
Tlx: 21642 SYD NL

SAYBOLT

Date : March 31.1998
Vessel : JANKE VENTURE
Location : Mina al Bakr Terminal, Iraq
Cargo : Basra Light Crude Oil

STATEMENT OF FACTS

To : The Master, ss. " JANKE VENTURE "
To : S.O.M.O. Mina al Bakr.

Dear Sirs,

This is to advise you that we, acting on behalf of the United nations as their Inspectors and Monitors,wish to draw the attention to all parties to the following:

That there is insufficient information on board of the ship to calculate and determine an accurate Vessel Experience Factor(VEF) as per the "API Manual of Petroleum Measurement Standards,Chapter 17-Marine Measurement, Appendix C-Procedure for calculating vessel experience factors(VEF)."

Due to this fact an experience factor will not be applied to the ships measurements when determining the Bill Of Lading Quantity for the ammount of Basra Light Crude Oil loaded.

Furthermore, on behalf of our client, the United Nations, we reserve the right to refer to this matter at a latter date.

Signed on behalf of Saybolt UN.Team — Lars Kjaergaard, Team Leader

Accepted on behalf of ss "JANKE VENTURE" — Master

Accepted on behalf of S.O.M.O Iraq — Manager

A.A. Sarian

31/03 '98 DIN 13:14 [TX/RX NR 6414] 002

S018366

T.a.v. G Brett

SAYBOLT

TO: SOMO BAGHDAD
TO: SOMO CEYHAN

CC: BOTAS

Timed : 27-08-98 at 15:00

LETTER OF PROTEST

Dear Sirs,

The vessel "Meata" which has loaded for the account of Rosneft has a UN approval to load 500,000 barrels +/- 3%. On completion of loading the ships figures gave a loaded quantity of 511,911 barrels which falls within the UN stipulated amount. We see no reason to require discharge to shore of 11,000 barrels.

If this transfer to shore is a requirement enforced by you, we, as monitors on behalf of the United Nations:-

1) Reserve the right of our principal to refer to this matter at a later date, particularly in respect of any delays incurred.

2) Insist that any such transfer to shore is effected in such a way that the transferred cargo can be measured accurately, and will not be degraded in quality in any way, to the satisfaction of the Saybolt/UN monitors on site. Transfer of cargo to the Kirrikale pipeline, or another vessel, will not be acceptable.

3) We can accepted the decision to discharge back into T 4

Yours faithfully,

Saybolt Int. - UN Team Ceyhan, Turkey.

Huib de Bruijn
Team - Leader

For: SOMO

Mr. H.S.A. Razzaq

NOTE:THE QUANTITY CONFIRMED BY SOMO IS IN ACCORDANCE TO THE REQUIRMENTS OF THE L/C OPENED BY BUYER TO COVER THE VALUE OF THE SAID CARGO .

S018915

Overseers, The
.UN Resolut. 986 - Oil For Food
United Nations
New York

SAYBOLT NEDERLAND BV

Independent Inspectors
Quality Assurance Services
Chemical Laboratories

Members ASTAMP
Management: h. F. Plumers

SAYBOLT

Report No. : 29152/97
Date : 27-08-97
Vessel : MESTA
Location : Ceyhan (Turkey)
Grade : Kirkuk crude Oil

SUMMARY REPORT

Final after partly discharging

	Vessel loaded Excl. OBQ	Bill of Lading	Difference Quantity	o/o
T.C.V. Barrels	502,526			
G.S.V. Barrels	501,876	499,230	2,646	.53
Gross M.Tons Air	67,254.819	66,900.227	354.592	.53
Gross Longtons	66,192.43	65,843.44	348.99	.53
N.S.V. Barrels	501,751	499,105	2,646	.53

	Vessel less OBQ Adjusted by VEF	Bill of Lading	Difference Quantity	o/o
T.C.V. Barrels	499,879			
G.S.V. Barrels	499,230	499,230	0	0.00

	Non Liquid Oil	Liquid Oil	Free Water	Total Volume
O.B.Q. Barrels	2,400	111	0	2,511

Vessel Experience Factor Based on 2nd Average : 1.0053
S & W Volume o/o : .025

	Vessel Total	OBQ	Val Loaded	Bill Of Lading
Free Water BBls	652		652	
S & W Volume BBls	125		125	125
Total Volume BBls	777		777	125

N.O.R. Tendered 26-08-97 10:00 Commenced Loading 26-08-97 14:30
Bill of Lading Dated 27-08-97 Completed Loading 27-08-97 16:50

SAMPLING Samples taken : yes
Description of the sample Number of samples taken
Inline sampler 1 x 5 LTRS

ANALYSIS			
A.P.I.		ASTM D 1298	36.00
Water Content	Vol o/o	ASTM D 4006	.025
Sediments by extraction	Mass o/o	ASTM D 473	
Pour Point	oC	ASTM D 97	Less -21
Viscosity at 20 oC	mm2/s	ASTM D 445	4.83
Salt in Crude	lb/1000 Bbls	ASTM D 3230	7

Remarks:
Cu Metres at 60 oF Bill Of Lading : 79,371.080
Cu Metres at 60 oF Vessel : 79,791.760

Post address
P.O. Box 151
3000 AD Rotterdam
The Netherlands

Tel. (010) 460 99 11
Telex 21642
Fax (010) 436 38 00

All our activities are carried out under the terms lodged at the Arrondissementsrechtbank (County Court) in Rotterdam.
Trade Register Rotterdam No 229.922

S018916

14-JUN-98 18:07 [8108 NR TR/II] TO:01 NOZ 88. 00/01

SAYBOLT

Saybolt International B.V.

Independent Inspectors.
Chemical laboratories.

P.O. Box 151,
3000 AD Rotterdam
The Netherlands
Tel: (31) 10 4609911
Fax: (31) 10 4383600
Tlx: 21642 SVD NL

Date : June 14, 1998
Vessel : HELLESPONT ORPHEUM
Location : Mina al Bakr Terminal, Iraq
Cargo : Basrah Light Crude Oil

STATEMENTS OF FACTS

To : The master . "Hellespont Orpheum"

Dear Sir,

In accordance with the letter of Credit issued by the United Nations on behalf of Receiver "Zarubezhneft", the maximum quantity for the ship to load was 2,000,000 barrels plus 5 %. This equals 2,100,000 barrels.

This quantity was agreed with terminal personnal, UN monitors and ship personnel. The latter requested that loading would be terminated by means of ship stop.

However, after calculations were completed at end of loading of mentioned cargo there was found to have been a total of 2,116,648 barrels received on board.

This indicates that a quantity of 16,648 Net U.S. bbls have been overloaded at this time for which it will be necessary to obtain an ammendment to the issued Letter of Credit. This matter may be considered in hand.

Signed on behalf of Saybolt UN team Arno [illegible]

Accepted on behalf of "HELLESPONT ORPHEUM" [illegible]

FOR PAYMENT ONLY
AS C/P MINIMUM 2.138.000 BBLS

P.01

14-JUN-98 18:07 SAYBOLT

S019534

167

Saybolt International B.V.

Independent Inspectors
Chemical Laboratories

P.O. Box 151,
3000 AD Rotterdam
The Netherlands
Tel : (31) 10 4609911
Fax : (31) 10 4353600
Tlx : 21642 SVD NL

SAYBOLT

Date : August 22, 1997
Vessel : JAHRE VENTURE
Location : Mina al Bakr Terminal, Iraq
Cargo : Basra Light Crude Oil

STATEMENT OF FACTS

To : The Master, ss "JAHRE VENTURE"
To : S.O.M.O. Mina al Bakr.

Dear Sirs,

This is to advise you that we, acting on behalf of the United Nations as their Inspectors and Monitors, wish to draw the attention of all parties to the following.-

That there is insufficient information on board of the ship to calculate and determine an accurate Vessel Experience Factor (VEF) as per the "API Manual of Petroleum Measurement Standards, Chapter 17 - Marine Measurement, Appendix C - Procedure for calculating vessel experience factors (VEF)."

Due to this fact an experience factor will not be applied to ships measurements when determining the Bill of Lading Quantity for the amount of Basra Light Crude Oil loaded.

Furthermore , on behalf of our client, the United Nations, we reserve the right to refer to this matter at a later date.

Signed on behalf of Saybolt UN. Team.

Cpt. Paul Edwards, Team Leader

Accepted on behalf of ss "JAHRE VENTURE"

Master

Accepted on behalf of S.O.M.O. Iraq

Manager

ZUHAIR NASI
SOMO REPRESENTATIVE

S021311

E-01-03

c) OIOS AUDITS & REPLIES

Peter Boks/Saybolt/NL
10/22/2002 08:05 PM

To sevan@un.org
cc
bcc
Subject Audit recommendations

Dear Benon,

How can I cope with people that do not understand what they are looking at and continuously mix up proposals and contracts.

The auditors refer to the equipment costs of USD 230,000 mentioned in one of the early proposals versus a total contract value of USD 2,940,100.-.

It should be taken into consideration that after obtaining more knowledge over time, we revised our budget and concluded a contract with the UN on 16 August 1996 with a contract value of USD 1,868,000.- per period of 180 day's.

I will obviously provide you with a more detailed overview but needed to set off steam after observing so much ignorance.

Please note that the final contract nor the present contract specify any of the costs, so I can not understand the point the auditors make to stop paying for equipment.

Apologies for being disagreeable.

Kindest regards,

Peter Boks

If you are satisfied with our services do tell others. If you are NOT satisfied, please do tell us:
http://www.saybolt.com/complaint.nsf/

All our activities are carried out under our general terms and conditions and in accordance with our code of practice. The general conditions can be consulted at http://www.Saybolt.com/ ,and will be sent upon request free of charge.

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S023437

Dear Mr. Sevan,

AUDIT RECOMMENDATIONS

Your letter of October 21st, 2002, on the above matter is to hand and I would like to comment as below.

It now becomes obvious that the authors statements based on their misunderstanding of the documents that they seem to have at their disposal.

Firstly, the "Request for Bid" calls for an all-inclusive price on a per/man per/day basis. There is no requirement to quote a cost for equipment; indeed the RFP does not require any costs to be itemized.

Initially, we were asked to submit a per/man/day for 12 men over a 240-day contract period. This submission was supported by documentation labeled "Tariff Structure" (more as an "aide mémoire" to assist in understanding how the) per/man/day price was calculated) which makes a reference to equipment costs of US$ 230,000 against a man/day rate of US$ 1,020 per day.

Subsequently the RFP requirements were discussed and updated, resulting in man/day rates of US$ 820, eventuating in a final agreed rate of US$ 675 per man day resulting from a long, and evolutionary, negotiating process, with an additional amount for testing the quality of the crude oil exported.

The OIOS report, under Section D. Contract Issues, Para's 49 and 50, quite openly quotes from the "Tariff Structure" document (the provenance of which is noted above) even though this particular document refers to a man/day rate of US$ 1,020 per day (which was never accepted) and the RFP requirements for Saybolt to quote ONLY a single per/man/per/day rate. Para 49 then proceeds to extract a figure of US$ 230,000 for equipment (from a bid submission that was not accepted) and simply applies this to the total contract cost to produce a percentage of 7.82%.

In Para. 50 of the OIOS report this erroneous percentage has then been applied to the man/day rate (that was accepted at a later date) to give a figure of circa US$ 55 per day and merely multiplied up to a cost over 9 phases. Hardly convincing mathematics!

As we have iterated a number of times before, there was no equipment cost quoted to the United Nations. We ONLY reacted to the RFP and provided EXACTLY what was requested - nothing more and nothing less - namely a fully inclusive per man per day cost for 14 men for a period of 6 months.

Then the OIOS report, in Para 51, states that IN OUR OPINION equipment should have been charged to the OIP as a one-time expenditure with an additional provision for maintenance of the equipment. The OIOS is entitled to an opinion but any such opinion should be limited to the remit of the audit in hand, and obviously cannot be retro-actively applied to an existing legally constituted open tender contract.

The OIOS opinion also fails to embrace the fact that without a price increase (indeed a price reduction in later phases) Saybolt has continually replaced and updated equipment situated in Iraq and Turkey, notwithstanding the considerable increased capital costs encountered since the contract inception, and the maintenance and transportation costs.

I trust that the above clarifies the misunderstandings. Please do not hesitate to contact me if further explanantion is required.

Yours sincerely,

Peter Boks.

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME - BUREAU CHARGE DU PROGRAMME IRAQ

NOTE BY THE OFFICE OF THE IRAQ PROGRAMME

Comments by the Office of the Iraq Programme
on the final report submitted by OIOS on 15 April 2002

OIOS Audit No. AF2001/30/6: Audit of the management of the oil inspection services contract

1. Following the adoption of Security Council resolution 986 (1995) on 14 April 1995 and the conclusion of a Memorandum of Understanding (MOU), on 20 May 1996, between the Secretariat of the United Nations and the Government of Iraq (S/1996/356), Saybolt Eastern Hemisphere BV (hereafter referred to as Saybolt) was awarded Contract PTD/127/0065-96, in August 1996, to provide the services of 14 individuals with "particular experience and qualifications to assist in monitoring the export of petroleum and petroleum products form Iraq". The contract was for an initial term of six (6) months, with an option of renewal for up to three (3) successive periods of six (6) months, on the same terms and conditions. Contract PTD/127/0065-96 was subsequently amended several times to provide for additional inspectors for oil spare parts, and groups of oil experts that undertook special assignment at the behest of the Security Council. Contract number PD/CO114/00 executed in June 2000 succeeded contract PTD/127/0065-96. Under the new contract, which is for one year, with an option of renewal for three (3) successive terms on the same terms and conditions, Saybolt would provide 20 inspection agents; 14 to monitor the oil exports and six (6) for spare parts and equipment. The contract has been amended to provide for an increase in the number of oil spare parts inspectors from six (6) to eight (8), bringing the total number of agents to 22.

I. Introduction

2. In paragraph 5 of the audit report (hereafter referred to as the Report), it is stated that the Office of the Iraq Programme (OIP) did not arrange for an exit conference requested by OIOS or respond to audit recommendations forwarded in a draft report, on 7 December 2001, with a deadline of 15 January 2002. It is also stated that "despite the granting of two time extensions, no response to the draft audit report recommendations has been received up until now."

3. As stated in paragraph 1 of the Report, it took from March through August 2001 to conduct the audit, and then it took over three months, until 7 December 2001, to submit the draft report to OIP for comments thereon by 15 January 2002, during a period when OIP was totally involved with the start of the implementation of a new phase (phase XI) of the humanitarian programme and consideration of the new distribution plan being submitted by the Government of Iraq.

4. A quick review of the draft report indicated immediately the necessity for a thorough review because OIP could not agree either with the findings or the assumptions made by the auditors. There were also many errors in the calculations made by the auditors, which required us to check invoices, among others. Furthermore, the OIP staff member who had been responsible with the management of the contract was no longer with OIP. It was also necessary to seek detailed information from Saybolt's headquarters regarding some of the claims made in the draft report, because the auditors, who although had held meetings with the contractor's team leader in the field, had not been in touch with Saybolt's headquarters, or at the least through OIP, to receive authoritative responses to their queries.

5. The above explanations were provided to the Director of the Internal Audit Division and the Chief of the Iraq Programme Unit of OIOS, with a request for extension of the deadline, which was granted. Furthermore, the Director of the Internal Audit Division and the Chief of the Iraq Programme Unit were fully informed of the extreme difficulties being encountered in implementing the programme, which obliged the Executive Director of the Iraq Programme to travel to Iraq on 10 January 2002 with a view to resolving the difficulties with the Government of Iraq, including the refusal to grant over 200 visas requested for UN personnel involved in the implementation of the programme. The Executive Director had to stay longer in Iraq then originally planned, for almost a month. It was taken for granted that OIOS, in addition to being informed by OIP and having two resident auditors in Iraq, was fully aware of the continuing difficulties encountered in programme implementation as the programme has become more politicized than ever. Consequently, the focus of OIP's attention at the time of the submission of the draft report to OIP had been on matters that affected the day-to-day implementation of the programme as well as assisting the Security Council Committee established by resolution 661 (1990) (hereafter referred to as the Committee) in resolving the difficulties encountered within the Committee itself.

6. The Director of the Internal Audit Division and the Chief of the Iraq Unit will recall that it was through the personal intervention of the Executive Director that they were granted Iraqi visas that enabled them undertake their recent visit to Iraq. On the return of the Executive Director to Headquarters, it was agreed with OIOS that OIP would prepare its comments on the draft audit report, first as "a non-paper", for discussions with the Internal Audit Division, on an informal basis. It was agreed that such discussions would take place on the return of the Director and the Chief of the Iraq Unit from their visit to Iraq. OIP waited for their return in order to submit its "non-paper" for discussions. Instead, however, and contrary to the arrangements agreed upon earlier, the Executive Director received an e-mail message, on 5 April 2002, from the Chief of the Iraq Programme Unit, which read as follows: "As previously agreed a response to the above draft report was to be provided by 31 March 2002. This was the second extension given. Since a response has not been received we will be issuing the final report shortly." OIP was not even aware that the Director and the Chief of the Iraq Unit had already returned to Headquarters. At the time when the arrangements were agreed upon, the Director and the Chief of the Iraq Unit were informed of the intention of the Executive Director to invite a representative of Saybolt to be present at the discussions on the "non-paper". Disappointed with the attitude of the Chief of the Iraq Unit and even though the OIP "non-paper" was ready, the Executive Director responded that the Chief of the Iraq Unit could go ahead and publish the report as long as "you are prepared to be fully accountable for your report. If you go ahead and

publish it, however, you must also undertake to publish our comments thereon, in toto, either as a separate report or an addendum thereto." Copy of the e-mail exchange of correspondence is attached as an annex to the present Note.

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7. The audit objectives as stated in the Report are, *inter alia*, to assess OIP's management of the contract, determine if the contractor provides the required services in an economical, efficient and effective manner, and review the management of other services being provided by the contractor.

8. A review of the Report, against the stated objectives of the audit, would have to take into full consideration the context in which the contracts were executed and administered. Contracts are not executed in a vacuum. This particular contract is being carried out within a very rigorous sanctions regime and managed in a highly sensitive political environment. Any realistic assessment of the management of the contract would have to factor in these considerations. Yet, it would appear from the Report that the audit was conducted without taking full cognizance, either of the legal or political context of the contract which in turn influence its management. There are many aspects of the programme as well as its implementation governed by the relevant resolutions and decisions of the Security Council and its Committee, which outside the political context may defy logic; however, as the Secretary-General has stated repeatedly regarding this programme, "we take our marching orders from the Security Council".

9. For example, in the introductory paragraph of the Executive Summary, it is stated that "OIP should have considered utilizing UN staff to perform the oil inspection service as an alternative to hiring a contractor, which would have resulted in substantial savings." Utilizing UN staff to perform the oil inspection services, as recommended by the auditors, would have been inconsistent with the Security Council resolution 986(1995) and the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq (MOU), on the implementation of the Security Council resolution 986(1995) (S/1996/356). Annex II, paragraph 4, of the MOU expressly provides for independent inspection agents to monitor Iraqi oil exports. Consideration of savings was never the ultimate goal of the decision taken by the Security Council; rather, the goal was to ensure full and thorough inspection of oil exports and full compliance with the decisions taken by the Council.

10. Various amendments of the contract were undertaken in response to the requests of the Security Council and its Committee that required urgent action on the part of the Secretariat. Fortuitously, the established good working and highly professional relationship of the Government of Iraq with Saybolt presented the United Nations with a considerable advantage, one that cannot be cost evaluated, and which has enabled OIP to field the special missions most expeditiously pursuant to decisions taken by the Council or its Committee, avoiding inordinate delays in the granting of visas to the experts who had to travel to Iraq on short notice. Furthermore, it has been essential to ensure the confidence of not only of the Security Council members but also of the Government of Iraq regarding the impartiality of the work of the experts, as evidenced by the fact that we have had no difficulty in securing visas for one of the leaders from Saybolt to visit Iraq on a regular basis, despite his nationality, which is British.

11. The decision to manage the contract by OIP at Headquarters rather than by UNOHCI was in order not to unduly compromise the latter's mandate. This was a decision taken even before the establishment of OIP in October 1997. The same applies for the management of the contract with Cotecna, and previously with Lloyds. To the extent possible, efforts have been made by OIP to institute appropriate procedures that would ensure that the contractor fully discharges its contractual responsibilities. It is realistic, however, to acknowledge that political actions may affect the manner in which the contractor discharges its responsibilities. For example, it is common knowledge that oil exports are interrupted periodically, such as the present decision taken by the Government of Iraq to suspend all oil exports for 30 days. Furthermore, although the Government has refused to allow any additional contractor's staff to be stationed in Iraq on a permanent basis, Saybolt has, with OIP's consent, occasionally deployed more staff on a short-term basis to cope with peak periods of work. It should be noted, however, that irrespective of the number of staff deployed by the contractor, payment is effected only for the number provided for in the contract.

12. The contractor also provides expert advice to OIP in its day-to-day-operations as well as to the Committee, including regular briefings on the oil industry of Iraq as well as on oil spare parts and equipment provided under the programme. With regard to the status of the contractor's staff posted in Iraq, it is recommended to the auditors that they review the relevant provisions of the MOU, in particular Section VIII, concerning Privileges and Immunities. A fuller understanding of the range of services provided by the contractor would have enabled an appreciation of the background to the contract, the contract itself, and its management.

13. Although the auditors undertook site visits to some of the locations where the independent inspection agents are located, they did not, most unfortunately, visit Mina al-Bakr to witness first hand the very difficult and most dismal conditions under which the independent inspection agents operate, literally closeted on the oil platform which may collapse at any time. In addition, there was no consultation between the auditors and OIP officials, nor with Saybolt headquarters that would have helped clarify for the auditors some of the contentious issues. Although the auditors held discussions with the contractor's team-leader in Iraq, they should have addressed their questions to Saybolt headquarters, or at least through OIP, in order to receive a more authoritative responses.

14. Comments on specific audit findings and recommendations are proffered hereunder:

A: Monitoring of invoice payments and financial matters

Procedures have not been implemented to monitor invoice payments:

15. Paragraph 9(i) states that "a review of 19 monthly invoices and supporting documents found "deficiencies". Among the deficiencies stated is ambiguity of the attendance record which reflected "from arrival to departure Amman". In the view of the auditors, payments should only be made for manning the locations in Iraq and Turkey.

16. Contract number PTD/127/0065-96 (the initial contract) determined the number of inspectors required at particular locations in Iraq and Turkey, and Article 7.1 provides for full payment for complete and satisfactory performance by the contractor of his obligations under the contract. In that regard, it could be argued that once the requirement of satisfactory performance is met, the "deficiency" in the *attendance record* becomes a non-issue. Nonetheless, since December 2000 the *attendance record* has shown "Personnel Attendance on Location, from arrival to departure".

17. The Report also illustrates that the auditors did not have a full understanding of the contract and the method used in the preparation of invoices by Saybolt. This misunderstanding led to a significant error in 'finding' that Saybolt overcharged some $370,000 for services provided during the period 29 May 1999 to 28 June 2001. The auditors have confused the billing mechanism, seemingly thinking that Saybolt's billing was based on contracted staff levels and not on staff on site. The auditors have also confused the contracted number of inspectors for oil spare parts and equipment. There are **eight** and **not six** inspectors, as stated in paragraph 8 of the Report.

18. There is a historical precedent in the preparation of invoices in line with the commencement date of the current contract. The invoice always covers the period between the 29th day of the previous month until the 28th day of the month the invoice is prepared. Thus, the invoice prepared at the end of June covers the last few days of May until the 28th of June inclusive. Reference is made in this regard to Amendment No. 8 to contract PTD/CON/127/0065/9, which covered the period 29 May 1999 through 28 November 1999, after which this invoicing scheme was implemented. A review of all invoices found only one incorrect invoice issued for the month of June 1999. This irregularity does not appear in any of the other invoices. No over billing occurred as a result of this split-month billing, except for the July 1999 bill that included "31 June 1999". This overcharge (17 Man days) will be deducted from a future payment. That the irregularity was not queried by OIP was because OIP understood very well the billing mechanism.

19. The lump sum payment method provided for in Contract PTD/127/0065-96 (the initial contract) was discontinued with effect from 28 May 1999 in the successor contract. The change was a consequence of Amendment 8 of the original contract.

Overpayment of monthly invoices needs to be recovered

20. **Paragraph 10** states that the contractor had overcharged by approximately $370,000, on short and excess stationing of staff. Except for the 1999 invoice where Saybolt billed for 31 June 1999, there did not appear to be any evidence of over billing. The invoices were in line with the attendance records. It would seem that the auditors have only indicated the first 28 days of the month shown on the attendance record, and ignored the 29th, 30th and 31st day of the previous month, in determining the days of attendance. The other billing errors found were for December 2001, where Saybolt billed for 421 days for Oil Inspectors against 422 shown on the attendance sheet, so undercharging by one day, and June 1999, where a wrong code was used on the attendance sheet, although this did not have a financial consequence.

21. **Regarding the short stationing of staff**, as the invoices (since 29 May 1999) were based on staff as per the attendance sheet, no adjustment was required to the invoice for contracted staff that were not on duty, as the invoice did not include any charge for an absent Saybolt staff member. As noted above, irrespective of the maximum number of oil spare parts inspectors allowed into Iraq, during the initial stages of that programme monitoring oil spare parts and equipment provided under the programme, the contractor only deployed number of staff sufficient to effectively carry out the requirements of the Committee, as there was, in the initial period, an obvious time delay in ordering and the actual arrival of the oil spare parts and equipment. It would, thus, appear that the auditors did not differentiate between Saybolt's responsibilities.

Communication charges by the Contractor have been excessive

22. **Paragraphs 11 and 12** state that the tariff structure of the contract include communication expenses which is about 21 per cent of the total contract amount and that the Contract did not provide for any requirement to justify the expenses incurred through the use of a satellite communication system (Satcoms). The Report also states that the "UN did not consider alternative options such as using the UN telecommunication system, which would have reduced the communication expenses significantly, apart from being transparent in terms of identification of all calls including personal ones..."

23. The auditors did not seem to take into consideration the geography of Iraq, the location of the sites where the independent inspection agents are stationed, the logistics and difficulties, particularly political, which would have been involved in extending the UN telecommunication system to the various locations. It should be borne in mind that the United Nations has been encountering considerable difficulties with the Government of Iraq in even importing replacement and or spare parts for existing UN communication establishment in Iraq.

24. Also, it must be borne in mind that it is essential that the independent inspection agents transmit their reports most expeditiously from the location where they are based, using communication not limited to the various Satcom units alone. Furthermore, there is daily on-line time from Saybolt's headquarters to the various locations in the field, to transmit data such as the authorization documentation for crude oil loadings, as well as, communication with UN Headquarters, as appropriate. Finally, it should be noted that "on-line" costs was renegotiated in the current contract, PD/COI 14/00, resulting in substantial savings on communication costs.

OIP needs to recover personal phone calls made by the Contractor's staff

25. **Paragraph 14** states that Saybolt's "internal policy is to allow each of its staff members free private telephone calls totaling up to 45 minutes per month. In Turkey, it was ascertained that staff members were not charged at all for personal calls, as these were not substantial in the Contractor's view. Since the total communications cost is included in the man-day cost structure, private telephone calls of the Contractor staff members are being charged to OIP."

26. The auditors seem to have confused the cost structure with the agreed billing procedure. As the contract is all-inclusive daily fee, the only mechanism for charging would be

attendance on site of the contracted personnel and satisfactory performance of their duties.

27. The contract was awarded to Saybolt based on competitive tender and there is no evidence that alleged communication costs for private calls are charged to OIP. It must also be mentioned that the State Oil Marketing Organization (SOMO) has rented for quite some time upon Saybolt's communication systems, particularly after the military action in 1998. All costs involved amounting to USD 6,000 per month were absorbed by the contractor (Saybolt).

28. However, the points raised in the Report regarding the cost structure could be utilized in the negotiations for the next contract.

Accommodation and local transportation charges included in man-day billing rate have been excessive

29. **Paragraphs 16 and 17** state, *inter alia*, that at Zakho and Mina-al-Bakr, the Government of Iraq had provided accommodation for the Contractor's staff, and at Zakho, SOMO had also provided two cars for local transportation.

30. With regard to questions raised to costs for accommodation, transportation, communications, etc., in Iraq, it is a well-known fact that these types of expenses to be incurred in Iraq would have to be compensated, but under the restrictions of sanctions, no payments could be made within Iraq in any other currency but Iraqi dinars. This has led to special arrangements by the contractors, not just Saybolt, to ensure that these services, etc., are provided, as required.

Transport costs provided for in the Contract have been charged

31. **Paragraph 18** states that "notwithstanding specific provisions in the Contract to the contrary, amendment number three provided for computer equipment for two spare parts inspectors at a cost of $17,800. Furthermore, as per the proposal of the Contractor, dated 19 September 2000, the cost of vehicles for spare parts inspectors was also authorized at $39,000. In this regard, we note that the man-day rate provides for transportation costs of 2.85 per cent. In our opinion, adequate provision was made in the Contract for transportation and no justification was given for amending the Contract to provide additional transport. This arrangement was not transparent and appeared to double charge the UN for these costs."

32. To facilitate the execution of the contract, it was decided that Saybolt could purchase three vehicles and operate them independently and the vehicles would remain the property of the United Nations. Because of the urgency of the need, it was further decided to purchase vehicles that were immediately available, that happened to have different colors and prices.

Non-expendable equipment purchased by the Contractor had not been adequately accounted for

33. **Paragraph 20** states that "the UN had authorized the Contractor to purchase equipment including vehicles, and communication equipment like satcoms, computers and software. We found that the equipment paid for by the UN did not have any UN asset number affixed and had never been inspected by the UN. Furthermore, the equipment was not entered into OIP's

inventory system, and there had been no periodic checks on these assets as required by UN financial rules."

34. The contract is all-inclusive, that is to say, inclusive of the equipment purchased by the contractor. In this regard, the communication equipment, computers and software are not UN property, and therefore there is no corresponding requirement for an inventory.

Charges for additional services provided by the Contractor have been excessive and inadequately monitored

35. **Paragraphs 21 to 25** state, *inter alia*, that OIP accepted cost proposals from the contractor for additional services "without any evidence of price negotiations or tests of reasonableness. Moreover, payment for these services had been made without documentation to support the invoicing such as original bills for purchases, tickets, vouchers, etc."

36. The auditors do not seem to have understood clearly the nature of the work of OIP and the very sensitive and often most urgent requests by the Security Council and its Committee. The proposals referred to by the auditors relate to specific survey missions that were undertaken at the specific request of the Security Council within a very tight timeframe. The proposals by the contractors are "all-in", i.e., including all relevant personnel for technical activities and analysis, as well as for ancillary services, such as report writing, presentations to the Security Council Committee, etc. In addition to the demands by the Security Council, the Government of Iraq would also have had to agree to the presence of any contractor, and the Government's experience with Saybolt presented the United Nations with a considerable advantage - one that cannot be cost evaluated - and rendered the missions much more expeditious and effective.

37. It is also an erroneous assumption that OIP does not maintain comparative information to determine the "reasonableness" of proposals. OIP has always kept such information and has maintained on-going contact with professional societies and industrial organizations, and has thus been able to discuss quickly with experts whether technical and financial proposals were reasonable.

38. Regarding the comments on the round-trip from Amman-Baghdad-Amman, it is conceded that the charges were overstated. Consequently, OIP is arranging a deduction of the overcharge, as appropriate.

39. The auditors do not seem to have taken into consideration the question of the time factor established by the Council and its Committee, which had to be taken into consideration in fielding missions. Fortunately, Saybolt had and was able to provide experts immediately from their rosters who were specialized in the areas necessary to undertake such missions, as well as having great technical familiarity with both the Iraqi oil industry as well as the oil industry in general in the region. Regarding the comments specifically on **paragraphs 24 and 25**, on "the reasonableness" of the charges, it is essential to keep in mind that the contract was based on an "all-in" cost proposal. Furthermore, the contractor's proposals were fully considered by the Oil Overseers.

The Contractor had not conducted "audit visits" as provided for in the Contract

40. **Paragraph 26** states that although the contractor's proposal dated June 1996, provided for a coordinator from Rotterdam to "audit" their operation in Iraq every six weeks, no audit had been conducted. On the assumption that the costs of the visits would have been included in the overall price proposed by the Contractor, the auditors consequently calculated 36 such missed visits.

41. The assumption is incorrect, as the technical head of the Iraq team for Saybolt regularly undertakes missions to Iraq and the cost of these visits is included in the overall cost of the contract. In addition, regular "audit" visits are undertaken by OIP experts, particularly those involved in spare parts and equipment for the oil sector, as well customs experts and the Oil Overseers. It should also be pointed out that it is more effective and efficient to have an overall team leader positioned within Iraq that has total responsibility for "auditing" functions on an on-going basis of review and action, than only periodic "audit" visits, which are, after all, *post facto*.

Services provided by UNOHCI have not been adequately charged to the Contractor

42. **Paragraphs 27 and 28** have been duly noted. As stated in paragraph 12 above, it may be useful for the auditors to review Section VIII of the MOU, concerning Privileges and Immunities.

B: Monitoring Contractor's performance

OIP officials charged with monitoring the Contract had not made inspection visits to Iraq

43. Regarding the comments on **paragraphs 29 and 30**, it should be noted that the contract is being executed in a highly sensitive political environment. As has been already stated, in order not to compromise UNOHCI's mandate, it was decided to administer the contract from Headquarters. OIP maintains oversight of the activities of Saybolt on a daily basis through reporting as well as daily consultations with Saybolt, the Oil Overseers, as well as the OIP group of experts on oil spare parts.

D: Contract Issues

Need to separate the cost of Contractor's equipment from the man-day fee structure

44. **In paragraphs 31 to 37**, and the auditors' corresponding recommendations, the Report discusses the cost of equipment purchased under the contract with Saybolt. While the comments are too vague to constitute a valid finding, it is clear that the auditors did not take into full consideration the ongoing maintenance, repair and replacement costs that are factored into the contract as well, when they speak of onetime costs for equipment and recommend reimbursement by Saybolt. Furthermore, had the auditors been in touch with Saybolt's headquarters, they could have received the information regarding the cost of "some of the equipment", as the auditors have put it.

Scrutiny of CVs of Contract personnel have been ineffective

45. It would seem that the auditors did not fully understand the background of the issue of early pensioners. It was originally foreseen that the contractor would identify overseers. That idea was subsequently cast aside. In the selection of staff assigned to monitor the crude oil exports from Iraq, one clearly needs experienced and motivated individuals capable of working efficiently in the most arduous conditions in Iraq.

46. It is also incorrect to state that CVs of contractor's personnel are not reviewed. Whenever Saybolt sent a recommendation, it was reviewed by the appropriate staff at OIP and then forwarded to the Oil Overseers in OIP, for their comments. OIP has at times raised a number of questions with regard to candidates proposed by Saybolt, for various reasons, including experience, language skills, and geographical distribution. This was all discussed during the daily contacts between Saybolt and OIP. Candidates were withdrawn by Saybolt following these discussions, and therefore there was no need for "rejection" by OIP.

47. In the memorandum, dated 15 April 2002, addressed to the Executive Director of the Iraq Programme, transmitting the Report, the Director of the Internal Audit Division, OIOS, has state i, *inter alia*, that OIOS considered recommendations 3, 4, 6, 8, 9, 16, 17 and 21, contained in the report "as being of critical importance". In light of the introductory remarks above, as well as the comments on specific paragraphs, it will be necessary to review each of the recommendations as stated hereunder:

> **Recommendation 3:** Establish a contract management unit in Iraq whose functions should include reviewing invoices' supporting documentation, verifying Contractor's attendance records, monitoring additional requests for equipment and services by the Contractor and providing input for evaluation of the services provided (AF01/30/6/003).

48. This recommendation fails to take into consideration the fact that this would require additional resources and staffing, which are extraneous to UNOHCI's mandate and would not necessarily be agreed to by the Government of Iraq. Furthermore, it should be borne in mind that UNOHCI is an integral part of OIP. We believe that the decision to manage the contract from Headquarters level was the right decision taken. We have the expertise within OIP at the Headquarters, including the Oil Overseers and the group of oil spare parts experts with whom Saybolt has to work very closely, almost on a day-to-day basis.

> **Recommendation 4:** OIP management should recover the overpayment of $370,000 as indicated in Annex I, from the Contractor in subsequent billings (AF01/30/6/004)

49. This recommendation should be further reviewed by OIOS. The $370,000 seems to be significantly overstated. Ironically, Saybolt's review of its invoices revealed undercharging of approximately $19,000 that might cancel any overcharging.

Recommendation 6: OIP management should in future contracts with the Contractor (or any other contractor) separate the communication expenses from the man-day tariff structure and reimburse these on presentation of detailed documentation (e.g. invoices from service providers) (AF01/30/6/006)

50. The recommendation is noted and will be taken into account for the negotiation of future contract proposals.

Recommendation 8: OIP management should take steps to stop payment of personal telephone calls of the Contractor staff and recover the amounts overpaid which is estimated at $109,000 for the first nine phases of the programme (AF01/30/6/008).

51. The contract is an all-inclusive, and there is no evidence that the contractor has separately charged OIP for private calls. Further, it would be contrary to the terms of the contract to demand such reimbursement.

Recommendation 9: OIP management should recover overpayments for accommodation and transportation of approximately $471,000 from the Contractor (AF01/30/6/009)

52. The contract is all-inclusive, therefore under the terms of the contract there is no reimbursement due.

Recommendation 16: Implement procedures for procuring urgently required services, which should include: obtaining quotations from other suppliers; checking the reasonableness of quotations based on actual costs; and negotiating costs with the selected supplier (AF01/30/6/016).

53. As stated above, OIP maintains constant contact with professional societies and industrial organizations and is, therefore, current on the costs of services. However, the recommendation is noted.

Recommendation 17: OIP management should obtain details of "audit visits" undertaken by the Contractor and if no such visits have taken place, recover an estimated amount of $270,000 for 36 such required visits up to phase nine (AF01/30/6/017).

54. It is more effective and efficient to have an overall team leader positioned within Iraq that have total responsibility for "auditing" functions on an on-going basis of review and action, rather than only periodic "audit" visits, which are after all *post facto*. In this regard, OIP does not consider that any recovery is due.

Recommendation 21: OIP management should establish an appropriate approval process for candidates proposed by the contractor in accordance with the contract (AF01/30/6/021).

55. There are consultations between OIP and the contractor in the selection of candidates. However, consideration will be given to establish a formal procedure for conveying approval of candidates proposed by the contractor.

UNITED NATIONS NATIONS UNIES

INTERNAL AUDIT DIVISION
OFFICE OF INTERNAL OVERSIGHT SERVICES

Reference: AUD-7-1:31 (1023 / 02) 3 July 2002

To: Mr. Benon Sevan, Executive Director
Office of the Iraq Programme

From: Esther Stern, Director
Internal Audit Division, OIOS

Subject: **OIOS Audit No. AF2001/30/6: Audit of the management of the oil inspection services Contract**

1. A draft audit report on the above-mentioned subject was issued on 7 December 2001 requesting a response by 15 January 2002. The deadline for the response was eventually extended, for approximately 2.5 months, until 31 March 2002. Subsequent to the issue of the final version of the report on 15 April 2002, a reply to the recommendations was received from OIP, addressed to the OIOS USG, under a covering memorandum dated 17 April 2002. In order to address the response to the recommendations, OIOS has decided to issue a revised version of the final audit report incorporating OIP's comments.

2. Based on your response to the report, we are pleased to inform you that we have closed recommendations 001, 005, 006, 012, 015, and 021 in the IAD recommendation database. In order for us to close out the remaining recommendations - recommendations 002 to 004, 007 to 009 to 011, 013, 014, and 016 to 020 - we request that you provide us with additional information as indicated in the text of the report and a time schedule for implementing each of the recommendations. Please refer to the recommendation number concerned to facilitate monitoring of implementation status.

3. IAD is assessing the overall quality of its audit process and kindly requests that you consult with your managers who dealt directly with the auditors and complete the attached client satisfaction survey form.

4. Thank you for the assistance and cooperation provided to the auditors on this assignment.

Copy to: Mr. J. Connor
Mr. J.P. Halbwachs
UN Board of Auditors
Mr. D. Knutsen
Mr. J. Prasad

United Nations
OFFICE OF INTERNAL OVERSIGHT SERVICES
Internal Audit Division

Audit subject: Management of the oil inspection services Contract
Audit No. AF2001/30/6

Report date: 3 July 2002

Audit team:
Dagfinn Knutsen, Auditor-in-Charge
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Audit of the management of the oil inspection services Contract
(AF2001/30/6)
Executive Summary

From March through August 2001, OIOS conducted an audit of the management of the oil inspection services Contract between the United Nations and Saybolt Eastern Hemisphere B.V. (the Contractor). The focus of the audit was on administrative and management aspects of the Contract. The audit found that there are substantial costs that should be recovered from the Contractor as a result of overcharged and overpaid amounts and unjustified and unsubstantiated expenditures. Moreover, OIP should in future contracts consider altering certain contractual arrangements in order to ensure more cost effectiveness.

Results in brief:

- A review of 19 monthly Contractor's invoices found inadequate procedures to monitor invoice payment and ambiguities in supporting documentation leading to estimated overpayments of approximately $186,000
- Excessive charges have been made for company and personal communication costs. Substantial savings could have been achieved if communication costs were paid on an actual basis.
- Charges by the Contractor for accommodation and local transportation were excessive and were not based on the fact that the Government of Iraq often provided these services free of charge. Had this been taken into account, estimated savings of $471,000 could have been achieved
- Despite transportation costs being provided for in the Contract, amendments were made for the purchase of vehicles
- The Contractor had made excessive charges for certain additional services such as providing equipment for spare parts inspectors, engaging four additional experts, transportation charges for consultants, etc. In addition, invoices were paid without adequate supporting documentation and justification.
- $235,330 was paid to the Contractor for providing a "Comprehensive survey of the oil industry in Iraq". An exception to bidding for this service was resorted to in awarding the contract (PD/C0003/00). However, no measures were taken to assess the reasonableness of the Contractor's proposal, and payment was made without any supporting documentation being submitted
- Audit visits as provided for in the Contract had not been made by the Contractor, resulting in overpayments of $270,000
- The Contractor had not been charged for the services provided by United Nations Office of the Humanitarian Coordinator in Iraq (UNOHCI). Are their any ?

- No procedures had been established to monitor the services of the Contractor, in the absence of which it is not clear as to how OIP had assessed the quality of services provided.
- Agreeing to pay for equipment costs, built into the per-man day cost structure, had resulted in the UN paying approximately $3/2 million for the Contractor's equipment. This cost appeared excessive compared to the value of actual equipment in use by the Contractor.
- OIP had not been scrutinizing the curriculum vitae of the Contractor's staff effectively, even though they are required to do so under the Contract.

Major recommendations:

OIP should:

- Strengthen the procedures for approving the Contractor's invoices by requiring complete supporting documentation and performing detailed verification of them.
- Establish a contract management unit in Iraq whose functions should include reviewing invoice supporting documentation, maintaining attendance records for contractors, assessing requests for additional equipment and services by the Contractor, and providing input for evaluation of the services provided.
- Recover approximately $186,000 due to overcharging for excess numbers of staff at designated locations and mistakes apparent from records. OIP should review all Contractor invoices to determine the correct recoverable amount.
- Consider amending the Contract so that communication, local transportation and accommodation cost are segregated from the per-man day cost structure and are reimbursed based on verifiable supporting documentation.
- Consider amending the Contract to segregate the Contractor's equipment costs from the per-man day cost structure. There should be a one-time reimbursement of the actual cost with some provision for maintenance.
- Check contracts for additional services for reasonableness, obtain additional quotation and full justification and documentation to support payments.
- Bill the Contractor for the services provided by the UN to the Contractor at the standard cost for third parties.
- Develop a clear mechanism to monitor and evaluate the performance of the Contractor, both at the field and Headquarters level.
- Develop appropriate procedures to approve Contractor's personnel more effectively.

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I. INTRODUCTION

1. From March through August 2001, OIOS conducted an audit of the management of oil inspection services Contract between the United Nations and Saybolt Eastern Hemisphere B.V. (the Contractor). The audit was conducted in accordance with the general and specific standards for the professional practice of internal auditing in United Nations Organizations.

2. One of the functions of the Office of Iraq Programme (OIP), under Security Council Resolution (SCR) 986 (1995) is to oversee the export of oil and oil products from Iraq through approved export points. In addition, OIP is responsible for monitoring the end use of oil equipment and spare parts that are being procured by Iraq to improve its decaying oil industry infrastructure.

3. The initial Contract with Saybolt Eastern Hemisphere (Contract no. PD/CON/127/0065/96), was awarded in August 1996 as a result of a request by the Department of Political Affairs (DPA) for the provision of independent experts in international oil trade in accordance with SCR 661 (1990). Since the initial Contract, twelve amendments have been made, including four amendments for additional labour and travel costs. Recently, a new bidding exercise was conducted by the Procurement Division (PD) which resulted in the Contractor again being awarded the Contract (Contract no. PD/CO114/00).

4. The new Contract extends from 29 May 2000 until 28 May 2001 with an annual contract value not to exceed $5,316,150 and an aggregate value of $21,264,600. Moreover, the new Contract provides for an option to renew it for three successive one-year periods, under the same terms and conditions, including price. In addition to this Contract, OIP has also entered into other contracts with Saybolt to carry out studies separate from this Contract. The Contractor currently employs 14 inspectors to oversee oil exports from Zakho, in Northern Iraq, and Umm Qasr, on the Persian Gulf, and six inspectors are employed to monitor the end-use of oil equipment and spare parts imported by Iraq.

5. A request was sent to OIP to arrange for an exit conference in order to discuss the findings and recommendations resulting from the audit. However, OIP management did not respond to our request. The draft audit report was then sent to OIP on 7 December 2001 with a deadline of 15 January 2002 to respond to the audit recommendations. A final audit report was therefore issued on 15 April 2002. The current report has been amended to take into accounts comments subsequently received from OIP. The comments are indicated by the use of italics.

II. AUDIT OBJECTIVES

6. The major objectives of the audit were to:

(i) Assess OIP's management of the Contract, both in Iraq and at Headquarters, with respect to the obligations of the Contractor and OIP under the terms of the Contract, and procedures to verify and evaluate the Contractor's performance, receipt of services, and to review and pay invoices;

(ii) Determine if the Contractor provides the required services in an economical, efficient and effective manner; and

(iii) Review the management of other services being provided by the Contractor.

III. AUDIT SCOPE

7. OIOS conducted a previous audit (A/55/746) on the procurement aspects of this Contract. The current audit therefore focused on contract management issues. The audit consisted of a review of the Contract, invoices, and OIP's procedures to evaluate the Contractor's performance. In addition, physical inspections of the Contractor's operations were carried out in Iraq and Turkey. We interviewed OIP officials in New York and Iraq. In addition, with OIP's agreement and cooperation, we directly contacted the Contractor to provide us with explanations and certain documentation concerning their working arrangements.

IV. AUDIT FINDINGS AND RECOMMENDATIONS

A. Monitoring of invoice payments and financial matters

Procedures have not been implemented to monitor invoice payments

8. The Contract and amendments required the Contractor to provide a total of 14 Oil Inspectors with a breakdown of six at Mina-al-Bakr, three at Zakho, and five at Ceyhan in Turkey. In addition, amendment number 8 of the Contract provided for six spare parts inspectors (two each at three different locations). The number of inspectors, whether for oil or spare parts, is the only measurable parameter by which the UN authorized payment to the Contractor. Hence, an accurate attendance record is essential to support the monthly invoices submitted by the Contractor. Our review of procedures found however, that they were lacking basic financial checks and balances, resulting in a number of incorrect payments.

9. A review of 19 monthly invoices and supporting documents found the following deficiencies:

(i) The attendance record was ambiguous since in many cases it reflected the attendance "from arrival to departure Amman", whereas the payment to the Contractor should only be made for manning the locations in Iraq and Turkey. This could have resulted in payment for staff not at the work locations.

(ii) The attendance sheet did not relate to the month written on it. For example, if the month is written as "June" that has 30 days, the attendance details are for 31 days. This irregularity, found in 18 of the19 invoices reviewed, was never questioned by OIP.

(iii) In the initial Contract, payments were to be made in lump sums; 30 per cent three months after start of Contract, 30 per cent six months after start, and 40 per cent upon

satisfactory completion of the Contract. The relevant invoices had no supporting documentation such as attendance sheets, on which to base the payment. Hence, there was a lack of any internal control.

(iv) While the numbers of the Contractor staff present at a location are the vital parameter for payments, our review of the monthly invoices revealed that the Contractor had often maintained staff at each location both lower than, and at times, in excess of OIP requirements. This may have been due to the Contractor's rotation/leave policy for staff.

Recommendations 1, 2 and 3:

OIP management should:

(i) Request the Contractor to modify the supporting invoice documents (attendance sheets), to clearly indicate the exact location of their staff which is currently indicated as "from arrival to departure Amman", which would enable OIP to verify the invoice (AF01/30/6/001);

(ii) Review the arrangement whereby the Executive Director certifies invoices, and institute specific procedures for checking and approving invoices (AF01/30/6/002); and

(iii) Establish a contract management unit in Iraq whose functions should include reviewing invoices' supporting documentation, verifying the Contractor's attendance records, monitoring additional requests for equipment and services by the Contractor and providing input for evaluation of the services provided (AF01/30/6/003).

10. *OIP agreed with recommendation 001, indicating that as of December 2000 the attendance record has shown "personnel attendance on location, from arrival to departure."* The recommendation has been closed. OIP did not provide a comment on recommendation 002 hence the recommendation remains open.

11. *Recommendation 003 was not agreed to and OIP stated that the contract was managed by OIP rather than UNOHCI so as not to unduly compromise UNOHCI's mandate. OIP also stated "that to the extent possible, efforts have been made by OIP to institute appropriate procedures that would ensure that the contractor fully discharges its contractual responsibilities. OIP also stated, "we have the expertise within OIP at the Headquarters, including the Oil Overseers and the group of oil spare parts experts with whom Saybolt has to work very closely, almost on a day-to-day basis."* OIOS would like to clarify that it did not intend for UNOHCI to undertake the contract management function, but rather that OIP be in charge of this function. Furthermore, the Oil Overseers informed us that they have no active part in the management of the contract and only use the information provided by the Contractor. Nonetheless, we are pleased to note that appropriate procedures have been established by OIP. In order to close this recommendation we request that

OIP provide us with a copy of the procedures. We also request that OIP reconsider establishing a formal contract management unit in the field.

Overpayment of monthly invoices needs to be recovered

12. A review of invoices found that inadequate scrutiny had led to irregularities resulting in overpayments of approximately $370,000, which should be recovered from the Contractor (as detailed in the Annex) on account of overcharging, and short and excess stationing of staff. The following discrepancies were found:

(i) On a few occasions, the Contractor had overcharged OIP since the attendance record showed lower man-days than those charged;

(ii) It was observed that the Contractor had often maintained lower strengths than that required by the Contract. However, OIP did not deduct any amounts for such non-performance; and

(iii) The Contractor had charged for additional staff in excess of contractual requirements, which had been paid by OIP.

In our opinion, the poor attendance recording practices by the Contractor resulting in overcharging indicates a lack of professionalism and should be immediately rectified as recommended above.

Recommendations 4 and 5:

OIP management should:

(i) Recover the overpayment of $186,000, as indicated in Annex from the Contractor in subsequent billings (AF01/30/6/004); and

(ii) Review all other monthly invoices to determine if any further amounts need to be recovered from the Contractor on account of over-billing and short/excess maintenance of staff. This review should also cover those invoices without supporting attendance sheet (AF01/30/6/005).

13. *OIP disagreed with recommendation 004, and stated that the auditors did not understand the billing mechanism which was based on staff on site rather than contracted staff levels and that the invoice of a month covered the period from 29th of the previous month to 28th of the month of the invoice. It further stated that accordingly there was no overpayment involved except for the month of June 1999 (overpayment of 17 man-days) which would be deducted from a future payment.* OIOS was aware that the contractor had charged for the staff actually present at the sites instead of the numbers required as per the contract. OIOS had recommended recovery of the amounts which had been paid by OIP for (i) overcharges for additional staff in excess of contractual requirements and (ii) on account of mistakes apparent from records. Concerning the failure of the Contractor to maintain the staffing levels agreed to in the contract, OIOS is of the opinion that there should be a penalty

clause in the contract for such non-performance. The Annex has been amended to reflect our revised calculations. Furthermore, OIOS wishes to note that the indication of dates on a monthly invoice from 29th of the previous month to 28th of invoiced month, as stated by OIP, is not relevant to the calculation of overpayments, which were done by comparing the strength actually present to that required, on a day-to-day basis in accordance with the Contract provisions. Thus, we request OIP to re-consider this recommendation and, accordingly, the recommendation remains open.

14. *Paragraph 16 of OIP's reply states that the contract, "...provides for full payment for complete and satisfactory performance by the contractor of his obligations under the contract. In that regard, it could be argued that once the requirement of satisfactory performance is met, the 'deficiency' in the attendance record becomes a non-issue."* This appears to imply that the contract's requirement for inspectors is flexible. If this were the case, then it would be appropriate to amend the contract to state the actual requirements and not to pay for additional unneeded inspectors.

15. *OIP has indicated in its response to recommendation 005, that a review of invoices had only revealed two minor discrepancies.* The recommendation has therefore been closed.

Communication charges by the Contractor have been excessive

16. A review of the tariff structure (appendix III of the proposal of June 1996) proposed by the Contractor, clearly indicated that all expenses such as labour, compensation, hotel, boarding and lodging, travel expenses, local transport, communication, insurance, risk premium, insurance, sample material transport and equipment were taken into account in arriving at the contract price. Included in the proposal were communication expenses of $603,000, which is about 21 per cent of the total contract amount. For the initial six months of the Contract this amounted to approximately $380,000.

17. Despite this huge expenditure, the Contract did not provide for any requirement to justify the expenses incurred. The communication expenses were essentially due to the use of a satellite communication system (Satcoms). The UN did not consider alternative options such as using the UN telecommunication system, which would have reduced the communication expenses significantly, apart from being transparent in terms of identification of all calls including personal ones. Hence, an opportunity to effect substantial savings had been forgone. With regard to the spare parts inspectors, the UN agreed to communication expenses of $288 per day for each of three locations. Later on the communication expenses of $288 was merged with the tariff for inspectors at $699 per man-day.

18. While PD and OIP attempted to require presentation of actual bills in authorizing payment for telecommunications, the Contractor had not agreed to this stating in an e-mail dated 02/06/98 that " From the beginning we have been asked to quote a tariff structure which was all in. Your suggestion to extract the communication cost from our per man per day fee is in opposition to this philosophy, also it is not technically possible. Although our quotations clearly contain estimates, we have based our costs on empirical information from the previous phases. As our communication costs in Rotterdam are not separable in anyway, this can not be substantiated by invoices". In our view, there

is a high probability that the UN may be paying more for the communication expenses, than the Contractor is actually spending.

Recommendations 6 and 7:

OIP management should:

(i) In future contracts with the Contractor (or any other contractor) separate the communication expenses from the man-day tariff structure and reimburse these on presentation of detailed documentation (e.g. invoices from service providers) (AF01/30/6/006); and

(ii) Investigate the use of alternative communication options including the use of UNOHCI's telecommunications network with appropriate reduction in the Contract price for communication charges (AF01/30/6/007).

19. *OIP took note of recommendation 006, and stated, "on-line costs were renegotiated in the current contract, PD/COI 14/00, resulting in substantial savings on communications costs." It also stated that this recommendation would be taken into account in the negotiation of future contract proposals. OIP also noted that the Procurement Division questioned the practice of including communication and equipment costs in the man-day-rate structure, and indicated they would be more "comfortable" with one time "non-recurring" costs. However, the contractor opposed this approach stating, "From the beginning we have been asked to quote a tariff structure which was all in."* Based on OIP's response, we have closed this recommendation.

20. *OIP disagreed with recommendation 007 and stated in its reply that the auditors had not adequately taken into account the location of the inspectors, and the logistics and political difficulties for UNOHCI to expand its telecommunication system to these areas.* However, OIOS wishes to note that it is not aware of any attempts by OIP to determine the feasibility of adding the contractors to the UNOHCI network in Iraq. In our view, the feasibility of doing this should have been looked into. This recommendation remains open pending OIP's review of the feasibility of adding the Contractors to the UNOHCI network.

<u>OIP needs to recover personal phone calls made by the Contractor's staff</u>

21. We found that the Contractor's internal policy is to allow each of its staff members free private telephone calls totaling up to 45 minutes per month. In Turkey, it was ascertained that staff members were not charged at all for personal calls, as these were not substantial in the Contractor's view. Since the total communications cost is included in the man-day cost structure, private telephone calls of the Contractor staff members are being charged to OIP.

22. Based on a cost of $3 per minute, the estimated free telephone service being enjoyed by the Contractor's staff (excluding Ceyhan cost) using Satcom in Iraq would be on the order of $2,025 per

month or a total of $12,150 per six-month phase. We are of the opinion that this benefit should not have been charged to OIP.

Recommendation 8:

OIP management should take steps to stop payment of personal telephone calls of the Contractor staff and recover the amounts overpaid which is estimated at $109,000 for the first nine phases of the programme (AF01/30/6/008).

23. *OIP disagreed with recommendation 008 and stated in their response that there was no evidence that personal telephone calls are charged to OIP. It also believed it would be contrary to the terms of the contract to demand such reimbursement.* OIOS is of the opinion that OIP should obtain a monthly statement from the Contractor indicating telephone usage to ensure that only official calls are charged to the UN. In addition, future contracts should not tie phone charges to the man-day-rate but rather should be charged separately. In this regard, we found that PD had requested itemized billing of telephone calls from the Contractor, but was informed that this was not technically feasible. However, OIOS notes that since the Contractor is able to separate personal phone calls for its staff, presumably it can also do this for charges to OIP. In order to close this recommendation, we request for OIP to ascertain the actual personal calls made by the Contractor staff and to recover the amount of these charges.

<u>Accommodation and local transportation charges included in man-day billing rate have been excessive</u>

24. Based on the Contractor's proposal of June 1996 and subsequent proposals, expenses for accommodation and local transport were included in the per-man-day fee structure at the rates of 2.85 per cent ($83,700 out of a total of $2,940,100) and 5.32 per cent ($156,400 out of a total of $2,940,100), respectively. However, we found that at Zakho and Mina-al-bakr, the Government of Iraq oil company had provided accommodation for the Contractor's staff. Despite specific queries to the Contractor whether they are paying any cost towards accommodation, no response was received. In addition at Zakho, the oil company had provided the Contractor with two cars for local transportation.

25. Based on the Contract proposal, we estimated that cost per-person-per day is around $20 for accommodation and $37 for transportation. This has resulted in an overpayment of approximately $471,000 (for nine oil inspectors at Mina-al-Bakr (6) and Zakho (3) in the case of accommodation charges and three oil inspectors at Zakho in the case of local transportation charges) for the nine completed phases.

Recommendations 9 and 10:

(i) OIP management should recover overpayments for accommodation and transportation of approximately $471,000 from the Contractor (AF01/30/6/009); and

(ii) Future contracts with the current or other contractors should take into account free accommodation and transportation provided so that the UN obtains best value for money (AF01/30/6/010).

26. *Regarding recommendation 009, OIP stated "...in Iraq, it is a well-know fact that these types of expenses to be incurred in Iraq would have to be compensated, but under the restrictions of sanctions, no payments could be made within Iraq in any other currency but Iraqi dinars. This has led to special arrangements by the contractors, ..." OIP also stated, "the contract is all-inclusive, therefore...no reimbursement is due."* From this response it is not clear whether the contractor has in fact paid the GOI for accommodation expenses and the transportation provided for its staff. In order to close this recommendation, we would appreciate being informed of the arrangements made and the amounts actually paid to the GOI by the Contractor.

27. *OIP appears to have agreed with recommendation 010, stating in paragraph 28 of its response "...the points raised in the Report regarding the cost structure, could be utilized in the negotiations for the next contract." In order to close this recommendation we request OIP to confirm that it will amend the cost structure in future contracts.*

Transport costs provided for in the Contract have been charged

28. The initial Contract, as well as the new one, specified that the price included all costs such as transportation, equipment, etc. We found that, notwithstanding specific provisions in the Contract to the contrary, amendment number three provided for computer equipment for two spare parts inspectors at a cost of $17,800. Furthermore, as per the proposal of the Contractor, dated 19 September 2000, the cost of vehicles for spare parts inspectors was also authorized at $39,000. In this regard, we note that the man-day rate provides for transportation costs of 2.85 per cent. In our opinion, adequate provision was made in the Contract for transportation and no justification was given for amending the Contract to provide additional transport. This arrangement was not transparent and appeared to double charge the UN for these costs.

Recommendation 11:

OIP management should ensure that future contracts with this Contractor or other contractors be based on actual equipment cost and not incorporated in the man-day rate (AF01/30/6/011).

29. *OIP appears to have agreed with recommendation 011, stating in paragraph 28 of its response "...the points raised in the Report regarding the cost structure could be utilized in the negotiations for the next contract." In order to close this recommendation we request OIP to confirm that it will amend the cost structure in future contracts.*

30. **It was also found that the Contractor proposed and the UN approved (Amendment number 11 to the Contract) for the purchase of three vehicles for the spare parts inspectors at a cost of $19,500, $24,500 and $24,500 respectively. All these vehicles were to be Toyota Land Cruisers Prado STD with the only difference that, while the cheaper one was white in colour, the other two at $5,000 extra cost were green and beige. We are of the opinion that the UN should have not allowed and paid for different color vehicles which led to unjustifiable expenditure of $10,000.**

Recommendation 12:

OIP management should ensure that specification for vehicles are in accordance with the UN standards and avoid unnecessary specifications involving additional costs (AF01/30/6/012).

31. *OIP stated in its reply to recommendation 012, that because of the urgency of the situation, it was decided to purchase vehicles with different costs and colours that were immediately available.* Based on this explanation we are closing this recommendation. However, in the future we urge OIP to standardize the vehicle specifications in accordance with UN standards in order to minimize costs.

Non-expendable equipment purchased by the Contractor had not been adequately accounted for

32. **As noted above, the UN had authorized the Contractor to purchase equipment including vehicles, and communication equipment like satcoms, computers and software. We found that the equipment paid for by the UN did not have any UN asset number affixed and had never been inspected by the UN. Furthermore, the equipment was not entered into OIP's inventory system, and there had been no periodic checks on these assets as required by UN financial rules.**

Recommendation 13:

OIP management should ensure that UNOHCI takes stock of the equipment purchased by the Contractor and paid for by OIP, record them in the inventory system, and routinely perform physical verification (AF01/30/6/013).

33. ***OIP disagreed with the recommendation stating, "The contract is all-inclusive... In this regard, the communication equipment, computers and software are not UN property, and therefore there is no corresponding requirement for an inventory."*** OIOS points out that the equipment referred to in this report was purchased separately by the contractor outside of the contract, under separate amendments. Hence, the equipment is UN property and should be fully accounted for and recorded in UN property records. In order to close this recommendation, we request that evidence be provided showing that this equipment has been recorded in UNOHCI's asset register.

Charges for additional services provided by the Contractor have been excessive and inadequately monitored

34. From time to time OIP requested the Contractor to provide proposals for additional services. The cost proposals submitted by the Contractor had been accepted without any evidence of price negotiations or tests of reasonableness. Moreover, payment for these services had been made without documentation to support the invoicing such as original bills for purchases, tickets, vouchers, etc. These are basic procedures when paying for goods and services and should have been performed by OIP as a matter of routine before payment was made.

35. For example, for the purchase of communication equipment for spare parts inspectors valued at $17,800, no effort was made by OIP or even through UNOHCI to verify that the new equipment had actually arrived or that the equipment was in conformity with authorized standards before payment was released.

36. In another case, $67,600 was agreed to by OIP for services of four experts for a 10-day period (Amendment number 9, June 1999) without any verification of the reasonableness of the charges. A review of invoices indicated excessively high charges by the Contractor and acceptance by the UN without any questioning. The fees for these experts were $2,000, $1,500, $1,500 and $900 per day. These were much higher even by the Contractor's standards for senior inspectors/oil monitors, which the Contractor charged a maximum $699 per day including all costs. Furthermore, their trips from Amman-Baghdad-Amman were charged for and paid at the rate of $750 round trip, instead of the standard cost of $150 each way. It should be noted that whereas the Contractor charged $7,200 for the airfares for these four experts both for inward and outward flights to Amman, $3,000 was charged just for the Baghdad-Amman-Baghdad road journey.

37. A separate Contract (PD/C0003/00 dated 13 January 2000, in the amount of $236,400) was entered into with the Contractor to provide a report on the state of the Iraqi oil industry. While an exception to bidding was approved by the Department of Management, there was no indication that OIP had checked the reasonableness of the Contractor's proposal, which was accepted exactly as proposed. Considering the high value of the Contract it would have been expected that some of the charges should at least have been checked for reasonableness and quotations obtained from other consultants to provide this service. This could have been done without going into a full bidding exercise and within the time constraint required to report to the Security Council.

38. Furthermore, the invoice amounting to $235,350 (Invoice 987/00 dated 30 March 2000) was subsequently paid without any receipts for any of the expenses claimed by the Contractor, and without any evidence of review of the propriety or reasonableness of the charges. While the per day fee for the Contractor staff on this mission, ranged between $900 to $2,000, no supporting document was provided for the airfares ($21,500), boarding and lodging ($22,500), miscellaneous ($5,000) and video presentation ($5,350). In our view, these instances indicate the lack of adequate control procedures.

Recommendations 14, 15 and 16:

OIP management should:

(i) Take immediate steps to ensure that all payments have appropriate supporting documentation before payments are made, and that charges are checked for reasonableness (AF01/30/6/014);

(ii) Obtain clarification from the Contractor for the excessive charge of $3,000 for the Amman-Baghdad trip and recover the overpayment of $2,400 from future invoices (AF01/30/6/015); and

(iii) Implement procedures for procuring urgently required services, which should include: obtaining quotations from other suppliers; checking the reasonableness of quotations based on actual costs; and negotiating costs with the selected supplier (AF01/30/6/016).

39. OIP did not provide a response to recommendation 014 on whether they would ensure that adequate checks are made for invoices prior to payment. In order to close the recommendation we request a response indicating what steps have been taken to implement it.

40. *OIP agreed with recommendation 015, and indicated that it would arrange to deduct the overpayment.* The recommendation has therefore been closed, however we request OIP to provide us with documentation indicating recovery of these costs.

41. *OIP took note of recommendation 016, stating that it maintains comparative information to determine the reasonableness of proposals. It further stated that it was therefore able to "discuss quickly with experts whether technical and financial proposals were reasonable." OIP also stated, "...that the contractor's proposals were fully considered by the Oil Overseers."* OIOS points out, however, that during the audit, no documentation was available to indicate that a reasonableness check had been done for this contract. Furthermore, during interviews conducted at UNHQ, the Oil Overseers stated that they were not responsible for any issues concerning the contractual arrangements with any contractor. In order to close this recommendation we would therefore appreciate being provided with the analysis done to determine the reasonableness of the proposal discussed in paragraph 37.

<u>The Contractor had not conducted "audit visits" as provided for in the Contract</u>

42. The Contractor's proposal dated June 1996, provided for a coordinator from Rotterdam to "audit" their operation in Iraq every six weeks. Clearly, the cost of these visits would have been included in the overall price proposed by the Contractor. Accordingly, for the nine completed phases the Contractor should have undertaken 36 such visits (the cost charged by the Contractor for one trip to Iraq was $7,500). The Contractor was unable to provide any information indicating that such visits had taken place.

Recommendation 17:

OIP management should obtain details of "audit visits" undertaken by the Contractor and if no such visits have taken place, recover an estimated amount of $270,000 for 36 such required visits up to phase nine (AF01/30/6/017).

43. *OIP disagreed with recommendation 017, stating that it was the Contractor's Iraq team leaders role to audit operations and that this was more effective and efficient. It was also stated "the technical head of the Iraq team for Suyboli regularly undertakes missions to Iraq and cost of these visits is included in the overall cost of the contract." As such, OIP did not consider that any recovery is due.* OIOS points out that paragraph 3.2 of the Contractor's proposal, which is an integral part of the Contract, specifically calls for "audit" visits, which in our view are separate from the regular visits made by the technical head. However, since these visits had not taken place and in the absence of information provided by OIP on the number of visits undertaken by the technical head, we reiterate that the associated costs should be recovered. In order to close this recommendation we request that OIP provide us with documentation indicating that action has been taken to recover the costs paid for the required visits.

Services provided by UNOHCI have not been adequately charged to the Contractor

44. Under Article 7 and 8 of the new Contract (Article 8 and 9 of the old Contract), the UN was to provide only identity cards for the Contractors' personnel and allow access to UN transport only in cases of evacuation due to security developments, and medical evacuation. However, it was ascertained that UNOHCI provided many services including UN letters for visa support application for vehicle registration, issue of Iraq driving licenses, importation of equipment requiring customs clearance, repair and maintenance of vehicles (since June 2000), supply of walkie talkies, etc. In the initial phases UNOHCI was also providing transport facility to the Contractor. In fact UNOHCI has earmarked a senior official to deal with matters relating to the Contractor. It was also noticed that the UN Guards Contingent in Iraq (UNGCI) has provided Motorola radio sets to the Contractor.

45. While these services are necessary to enable the Contractor to function and should continue, in as much as these were not covered by a provision of the Contract, the cost of these services should be recovered from the Contractor. We found that only on seven occasions, between June 1999 and August 2001, had UNOHCI charged the Contractor a total sum of $1,447.21 for various services.

Recommendation 18:

OIP management should quantify the financial implication of services provided to the Contractor by the UN and recover the amounts based on standard mission charge out rates (AF01/30/6/018).

46. *OIP disagreed with recommendation 018 stating, "the auditors should review Section VIII of the MOU, concerning Privileges and Immunities."* This Section of the MOU deals with the right of

access of the UN, inspectors, etc. to Iraq and the obligations of the GOI and it is not clear how this relates to charging for services provided by the UN under the contract. The services to be provided by the UN are clearly spelled out in the contract as indicated in paragraph 43 above. Services, additional to these, should be charged for. In order to close this recommendation, we request that OIP determine cost of the services provided to the Contractor, and make every effort to recover those costs .

B. Monitoring Contractors performance

OIP officials charged with monitoring the Contract had not made inspection visits to Iraq

47. In Article 11 of the Contract, the UN reserved the right to inspect and test all services performed by the Contractor at all reasonable times and places during the period of the Contract. We found that while the OIP has in fact never exercised this right, OIP on all invoices and during presentation of the case for extension to the Headquarters' Committee on Contracts had stated that the services being provided by the Contractor were satisfactory and in full consonance with the Contract agreement. No formal evaluation has been made by OIP to determine the basis of this assessment.

48. While the Contract is mainly performed in Iraq (other than one location at Ceyhan, Turkey), OIP had not appointed anyone in Iraq to manage the Contract, in the absence of which there can be no assurance that the services were provided in consonance with the spirit and letter of the Contract. This is also indicated by the fact that many of the irregularities pointed out through this report would have had a better chance of being detected had contract management staff been located in Iraq.

D. Contract Issues

Need to separate the cost of Contractor's equipment from the man-day fee structure

49. Based on the tariff structure proposed by the Contractor, equipment purchased to perform the Contract built into the man-day fee structure for oil inspectors amounted to 7.82 per cent of the Contract cost ($230,000 out of a total of $2,940,000).

50. This means that OIP pays about $55 per day per inspector for equipment costs or approximately $1.2 million for the nine phases. A review of the inventory list provided by the Contractor indicated that the actual cost of equipment was far less than the amount reimbursed through the tariff structure. However, the exact amount could not be determined, as the Contractor did not provide the cost of some of the equipment items. In OIOS' view, it was clearly not the intent of the Contract for the UN to pay costs of equipment far exceeding their actual value.

51 In our opinion, equipment should have been charged to OIP as a one-time expenditure with an additional provision for maintenance of the equipment. That option would have been much cheaper, instead of paying for the equipment cost during all nine phases. We estimated that this has resulted in excessive payments of approximately $1 million.

Recommendations 19 and 20:

OIP management should:

(i) Provide for reimbursement of one-time equipment costs in future contracts in order to avoid the uneconomical arrangements of the current Contract (AF01/30/6/019); and

(ii) Negotiate with the Contractor to recover approximately $1 million paid for equipment in excess of its actual cost and to stop further payments for the equipment cost component in the current Contract (AF01/30/6/020).

52. OIP did not provide a response to recommendation 019. In our opinion, separating the cost of equipment from the man-day contract structure would be a more economical arrangement for the Organization. We therefore reiterate this recommendation.

53. *OIP disagreed with recommendation 020 stating, "While the comments are too vague to constitute a valid finding, it is clear that the auditors did not take into full consideration the ongoing maintenance, repair and replacement costs that are factored into the contract..." OIP also stated, "...had the auditors been in touch with Saybolt's headquarters, they could have received the information regarding the costs of 'some of the equipment'..."* OIP may not be aware that OIOS had contacted the Contractor's team leader in Iraq and requested the relevant information from him. This and other information requested was only partially provided. We remain concerned that under the current arrangement there is no relationship between the actual cost of equipment requirements purchased by the Contractor and the amount paid under the man-day-structure of the contract. We therefore request that OIP re-examine this issue and provide us with information on the steps taken to resolve the matter of excessive payments for equipment provided for under the contract.

Scrutiny of CVs of Contract personnel have been ineffective

54. The Contractor proposed (paragraph 1.1 of the Contractor's proposal of June 1996) that in view of importance and strict compliance with the relevant Security Council Resolutions (SCRs) and Memorandum of Understanding (MOU) with the Iraqi Government, each member of the team should be fully independent and consist only of people with proven experience, but without any existing connection to the oil industry. Accordingly, their recommendation was to form a team of pensioners, as it was not unusual in the oil industry to retire when about 45 years old. The Contractor further stated that it was capable of forming such a team of specialists with proven competence, integrity and neutrality within 48 hours. According to Article 1 of the Contract, the Contractor's proposal of June 1996 was an essential part of the Contract with the UN. A review of the CVs of pre-selected candidates (appendix II of the offer of the Contractor of June 1996) is summarized in the following table:

Candidate no.	Age	Educational qualification	Experience (years) with the Contractor	Other professional experience (Years)
1	53	Several school certificates	23	
2	57	Several school certificates	25	
3	42	High School and nautical academy	11	
4	34	Nautical college	7	
5	58	High School	5	34
6	31	Several School certificates	6	
7	38	O level/A level	7	
8	47	HND Chemistry	9	
9	33	B.Sc. Electronics Engineering	5 months	5
10	37	High School	4	14
11	N/A	High School	1	6
12	44	Master Mariner	1	11
13	35	Qualified marine Ch Officer	2	7
14	33	High School (Chemist)	6	
15	37	Marine School	6	13
16	38	1st Class Marine Engineer	10 months	17
17	33	Intermediate (HSC)	8	
18	34	Intermediate (HSC)	14	
19	32	Intermediate (HSC)	8	
20	32	Intermediate (HSC)	9	
21	32	Intermediate (HSC)	9	8
22	34	B Sc Degree	8	3
23	32	Technical High School	8	2
24	35	Mechanical Engineer	7	2
25	32	Diploma B.Sc.	6	
26	38	Chemical Engineer	1	11
27	N/A	High School	2 months	14

55. A perusal of the above table indicated that, contrary to their assertion that they would form a team of pensioners, the proposed candidates had varying ages and there was a lack of consistency in terms of experience. Another requirement of the Contract is that the UN should approve all candidates as submitted by the Contractor. We found however, that the UN has been approving proposed candidates as a matter of routine, as none of the candidates proposed by the Contractor has

ever been rejected.

Recommendation 21:

OIP management should establish an appropriate approval process for candidates proposed by the Contractor in accordance with the Contract (AF01/30/6/021).

56. *With regard to recommendation 021, OIP indicated that a process is already in place, and that CVs of candidates are discussed with the Contractor on a regular basis and those not accepted are withdrawn. However, OIP agreed to consider establishing a formal procedure.* On the basis of this response, we are closing this recommendation.

V. ACKNOWLEDGEMENT

57. We wish to express our appreciation for the assistance and cooperation extended to the auditors by OIP and UNOHCI during the conduct of this audit.

Esther Stern
Director
Internal Audit Division, OIOS

ANNEX

SAYBOLT OVERPAYMENTS

1	2	3	4	5	6
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 01	12,924	Charged 18 man days extra for Sr. Spare Pts. Insp., as charged for 202 man days instead of 184 per attendance sheet	10,052	14 man days total made up of 2 extra Sr. Spare Pts. Insp. from 13th to 16, 1 extra on 1st, 2nd, 17th, 18th, 29th and 30th.	30,156
Feb 01	[illegible]	[illegible]	14,341	1 Oil Insp. extra at Ceyhan on 20th. 19 man days extra for Sr. Spare Pts. Insp. as 1 extra from 4th to 14th and 2 extra from 18th to 21st	15,040
Dec. 00	13,980	20 man days for oil Insps. overcharged as invoiced for 421 instead of 401 per attendance sheet	2,135	1 Sr Spare Pts. Insp. extra on 29th and 30th. 1 extra oil Insp at Mina on 10th	29,396
Aug 00	15,378	22 man days for oil Insp. Charged extra as invoiced for 434 man-days instead of 412 per attendance	[illegible]	[illegible]	30,756
Apr. 00	16,375	25 man days charged extra for oil inspector as invoiced for 434 instead of 409 per attendance sheet	[illegible]	[illegible]	32,750

Dec. 99			2,540	1 Spare Pt Insp excess on 10th 3 man days extra for oil Insp. As 1 Oil Insp. excess on 18, 19th and 20th at Ceyhan	3,115
Nov 99	19,809	31 man days charged extra for Sr. Spare Pts. Inspector as invoiced for 93 man days instead of 62 per attendance sheet.	9,505	4 man days in excess for spare Part Insp as 1 maintained extra from 7th to 10th. 2 Oil Inspectors extra at Mina from 14th to 17th. 1 Oil Inspector extra at Zakho from 26th to 26th	50,433
Oct. 99			16,150	15 man days charged extra for oil inspectors as invoiced for 435 instead of a maximum authorized of 180 11 man days charged extra for Spare Pts. Inspectors as invoiced for 99 instead of max of 90 less 2 (i.e. 88) maintained short on 29th and 30th	17,300
July 99			8,515	Excess 9 man days at Mina as 1 Insp. maintained extra on 12th, 13th, and 22nd to 28th. Excess 4 man days at Zakho as 1 Insp. maintained extra on 8th, 9th, 14th and 15th	51,835
June 99			5,240	3 man days extra at Mina on 6th, 7th & 8th (one each) 3 man days extra at Zakho on 9th, 10th & 11th (one each) 2 man days extra at Ceyhan on 18th and 19th (One each)	58,399
Total	84,014		102,224		186,238

UNITED NATIONS
INTEROFFICE MEMORANDUM

NATIONS UNIES
MEMORANDUM INTERBUREAUX

OFFICE OF THE IRAQ PROGRAMME - BUREAU CHARGE DU PROGRAMME IRAQ

TO/A: **Mr. Dileep Nair**
Under-Secretary-General
for Internal Oversight Services

DATE: **17 April 2002**
REF: **ED/2002/OIOS/3**

THROUGH S/C DEL:

FROM/DE: **Benon V. Sevan**
Executive Director

SUBJECT/OBJET: **OIOS Audit No. AF2001/30/6: Audit of the management of the oil inspection services Contract**

I very much regret that I feel obliged to bring to your personal attention the comments of the Office of the Iraq Programme regarding the final Audit report issued by the Internal Audit Division of OIOS, concerning the management of the oil inspection services Contract.

As stated in the report, it took the auditors from March through August 2001 to conduct the above audit, and then it took over three months for the Internal Audit Division to submit the draft report, on 7 December 2001, to this Office for comments thereon by 15 January 2002, during a period when this Office was totally involved with the start of the implementation of a new phase (phase XI) of the humanitarian programme and consideration of the new distribution plan being submitted by the Government of Iraq. Further details as to what happened thereafter are provided in paragraphs 2 to 6 in the attached Note prepared by this Office.

In brief, I should like to inform you that this Office cannot agree either with the findings or the assumptions made by auditors.

I should like to reiterate that I have always welcomed audits, be they internal or external, but I also expect that auditors should understand very well the environment under which we are operating. Above all, they should do their homework and fully understand the resolutions and decisions taken by the Security Council, pursuant to which this programme is being implemented within the context of a very rigorous sanctions regime, including the very restrictive parameters established by the Security Council for the implementation of the programme. They should also understand well the relevant provisions of the Memorandum of Understanding concluded between the Secretariat of the United Nations and the Government of Iraq (S/1996/356).

We have been implementing the programme pursuant to Security Council resolution 986 (1995) under very difficult, complex and highly sensitive political environment. Reading the report, I do not see any appreciation on the part of the auditors of the difficulties encountered. It is always easy to pontificate. I do hope that the auditors concerned do not consider themselves infallible.

Accordingly, I should be grateful if you could kindly review the comments contained in the attached Note with a view to making the necessary revisions to the final report. Otherwise, I very much regret to inform you that we will be going yet again through the most unfortunate situation with regard to a previous audit regarding independent inspection agents, when the comments from the Secretariat, including the opinion of the Legal Counsel, were repeatedly ignored for several years. You know exactly the audit I am referring to.

Should a decision be taken not to revise the above report, I should appreciate it if the attached Note by this Office is issued either as an addendum to the report or as a separate document.

I should also like to have an appointment with you on your return from official travel, as early as possible. I will be in touch with your Office.

cc. The Deputy Secretary-General
Mr. Connor
Mr. Halbwachs
Mr. Myat
Ms. Stern
Ms. Featherstone
Ms. Uchegbu

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NOTE BY THE OFFICE OF THE IRAQ PROGRAMME

Comments by the Office of the Iraq Programme
on the final report submitted by OIOS on 15 April 2002

OIOS Audit No. AF2001/30/6: Audit of the management of the oil inspection services contract

1. Following the adoption of Security Council resolution 986 (1995) on 14 April 1995 and the conclusion of a Memorandum of Understanding (MOU), on 20 May 1996, between the Secretariat of the United Nations and the Government of Iraq (S/1996/356), Saybolt Eastern Hemisphere BV (hereafter referred to as Saybolt) was awarded Contract PTD/127/0065-96, in August 1996, to provide the services of 14 individuals with "particular experience and qualifications to assist in monitoring the export of petroleum and petroleum products form Iraq". The contract was for an initial term of six (6) months, with an option of renewal for up to three (3) successive periods of six (6) months, on the same terms and conditions. Contract PTD/127/0065-96 was subsequently amended several times to provide for additional inspectors for oil spare parts, and groups of oil experts that undertook special assignment at the behest of the Security Council. Contract number PD/CO114/00 executed in June 2000 succeeded contract PTD/127/0065-96. Under the new contract, which is for one year, with an option of renewal for three (3) successive terms on the same terms and conditions, Saybolt would provide 20 inspection agents; 14 to monitor the oil exports and six (6) for spare parts and equipment. The contract has been amended to provide for an increase in the number of oil spare parts inspectors from six (6) to eight (8), bringing the total number of agents to 22.

I. Introduction

2. **In paragraph 5** of the audit report (hereafter referred to as the Report), it is stated that the Office of the Iraq Programme (OIP) did not arrange for an exit conference requested by OIOS or respond to audit recommendations forwarded in a draft report, on 7 December 2001, with a deadline of 15 January 2002. It is also stated that "despite the granting of two time extensions, no response to the draft audit report recommendations has been received up until now."

3. As stated **in paragraph 1** of the Report, it took from March through August 2001 to conduct the audit, and then it took over three months, until 7 December 2001, to submit the draft report to OIP for comments thereon by 15 January 2002, during a period when OIP was totally involved with the start of the implementation of a new phase (phase XI) of the humanitarian programme and consideration of the new distribution plan being submitted by the Government of Iraq.

4. A quick review of the draft report indicated immediately the necessity for a thorough review because OIP could not agree either with the findings or the assumptions made by the auditors. There were also many errors in the calculations made by the auditors, which required us to check invoices, among others. Furthermore, the OIP staff member who had been responsible with the management of the contract was no longer with OIP. It was also necessary to seek detailed information from Saybolt's headquarters regarding some of the claims made in the draft report, because the auditors, who although had held meetings with the contractor's team leader in the field, had not been in touch with Saybolt's headquarters, or at the least through OIP, to receive authoritative responses to their queries.

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5. The above explanations were provided to the Director of the Internal Audit Division and the Chief of the Iraq Programme Unit of OIOS, with a request for extension of the deadline, which was granted. Furthermore, the Director of the Internal Audit Division and the Chief of the Iraq Programme Unit were fully informed of the extreme difficulties being encountered in implementing the programme, which obliged the Executive Director of the Iraq Programme to travel to Iraq on 10 January 2002 with a view to resolving the difficulties with the Government of Iraq, including the refusal to grant over 200 visas requested for UN personnel involved in the implementation of the programme. The Executive Director had to stay longer in Iraq then originally planned, for almost a month. It was taken for granted that OIOS, in addition to being informed by OIP and having two resident auditors in Iraq, was fully aware of the continuing difficulties encountered in programme implementation as the programme has become more politicized than ever. Consequently, the focus of OIP's attention at the time of the submission of the draft report to OIP had been on matters that affected the day-to-day implementation of the programme as well as assisting the Security Council Committee established by resolution 661 (1990) (hereafter referred to as the Committee) in resolving the difficulties encountered within the Committee itself.

6. The Director of the Internal Audit Division and the Chief of the Iraq Unit will recall that it was through the personal intervention of the Executive Director that they were granted Iraqi visas that enabled them undertake their recent visit to Iraq. On the return of the Executive Director to Headquarters, it was agreed with OIOS that OIP would prepare its comments on the draft audit report, first as "a non-paper", for discussions with the Internal Audit Division, on an informal basis. It was agreed that such discussions would take place on the return of the Director and the Chief of the Iraq Unit from their visit to Iraq. OIP waited for their return in order to submit its "non-paper" for discussions. Instead, however, and contrary to the arrangements agreed upon earlier, the Executive Director received an e-mail message, on 5 April 2002, from the Chief of the Iraq Programme Unit, which read as follows: "As previously agreed a response to the above draft report was to be provided by 31 March 2002. This was the second extension given. Since a response has not been received we will be issuing the final report shortly." OIP was not even aware that the Director and the Chief of the Iraq Unit had already returned to Headquarters. At the time when the arrangements were agreed upon, the Director and the Chief of the Iraq Unit were informed of the intention of the Executive Director to invite a representative of Saybolt to be present at the discussions on the "non-paper". Disappointed with the attitude of the Chief of the Iraq Unit and even though the OIP "non-paper" was ready, the Executive Director responded that the Chief of the Iraq Unit could go ahead and publish the report as long as "you are prepared to be fully accountable for yourreport. If you go ahead and publish it, however, you must also undertake to publish our comments thereon, in toto, either as a separate report or an addendum thereto." Copy of the e-mail exchange of correspondence is attached as an annex to the present Note.

x x x

7. The audit objectives as stated in the Report are, *inter alia*, to assess OIP's management of the contract, determine if the contractor provides the required services in an economical, efficient and effective manner, and review the management of other services being provided by the contractor.

8. A review of the Report, against the stated objectives of the audit, would have to take into full consideration the context in which the contracts were executed and administered. Contracts

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are not executed in a vacuum. This particular contract is being carried out within a very rigorous sanctions regime and managed in a highly sensitive political environment. Any realistic assessment of the management of the contract would have to factor in theseconsiderations. Yet, it would appear from the Report that the audit was conducted without taking full cognizance, either of the legal or political context of the contract which in turn influence its management. There are many aspects of the programme as well as its implementation governed by the relevant resolutions and decisions of the Security Council and its Committee, which outside the political context may defy logic; however, as the Secretary-General has stated repeatedly regarding this programme, "we take our marching orders from the Security Council".

9. For example, in the introductory paragraph of the Executive Summary, it is stated that "OIP should have considered utilizing UN staff to perform the oil inspection service as an alternative to hiring a contractor, which would have resulted in substantial savings." Utilizing UN staff to perform the oil inspection services, as recommended by the auditors, would have been inconsistent with the Security Council resolution 986(1995) and the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq (MOU), on the implementation of the Security Council resolution 986(1995) (S/1996/356). Annex II, paragraph 4, of the MOU expressly provides for independent inspection agents to monitor Iraqi oil exports. Consideration of savings was never the ultimate goal of the decision taken by the Security Council; rather, the goal was to ensure full and thorough inspection of oil exports and full compliance with the decisions taken by the Council.

10. Various amendments of the contract were undertaken in response to the requests of the Security Council and its Committee that required urgent action on the part of the Secretariat. Fortuitously, the established good working and highly professional relationship of the Government of Iraq with Saybolt presented the United Nations with a considerable advantage, one that cannot be cost evaluated, and which has enabled OIP to field the special missions most expeditiously pursuant to decisions taken by the Council or its Committee, avoiding inordinate delays in the granting of visas to the experts who had to travel to Iraq on short notice. Furthermore, it has been essential to ensure the confidence of not only of the Security Council members but also of the Government of Iraq regarding the impartiality of the work of the experts, as evidenced by the fact that we have had no difficulty in securing visas for one of the leaders from Saybolt to visit Iraq on a regular basis, despite his nationality, which is British.

11. The decision to manage the contract by OIP at Headquarters rather than by UNOHCI was in order not to unduly compromise the latter's mandate. This was a decision taken even before the establishment of OIP in October 1997. The same applies for the management of the contract with Cotecna, and previously with Lloyds. To the extent possible, efforts have been made by OIP to institute appropriate procedures that would ensure that the contractor fully discharges its contractual responsibilities. It is realistic, however, to acknowledge that political actions may affect the manner in which the contractor discharges its responsibilities. For example, it is common knowledge that oil exports are interrupted periodically, such as the present decision taken by the Government of Iraq to suspend all oil exports for 30 days. Furthermore, although the Government has refused to allow any additional contractor's staff to be stationed in Iraq on a permanent basis, Saybolt has, with OIP's consent, occasionally deployed more staff on a short-term basis to cope with peak periods of work. It should be noted,however, that irrespective of the number of staff deployed by the contractor, payment is effected only for the number provided for in the contract.

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12. The contractor also provides expert advice to OIP in its day-to-day-operations as well as to the Committee, including regular briefings on the oil industry of Iraq as well as on oil spare parts and equipment provided under the programme. With regard to the status of the contractor's staff posted in Iraq, it is recommended to the auditors that they review the relevant provisions of the MOU, in particular Section VIII, concerning Privileges and Immunities. A fuller understanding of the range of services provided by the contractor would have enabled an appreciation of the background to the contract, the contract itself, and its management.

13. Although the auditors undertook site visits to some of the locations where the independent inspection agents are located, they did not, most unfortunately, visit Mina al-Bakr to witness first hand the very difficult and most dismal conditions under which the independent inspection agents operate, literally closeted on the oil platform which may collapse at any time. In addition, there was no consultation between the auditors and OIP officials, nor with Saybolt headquarters that would have helped clarify for the auditors some of the contentious issues. Although the auditors held discussions with the contractor's team-leader in Iraq, they should have addressed their questions to Saybolt headquarters, or at least through OIP, in order to receive a more authoritative responses.

14. Comments on specific audit findings and recommendations are proffered hereunder:

A: Monitoring of invoice payments and financial matters

Procedures have not been implemented to monitor invoice payments:

15. **Paragraph 9(i)** states that "a review of 19 monthly invoices and supporting documents found "deficiencies". Among the deficiencies stated is ambiguity of the attendance record which reflected "from arrival to departure Amman". In the view of the auditors, payments should only be made for manning the locations in Iraq and Turkey.

16. Contract number PTD/127/0065-96 (the initial contract) determined the number of inspectors required at particular locations in Iraq and Turkey, and Article 7.1 provides for full payment for complete and satisfactory performance by the contractor of his obligations under the contract. In that regard, it could be argued that once the requirement of satisfactory performance is met, the "deficiency" in the *attendance record* becomes a non-issue. Nonetheless, since December 2000 the *attendance record* has shown "Personnel Attendance on Location, from arrival to departure".

17. The Report also illustrates that the auditors did not have a full understanding of the contract and the method used in the preparation of invoices by Saybolt. This misunderstanding led to a significant error in 'finding' that Saybolt overcharged some $370,000 for services provided during the period 29 May 1999 to 28 June 2001. The auditors have confused the billing mechanism, seemingly thinking that Saybolt's billing was based on contracted staff levels and not on staff on site. The auditors have also confused the contracted number of inspectors for oil spare parts and equipment. There are **eight** and **not six** inspectors, as stated in paragraph 8 of the Report.

18. There is a historical precedent in the preparation of invoices in line with the commencement date of the current contract. The invoice always covers the period between the 29th day of the previous month until the 28th day of the month the invoice is prepared. Thus, the invoice prepared at the end of June covers the last few days of May until the 28th of June

inclusive. Reference is made in this regard to Amendment No. 8 to contract PTD/CON/127/0065/9, which covered the period 29 May 1999 through 28 November 1999, after which this invoicing scheme was implemented. A review of all invoices found only one incorrect invoice issued for the month of June 1999. This irregularity does not appear in any of the other invoices. No over billing occurred as a result of this split-month billing, except for the July 1999 bill that included "31 June 1999". This overcharge (17 Man days) will be deducted from a future payment. That the irregularity was not queried by OIP was because OIP understood very well the billing mechanism.

19. The lump sum payment method provided for in Contract PTD/127/0065-96 (the initial contract) was discontinued with effect from 28 May 1999 in the successor contract. The change was a consequence of Amendment 8 of the original contract.

Overpayment of monthly invoices needs to be recovered

20. **Paragraph 10** states that the contractor had overcharged by approximately $370,000, on short and excess stationing of staff. Except for the 1999 invoice where Saybolt billed for 31 June 1999, there did not appear to be any evidence of over billing. The invoices were in line with the attendance records. It would seem that the auditors have only indicated the first 28 days of the month shown on the attendance record, and ignored the 29th, 30th and 31st day of the previous month, in determining the days of attendance. The other billing errors found were for December 2001, where Saybolt billed for 421 days for Oil Inspectors against 422 shown on the attendance sheet, so undercharging by one day, and June 1999, where a wrong code was used on the attendance sheet, although this did not have a financial consequence.

21. Regarding the short stationing of staff, as the invoices (since 29 May 1999) were based on staff as per the attendance sheet, no adjustment was required to the invoice for contracted staff that were not on duty, as the invoice did not include any charge for an absent Saybolt staff member. As noted above, irrespective of the maximum number of oil spare parts inspectors allowed into Iraq, during the initial stages of that programme monitoring oil spare parts and equipment provided under the programme, the contractor only deployed number of staff sufficient to effectively carry out the requirements of the Committee, as there was, in the initial period, an obvious time delay in ordering and the actual arrival of the oil spare parts and equipment. It would, thus, appear that the auditors did not differentiate between Saybolt's responsibilities.

Communication charges by the Contractor have been excessive

22. **Paragraphs 11 and 12** state that the tariff structure of the contract include communication expenses which is about 21 per cent of the total contract amount and that the Contract did not provide for any requirement to justify the expenses incurred through the use of a satellite communication system (Satcoms). The Report also states that the "UN did not consider alternative options such as using the UN telecommunication system, which would have reduced the communication expenses significantly, apart from being transparent in terms of identification of all calls including personal ones..."

23. The auditors did not seem to take into consideration the geography of Iraq, the location of the sites where the independent inspection agents are stationed, the logistics and difficulties, particularly political, which would have been involved in extending the UN telecommunication system to the various locations. It should be borne in mind that the United Nations has been

encountering considerable difficulties with the Government of Iraq in even importing replacement and or spare parts for existing UN communication establishment in Iraq.

24. Also, it must be borne in mind that it is essential that the independent inspection agents transmit their reports most expeditiously from the location where they are based, using communication not limited to the various Satcom units alone. Furthermore, there is daily on-line time from Saybolt's headquarters to the various locations in the field, to transmit data such as the authorization documentation for crude oil loadings, as well as, communication with UN Headquarters, as appropriate. Finally, it should be noted that "on-line" costs was renegotiated in the current contract, PD/COI 14/00, resulting in substantial savings on communication costs.

OIP needs to recover personal phone calls made by the Contractor's staff

25. **Paragraph 14** states that Saybolt's "internal policy is to allow each of its staff members free private telephone calls totaling up to 45 minutes per month. In Turkey, it was ascertained that staff members were not charged at all for personal calls, as these were not substantial in the Contractor's view. Since the total communications cost is included in the man-day cost structure, private telephone calls of the Contractor staff members are being charged to OIP."

26. The auditors seem to have confused the cost structure with the agreed billing procedure. As the contract is all-inclusive daily fee, the only mechanism for charging would be attendance on site of the contracted personnel and satisfactory performance of their duties.

27. The contract was awarded to Saybolt based on competitive tender and there is no evidence that alleged communication costs for private calls are charged to OIP. It must also be mentioned that the State Oil Marketing Organization (SOMO) has relied for quite some time upon Saybolt's communication systems, particularly after the military action in 1998. All costs involved amounting to USD 6,000 per month were absorbed by the contractor (Saybolt).

28. However, the points raised in the Report regarding the cost structure could be utilized in the negotiations for the next contract.

Accommodation and local transportation charges included in man-day billing rate have been excessive

29. **Paragraphs 16 and 17** state, *inter alia*, that at Zakho and Mina-al-Bakr, the Government of Iraq had provided accommodation for the Contractor's staff, and at Zakho, SOMO had also provided two cars for local transportation.

30. With regard to questions related to costs for accommodation, transportation, communications, etc., in Iraq, it is a well-known fact that these types of expenses to be incurred in Iraq would have to be compensated, but under the restrictions of sanctions, no payments could be made within Iraq in any other currency but Iraqi dinars. This has led to special arrangements by the contractors, not just Saybolt, to ensure that these services, etc., are provided, as required.

Transport costs provided for in the Contract have been charged

31. **Paragraph 18** states that "notwithstanding specific provisions in the Contract to the contrary, amendment number three provided for computer equipment for two spare parts inspectors at a cost of $17,800. Furthermore, as per the proposal of the Contractor, dated 19 September 2000, the cost of vehicles for spare parts inspectors was also authorized at $39,000. In this regard, we note that the man-day rate provides for transportation costs of 2.85 per cent. In our opinion, adequate provision was made in the Contract for transportation and no justification was given for amending the Contract to provide additional transport. This arrangement was not transparent and appeared to double charge the UN for these costs."

32. To facilitate the execution of the contract, it was decided that Saybolt could purchase three vehicles and operate them independently and the vehicles would remain the property of the United Nations. Because of the urgency of the need, it was further decided to purchase vehicles that were immediately available, that happened to have different colors and prices.

Non-expendable equipment purchased by the Contractor had not been adequately accounted for

33. **Paragraph 20** states that "the UN had authorized the Contractor to purchase equipment including vehicles, and communication equipment like satcoms, computers and software. We found that the equipment paid for by the UN did not have any UN asset number affixed and had never been inspected by the UN. Furthermore, the equipment was not entered into OIP's inventory system, and there had been no periodic checks on these assets as required by UN financial rules."

34. The contract is all-inclusive, that is to say, inclusive of the equipment purchased by the contractor. In this regard, the communication equipment, computers and software are not UN property, and therefore there is no corresponding requirement for an inventory.

Charges for additional services provided by the Contractor have been excessive and inadequately monitored

35. **Paragraphs 21 to 25** state, *inter alia*, that OIP accepted cost proposals from the contractor for additional services "without any evidence of price negotiations or tests of reasonableness. Moreover, payment for these services had been made without documentation to support the invoicing such as original bills for purchases, tickets, vouchers, etc."

36. The auditors do not seem to have understood clearly the nature of the work of OIP and the very sensitive and often most urgent requests by the Security Council and its Committee. The proposals referred to by the auditors relate to specific survey missions that were undertaken at the specific request of the Security Council within a very tight timeframe. The proposals by the contractors are "all-in", i.e., including all relevant personnel for technical activities and analysis, as well as for ancillary services, such as report writing, presentations to the Security Council Committee, etc. In addition to the demands by the Security Council, the Government of Iraq would also have had to agree to the presence of any contractor, and the Government's experience with Saybolt presented the United Nations with a considerable advantage - one that cannot be cost evaluated - and rendered the missions much more expeditious and effective.

37. It is also an erroneous assumption that OIP does not maintain comparative information to determine the "reasonableness" of proposals. OIP has always kept such information and has maintained on-going contact with professional societies and industrial organizations, and has

thus been able to discuss quickly with experts whether technical and financial proposals were reasonable.

38. Regarding the comments on the round-trip from Amman-Baghdad-Amman, it is conceded that the charges were overstated. Consequently, OIP is arranging a deduction of the overcharge, as appropriate.

39. The auditors do not seem to have taken into consideration the question of the time factor established by the Council and its Committee, which had to be taken into consideration in fielding missions. Fortunately, Saybolt had and was able to provide experts immediately from their rosters who were specialized in the areas necessary to undertake such missions, as well as having great technical familiarity with both the Iraqi oil industry as well as the oil industry in general in the region. Regarding the comments specifically on **paragraphs 24 and 25**, on "the reasonableness" of the charges, it is essential to keep in mind that the contract was based on an "all-in" cost proposal. Furthermore, the contractor's proposals were fully considered by the Oil Overseers.

The Contractor had not conducted "audit visits" as provided for in the Contract

40. **Paragraph 26** states that although the contractor's proposal dated June 1996, provided for a coordinator from Rotterdam to "audit" their operation in Iraq every six weeks, no audit had been conducted. On the assumption that the costs of the visits would have been included in the overall price proposed by the Contractor, the auditors consequently calculated 36 such missed visits.

41. The assumption is incorrect, as the technical head of the Iraq team for Saybolt regularly undertakes missions to Iraq and the cost of these visits is included in the overall cost of the contract. In addition, regular "audit" visits are undertaken by OIP experts, particularly those involved in spare parts and equipment for the oil sector, as well customs exports and the Oil Overseers. It should also be pointed out that it is more effective and efficient to have an overall team leader positioned within Iraq that has total responsibility for "auditing" functions on an on-going basis of review and action, than only periodic "audit" visits, which are, after all, *post facto*.

Services provided by UNOHCI have not been adequately charged to the Contractor

42. **Paragraphs 27 and 28** have been duly noted. As stated in paragraph 12 above, it may be useful for the auditors to review Section VIII of the MOU, concerning Privileges and Immunities.

B: Monitoring Contractor's performance

OIP officials charged with monitoring the Contract had not made inspection visits to Iraq

43. Regarding the comments on **paragraphs 29 and 30**, it should be noted that the contract is being executed in a highly sensitive political environment. As has been already stated, in order not to compromise UNOHCI's mandate, it was decided to administer the contract from Headquarters. OIP maintains oversight of the activities of Saybolt on a daily basis through reporting as well as daily consultations with Saybolt, the Oil Overseers, as well as the OIP group of experts on oil spare parts.

D: Contract Issues

Need to separate the cost of Contractor's equipment from the man-day fee structure

44. **In paragraphs 31 to 37**, and the auditors' corresponding recommendations, the Report discusses the cost of equipment purchased under the contract with Saybolt. While the comments are too vague to constitute a valid finding, it is clear that the auditors did not take into full consideration the ongoing maintenance, repair and replacement costs that arefactored into the contract as well, when they speak of onetime costs for equipment and recommend reimbursement by Saybolt. Furthermore, had the auditors been in touch with Saybolt's headquarters, they could have received the information regarding the cost of "some of the equipment", as the auditors have put it.

Scrutiny of CVs of Contract personnel have been ineffective

45. It would seem that the auditors did not fully understand the background of the issue of early pensioners. It was originally foreseen that the contractor would identify overseers. That idea was subsequently cast aside. In the selection of staff assigned to monitor the crude oil exports from Iraq, one clearly needs experienced and motivated individuals capable of working efficiently in the most arduous conditions in Iraq.

46. It is also incorrect to state that CVs of contractor's personnel are not reviewed. Whenever Saybolt sent a recommendation, it was reviewed by the appropriate staff at OIP and then forwarded to the Oil Overseers in OIP, for their comments. OIP has at times raised a number of questions with regard to candidates proposed by Saybolt, for various reasons, including experience, language skills, and geographical distribution. This was all discussed during the daily contacts between Saybolt and OIP. Candidates were withdrawn by Saybolt following these discussions, and therefore there was no need for "rejection" by OIP.

47. In the memorandum, dated 15 April 2002, addressed to the Executive Director of the Iraq Programme, transmitting the Report, the Director of the Internal Audit Division, OIOS, has stated, *inter alia*, that OIOS considered recommendations 3, 4, 6, 8, 9, 16, 17 and 21, contained in the report "as being of critical importance". In light of the introductory remarks above, as well as the comments on specific paragraphs, it will be necessary to review each of the recommendations as stated hereunder:

> **Recommendation 3:** Establish a contract management unit in Iraq whose functions should include reviewing invoices' supporting documentation, verifying Contractor's attendance records, monitoring additional requests for equipment and services by the Contractor and providing input for evaluation of the services provided (AP01/30/6/003).

48. This recommendation fails to take into consideration the fact that this would require additional resources and staffing, which are extraneous to UNOHCI's mandate and would not necessarily be agreed to by the Government of Iraq. Furthermore, it should be borne in mind that UNOHCI is an integral part of OIP. We believe that the decision to manage the contract from Headquarters level was the right decision taken. We have the expertise within OIP at the

Headquarters, including the Oil Overseers and the group of oil spare parts experts with whom Saybolt has to work very closely, almost on a day-to-day basis.

> **Recommendation 4:** OIP management should recover the overpayment of $370,000 as indicated in Annex I, from the Contractor in subsequent billings (AF01/30/6/004)

49. This recommendation should be further reviewed by OIOS. The $370,000 seems to be significantly overstated. Ironically, Saybolt's review of its invoices revealed undercharging of approximately $19,000 that might cancel any overcharging.

> **Recommendation 6:** OIP management should in future contracts with the Contractor (or any other contractor) separate the communication expenses from the man-day tariff structure and reimburse these on presentation of detailed documentation (e.g. invoices from service providers) (AF01/30/6/006)

50. The recommendation is noted and will be taken into account for the negotiation of future contract proposals.

> **Recommendation 8:** OIP management should take steps to stop payment of personal telephone calls of the Contractor staff and recover the amounts overpaid which is estimated at $109,000 for the first nine phases of the programme (AF01/30/6/008).

51. The contract is an all-inclusive, and there is no evidence that the contractor has separately charged OIP for private calls. Further, it would be contrary to the terms of the contract to demand such reimbursement.

> **Recommendation 9:** OIP management should recover overpayments for accommodation and transportation of approximately $471,000 from the Contractor (AF01/30/6/009)

52. The contract is all-inclusive, therefore under the terms of the contract there is no reimbursement due.

> **Recommendation 16:** Implement procedures for procuring urgently required services, which should include: obtaining quotations from other suppliers; checking the reasonableness of quotations based on actual costs; and negotiating costs with the selected supplier (AF01/30/6/016).

53. As stated above, OIP maintains constant contact with professional societies and industrial organizations and is, therefore, current on the costs of services. However, the recommendation is noted.

> **Recommendation 17:** OIP management should obtain details of "audit visits" undertaken by the Contractor and if no such visits have taken place, recover an estimated amount of $270,000 for 36 such required visits up to phase nine (AF01/30/6/017).

54. It is more effective and efficient to have an overall team leader positioned within Iraq that have total responsibility for "auditing" functions on an on-going basis of review and action, rather than only periodic "audit" visits, which are after all *post facto*. In this regard, OIP does not consider that any recovery is due.

> **Recommendation 21:** OIP management should establish an appropriate approval process for candidates proposed by the contractor in accordance with the contract (AF01/30/6/021).

55. There are consultations between OIP and the contractor in the selection of candidates. However, consideration will be given to establish a formal procedure for conveying approval of candidates proposed by the contractor.

Annex

To: Dagfinn Knutsen/NY/UNOG@UNHQ
cc: sterne@un.org@UNHQ, Dileep Nair/NY/UNOG@UNHQ, Anna Halasan/NY/UNOG@UNHQ, Nnenna Uchegbu/OIP@OIP, Maurice Critchley/OIP@OIP, sevan@un.org

Subject: Re: Oil inspection contract audit

Mr. Knutsen,

I am not really impressed with your threat to publish your report which took you from March to August to prepare a draft. I had asked for sufficient time to prepare our comments thereon because first, you had given us a very short period to respond to a draft which is full of errors and assumptions, a draft which was prepared without taking into full account, let alone an understanding, of the relevant provisions of the Security Council resolutions concerning the oil for food programme. Nor did you discuss the matter with Saybolt itself at its headquarters level to clarify matters on which you have reached a conclusion wrongly.

Accordingly, apart from commenting on your draft recommendations and/or observations, we had to go thoroughly through your draft report in a way to proof read it for you. It was agreed that I would submit to OIOS a draft for our discussions first before finalizing it and send it to OIOS formally. I was waiting for your return from Iraq in order to arrange for Mr. Peter Boks of Saybolt to be present at our discussions. I now see from your e-mail threathening to publish the report unless you receive my response shortly. As I have stated above, I am not impressed with such threathe. I must state in no uncertain terms that if indeed you mean it, then you go ahead and publish it, as long as you are prepared to be fully accountable for your report. If you go ahead and publish it, however, you must also undertake to publish our comments thereon, in toto, either as a separate report or as an addendum thereto.

I should appreciate to receive a response as to how you wish to proceed in order for this Office to prepare its response either in the format of a separate document or as a draft non-paper as we had agreed prior to your departure for Iraq.

Sincerely yours,

Benon V. Sevan

To: Benon Sevan/OIP@OIP
cc: sterne@un.org
Dileep Nair/NY/UNOG@UNHQ
Anna Halasan/NY/UNOG@UNHQ

Subject: Oil inspection contract audit

Mr. Sevan,
As previously agreed a response to the above draft audit report was to be provided by 31 March 2002. This was the second extension given. Since a response has not been received we will be issuing the final report shortly.

Best regards,
Dag

One United Nations Plaza, Room DC1-1528, New York, NY 10017 Tel: 1 212 963 5767 Fax: 1 212 963 1984 http://www.un.org/Depts/oip

Peter Boks
04/05/2002 01:41 PM

To: "Maurice Critchley" <critchley@un.org>
cc:

Subject: Auditors report

Dear Maurice,

Unfortunately I have not been able to pay you a visit whilst I was in New York during the last few day's.

I understood however from Graham that you met with him and indicated that our reply to the auditors with respect to our tariff was not entirely correct. As you rightly mentioned the difference is USD 10.- per man per day instead of the USD 20.- we used in our calculations.

Perhaps we can discuss how to proceed on this, also as we have not taken into consideration the undisputed invoices.

If you can let me know your phone number, I will call you coming Monday.

Kindest regards,

Peter Boks

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http://www.saybolt.com/complaint.nsf/

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ANNEX 1

ANALYSIS OF SAVBOLT INVOICES

S023544

ANNEX 1

ANALYSIS OF SAVBOLT INVOICES

S023543

ANNEX I

ANALYSIS OF SAVBOLT INVOICES

		correct				
Apr 99	[illegible]	23 mandays charged extra for oil inspector as invoiced for 434 instead of 409 per attendance sheet. [illegible] the attendance sheet and invoice is in order.	66,420	23 mandays short at Ceyhan as 1 Insp. short from 1st to 22nd and 29th to 31st. Reasons for non-visits short and invoice is in order.	+/- 8,050	On the other hand, as agreed for 6 no. man days for 1/2/11/65 but have omitted which should have been 1,150,875.
						+/- 4200
Dec 99			425	1 spare Pts Insp. short on 1st. Although the contract allows all for 6 inspectors, the work load at that time required 5+ staff duration of	2,550	3 Spare Pts Insp. excess on 10th. 3 mandays extra for oil Insp. As 1 Oil Insp. excess on 18, 19th and 20th at Ceyhan. Given the local conditions, [illegible] inspectors, staff problems, the late, [illegible] in weather and/or workload, the undersigned forwards the above mode.
					6,412	On the other hand, as agreed the man was per day for of 1/2/11/65 but have omitted which should have been 1,150,875.
Nov 99	[illegible]	31 mandays charged extra for Sr. Spare Pts. Inspector as invoiced for 93 mandays instead of 62 per attendance sheet. [illegible] of the attendance sheet and invoice is [illegible]	20,460	31 mandays short for Sr Spare Pts. Insps. From 1st to 31st. 2 mandays short for oil Insps. As 1 Insp. short at Ceyhan on 18th and 1 short at Zakho on 27th. Although a contract allowed for 6 inspectors, the workload at that time required [illegible] in addition to the staff mentioned in the above [illegible]	4,466	4 mandays in excess for spare Part Inspectors commenced visits from 7th to 10th. 2 Oil Inspectors extra at Mina from 14th to 17th. 1 Oil Inspector extra at Zakho from 21st to 26th. Given the local conditions, [illegible] inspectors, staff problems, the late, [illegible] in weather and/or workload, the undersigned forwards the above mode.
					8,412	On the other hand, as agreed the man was per day for of 1/2/11/65 but have omitted which should have been 1,150,875.
Oct 99			1,470	2 mandays short for spare	10,234	15 mandays charged extra for oil

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ANNEX I

ANALYSIS OF SAVBOLT INVOICES

				31st. 58 mandays short for spare parts inspectors as 2 commenced short from 1st to 3rd, 10th to 11th and 3 short 6th to 9th. Although the contract allowed for 6 inspectors, the workload at that time required for staff duration of	10th & 11th (one each). 2 mandays extra at Ceyhan on 18th and 19th (One each). Given the local conditions, [illegible] inspectors, staff problems, the late, [illegible] in weather and/or workload. The undersigned forwards the above mode.
					3,410	On the other hand, as agreed the [illegible] was per day for of 1/2/11/65 but have omitted which should have been 1,150,875.
Total	[illegible]		[illegible]		102,334	

S023546

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME - BUREAU CHARGE DU PROGRAMME IRAQ

COMMENTS ON
THE AUDIT OF THE MANAGEMENT OF THE OIL INSPECTION SERVICES CONTRACT

An audit of the management of the oil inspection contract was conducted by OIOS from March through August 2001. A draft report (AF2001/30/6), dated 7 December 2001, with findings and recommendations, as well as, a request for time schedule for the implementation of accepted recommendation, was forwarded to Mr. Sevan, under cover of memorandum reference number AUD-7-1:31 (1753/01), of same date.

Following the Security Council resolution 986 (1995) and the MOU, Saybolt Eastern Hemisphere BV, (Saybolt) was awarded Contract PTD/127/0065-96, in August 1996, to provide the services of 14 individuals with "particular experience and qualifications to assist in monitoring the export of petroleum and petroleum products form Iraq". The contract was for an initial term of six (six) months, with an option of renewal for up to three (3) successive periods of six (6) months, on the same terms and conditions. Contract PTD/127/0065-96 was subsequently amended several times to provided for additional inspectors for oil spare parts, and groups of oil experts that undertook special assignment at the behest of the Security Council. Contract number PD/CO114/00 executed in June 2000 succeeded contract PTD/127/0065-96. Under the new contract, which is for one year, with an option of renewal for three (3) successive terms on the same terms and conditions, Saybolt would provide 20 inspection agents; 14 to monitor the oil exports and 6 for spare parts and equipment. The contract has been amended to provide for an increase in the number of oil spare parts inspectors from 6 to 8, bringing the total number of agents to 22.

The audit objectives as stated in the draft report are, *inter alia*, to assess OIP's management of the contract, determine if the contractor provides the required services in an economical, efficient and effective manner, and review the management of other services being provided by the contractor. A review of the draft audit report, against the stated objectives of the audit, would have to take into consideration the context in which the contracts were executed and administered.

Contracts are not executed in a vacuum. As indicated above, this particular contract is being carried out within a sanctions regime and managed in a politically sensitive environment. Any realistic assessment of the management of the contract would have to factor in these considerations. Yet, it would appear from the draft report that the audit was conducted without taking cognizance, either of the legal or political context of the contract which in turn influence its management. For example, the introductory paragraph of the Executive Summary state that "OIP should have considered utilizing UN staff to perform the oil inspection service as an alternative to hiring a contractor, which would have resulted in substantial savings." An action by OIP in this regard would not have been consistent with the Security Council resolution

986(1995) and the Memorandum of Understanding between the Secretariat of the United Nations and the and Government of Iraq on the implementation of the Security Council resolution 986(1995) (MOU). Annex II, paragraph 4, of the MOU expresaly provides for ***independent inspection agents*** to monitor Iraqi oil exports.

Various amendments of the contract were undertaken in response to the requests of the Security Council and its Committee established by resolution 661 (1990) that required urgent action. Fortuitously, the experience of the Government of Iraq with Saybolt presented the United Nations with a considerable advantage, one that cannot be cost evaluated, and which rendered the missions much more expeditious and effective.

The decision to manage the contract from OIP rather than UNOHCI was in order not to unduly compromise the latter's mandate. To the extent possible, efforts have been made by OIP to institute appropriate procedures that would ensure that the contractor fully discharges its contractual responsibilities. It is realistic, however, to acknowledge that political actions may affect the manner in which the contractor discharges its responalbilities. For example, it is common knowledge that oil exports are interrupted periodically. The contractor, who has complained that the Government has refused to allow any additional contractor staff on a permanent basis, therefore occasionally deploys more staff to cope with peak periods of work.

The auditors failed to avail themselves of vital consultations that would have been useful to them in their work. Thus the audit objectives were carried out without a proper understanding of the background to the contract, the contract itself and its management.

Although the auditors undertook site visits to some of the locations where the independent inspection agents are located, they did not visit Mina Al Bakr to witness first hand the very difficult conditions under which the independent inspection agents operate. In addition, there was no consultation between the auditors and OIP officials, nor with Saybolt (the contractor) headquarters that would have helped clarify for the auditors some of the contentious issues. An exit conference might also have helped had one been held.

Comments on specific audit findings and recommendations are proffered hereunder:

A: Monitoring of invoice payments and financial matters

Procedures have not been implemented to monitor invoice payments:

Paragraph 8 of the draft report stated, *inter alia*, that the "number of inspectors, whether for oil or spare parts, is the only measurable parameter by which the UN authorized payment to the contractor. Hence an accurate attendance record is essential to support the monthly invoices submitted by the contractor."

The real parameter to measure the performance of the inspectors, whether for the export of oil or the monitoring of spare parts, are the detailed reports of all activities under Saybolt's area of contractual responsibility which come to OIP daily, weekly, and in special cases, as required. It should also be noted that through Amendment number 1 to Contract number PD/CO114/00, the

spare parts

number of oil inspectors was increased from six to eight. Paragraph has the total number of inspectors as twenty. This error is significant as it influenced the subsequentfindings and recommendations.

Paragraph 9(i) stated that "a review of 19 monthly invoices and supporting documents found "deficiencies". Among the deficiencies stated is ambiguity of the attendance record which reflected "from arrival to departure Ammad". In the view of the auditors, payments should only be made for manning the locations in Iraq and Turkey.

Contract number PTD/127/0065-96 (the initial contract) determined the number of inspectors required at particular locations in Iraq and Turkey, and Article 7.1 provides for full payment for complete and satisfactory performance by the contractor of his obligations under the contract. As has been noted above, the contractor has on site more oil inspection agents than required under the contract, and is not being paid for the excess number. In that regard, it could be argued that once the requirement of satisfactory performance is met, the "deficiency" in the*attendance record* becomes a non-issue. Nonetheless, since December 2000 the *attendance record* has shown "Personnel Attendance on Location, from arrival to departure".

The draft report also illustrates that the auditors do not have a good understanding of the contract and the method used in the preparation of invoices by Saybolt. This misunderstanding led to a significant error in 'finding' that Saybolt overcharged some $370,000 for services provided during the period 29 May 1999 to 28 June 2001. The auditors confused the billing mechanism, seemingly thinking that Saybolt's billing was based on contracted staff levels and not on staff on site. And, on that matter, the auditors confused the contracted number of inspectors for oil spare parts and equipment. This is eight and not six as stated in paragraph 8 of the draft report.

There is a historical precedent in the preparation of invoices in line with the commencement date of the current contract. The invoice always covers the period between the 28th day of the previous month until the 29th day of the month the invoice is prepared. Thus, the invoice prepared at the end of June covers the last few days of May until the 28th of June inclusive. Reference is made in this regard to Amendment No. 8 to contract PTD/CON/127/0065/9, which covered the period 29th of May 1999 through 28th of November 1999, after which this invoicing scheme was implemented. A review of all invoices found one incorrect invoice issued for the month June 1999. This irregularity does not appear in any of the other invoices. No over billing occurred as a result of this split-month billing, except for the July 1999 bill that included "31 June 1999". This overcharge (17 Man days) will be deducted from a future payment. That the irregularity was not queried by OIP was because OIP understood the billing mechanism, which the auditors did not.

The lump sum payment method provided for in Contract PTD/127/0065-96 (the initial contract) was discontinued with effect from 28 May 1999 in the successor contract. Since June 1999, invoices have been accompanied by an attendance sheet.

Overpayment of monthly invoices needs to be recovered

Paragraph 10 of the draft report stated that the contractor had overcharged by approximately $370,000, on short and excess stationing of staff. Except for the 1999 invoice where Saybolt billed for 31 June 1999, there did not appear to be any evidence of over billing. The invoices were in line with the attendance records. It would seem that the auditors only indicated the first 28 days of the month shown on the attendance record, and ignored the 29th, 30th and 31st day of the previous month, in determining the days of attendance. The other billing errors found were for December 2001, where Saybolt billed for 421 days for Oil Inspectors against 422 shown on the attendance sheet, so undercharging by one day, and June 1999, where a wrong code was used on the attendance sheet, although this did not have a financial consequence.

Regarding the short stationing of staff, as the invoices (since 29 May 1999) were based on staff as per the attendance sheet, no adjustment was required to the invoice for contracted staff that were not on duty, as the invoice did not include any charge for an absent Saybolt staff. As noted above, irrespective of the maximum allowed spare parts inspectors, during the initial stages of this work the contractor only deployed sufficient staff to effectively carry out the requirements of the 661 Committee, as there is an obvious time delay in ordering and physical arrival of spare parts and equipment. It would, thus, appear that the auditors did not differentiate between Saybolt's responsibilities.

Communication charges by the Contractor have been excessive

Paragraphs 11 and 12 stated that the tariff structure of the contract include communication expenses which is about 21 per cent of the total contract amount and that the Contract did not provide for any requirement to justify the expenses incurred through the use of a satellite communication system (Satcoms). The draft report also stated that the "UN did not consider alternative options such as using the UN telecommunication system, which would have reduced the communication expenses significantly, apart from being transparent in terms of identification of all calls including personal ones....."

The auditors did not seem to take into consideration the geography of Iraq, the location of the sites where the independent inspection agents are stationed, the logistics that would have been involved in extending the UN telecommunication system to the various locations and also the political environment.

It must be noted that time is essential and the independent inspection agents have to transmit their reports from the location where they are based, using communication not limited to the various Satcom units alone. There is also daily on-line time from Saybolt's headquarters to the various locations in the field, to transmit data such as the authorization documentation for crude oil loadings. It should also be noted that "on-line-" costs was renegotiated in the current contract, PD/COI 14/00, resulting in substantial savings on communication costs.

OIP needs to recover personal phone calls made by the Contractor's staff

Paragraph 14 stated that Saybolt's "internal policy is to allow each of its staff members free private telephone calls totalling up to 45 minutes per month. In Turkey, it was ascertained that staff members were not charged at all for personal calls, as these were not substantial in the Contractor's view. Since the total communications cost is included in the man-day cost structure, private telephone calls of the Contractor staff members are being charged to OIP."

The auditors seem to have confused the cost structure with the agreed billing procedure. As the contract is all-inclusive daily fee, the only mechanism for charging would be attendance on site of the contracted personnel and satisfactory performance of their duties.

The contract was awarded to Saybolt based on competitive tender and there is no evidence that alleged communication costs for private calls are charged to OIP. It must also be mentioned that the State Oil Marketing Organization (SOMO) has relied for quite some time upon Saybolt's communication systems after the military action in 1998. All costs involved amounting to USD 6,000., per month were absorbed by the contractor (Saybolt).

However, the points raised in the draft report regarding the cost structure could be utilized in the negotiations for the next contract.

Accommodation and local transportation charges included in man-day billing rate have been excessive

Paragraphs 16 and 17 stated, *inter alia* that at Zakho and Mina-al-bakr, the Government of Iraq had provided accommodation for the Contractor's staff, and at Zakho, SOMO had also provided two cars for local transportation.

With regard to questions related to costs for accommodation, transportation, communications, etc., in Iraq, it is a well-known fact that these types of expenses to be incurred in Iraq would have to be compensated, but under the restrictions of sanctions, no payments could be made within Iraq in any other currency but Iraqi dinars. This has led to special arrangements being made by the contractors, not just Saybolt, to ensure that these services, etc., would be provided.

Transport costs provided for in the Contract have been charged

Paragraph 18 stated that "notwithstanding specific provisions in the Contract to the contrary, amendment number three provided for computer equipment for two spare parts inspectors at a cost of $17,800. Furthermore, as per the proposal of the Contractor, dated 19 September 2000, the cost of vehicles for spare parts inspectors was also authorized at $39,000. In this regard, we note that the man-day rate provides for transportation costs of 2.85 per cent. In our opinion, adequate provision was made in the Contract for transportation and no justification was given for amending the Contract to provide additional transport. This arrangement was not transparent and appeared to double charge the UN for these costs".

To facilitate the execution of the contract, it was decided that Saybolt could purchase three vehicles and operate them independently and the vehicles would remain the property of the

United Nations. Because of the urgency of the need, it was further decided to purchase vehicles that were immediately available, that happened to have different colors and prices.

Non-expendable equipment purchased by the Contractor had not been adequately accounted for

Paragraph 20 stated that "the UN had authorized the Contractor to purchase equipment including vehicles, and communication equipment like satcoms, computers and software. We found that the equipment paid for by the UN did not have any UN asset number affixed and had never been inspected by the UN. Furthermore, the equipment was not entered into OIP's inventory system, and there had been no periodic checks on these assets as required by UN financial rules".

Due to the political environment in which the contract is executed, it is not feasible to conduct physical inventory of the vehicles and equipment at site locations. However, OIP maintains a record of what has been purchased by Saybolt under the 2.2% account, and does not necessarily wish to cause unnecessary friction with the Government of Iraq.

Charges for additional services provided by the Contractor have been excessive and inadequately monitored

Paragraphs 21 to 25 stated, *inter alia*, that OIP accepted cost proposals from the contractor for additional services "without any evidence of price negotiations or tests of reasonableness. Moreover, payment for these services had been made without documentation to support the invoicing such as original bills for purchases, tickets, vouchers, etc"

The auditors seem not to have a clear understanding of the nature of the work of OIP and the very sensitive and often urgent requests by the Security Council and its Committee established by resolution 661 (1990). The proposals referred to by the auditors relate to specific survey missions that were undertaken at the request of the Security Council within a tight timeframe. The proposals by the contractors are "all-in", i.e., including all relevant personnel for technical activities and analysis, as well as for ancillary services, such as report writing, presentations to the Security Council Committee, etc. In addition to the demands by the Security Council, the Government of Iraq would also have had to agree to the presence of any contractor, and the Government's experience with Saybolt presented the United Nations with a considerable advantage - one that cannot be cost evaluated - and rendered the missions much more expeditious and effective.

It is also an erroneous assumption that OIP does not maintain comparative information to determine the "reasonableness" of proposals. OIP has always kept such information and has maintained on-going contact with professional societies and industrial organizations, and has thus been able to discuss quickly with experts whether technical and financial proposals were reasonable.

Regarding the comments on the round-trip from Amman-Baghdad-Amman, it is conceded that the charges were overstated. Consequently OIP is arranging a deduction of the

overcharge. But again it should be noted that the auditors seem not to have taken into consideration the question of the time factor, in that Saybolt was able to provide experts immediately from their rosters who were specialized in the areas necessary to undertake these missions, as well as having great technical familiarity with both Iraq and other countries in the region. And regarding the comments specifically on Paragraphs 24 and 25 on the reasonableness of the charges, it is essential to keep in mind that the contract was based on an "all-in" cost proposal.

The Contractor had not conducted "audit visits" as provided for in the Contract

Paragraph 26 stated that although the Contractor's proposal dated June 1996, provided for a coordinator from Rotterdam to "audit" their operation in Iraq every six weeks, no audit had been conducted. On the assumption that the costs of the visits would have been included in the overall price proposed by the Contractor, the auditors consequently calculated 36 such missed visits.

The assumption is incorrect, as the technical head of the Iraq team for Saybolt, Mr. Graham Brett, regularly undertakes missions to Iraq and the cost of these visits is included in the overall price of the contract. In addition, regular "audit" visits are undertaken by OIP experts, particularly those involved in spare parts and equipment for the oil sector, as well customs experts and the Oil Overseers. It should also be pointed out that it is more effective and efficient to have an overall team leader positioned within Iraq that have total responsibility for auditing functions on an on-going basis of review and action, than only periodic "audit" visits, which are after all *post facto*.

Services provided by UNOHCI have not been adequately charged to the Contractor

Paragraphs 27 and 28 have been duly noted.

B: Monitoring Contractor's performance

OIP officials charged with monitoring the Contract had not made inspection visits to Iraq

Regarding the comments on paragraphs 29 and 30, it should be noted that the contract is being executed in a politically sensitive environment. As has been already stated, in order not to compromise UNOHCI's mandate, it was decided to administer the contract from headquarters. OIP maintains oversight of the activities of Saybolt on a daily basis through reporting as well as daily consultations with Saybolt, the Oil Overseers, as well as the group of experts on oil spare parts.

Need for reduction in contract payment during "no work" periods

In paragraphs 31 and 32, the auditors opine that during times when oil is not being exported from Iraq, the contractors should not be paid. In this connection, it would be truly difficult to imagine any professional company of this type that would agree to such conditions in its contract with the United Nations. There is no way to know in advance when there will be a disruption in the oil exports, and it is illogical to expect that ships will wait until the

inspectors are back in place before they can load. To move inspectors in and out of Iraq on that kind of assumption would render the United Nations incapable of fulfilling its mandate in regard to monitoring of oil exports. The requirements of the Security Council and the Security Council Committee demand that a full time presence of inspectors be maintained in the designated sites.

Need to separate the cost of Contractor's equipment from the man-day fee structure

In paragraphs 33 to 35, and the auditors' corresponding recommendations, the report discusses the cost of equipment purchased under the contract with Saybolt. While the comments are too vague to constitute a valid finding, it is clear that the auditors did not take into consideration the ongoing maintenance, repair and replacement costs that are factored into the contract as well, when they speak of onetime costs for equipment and recommend reimbursement by Saybolt.

Scrutiny of CVs of Contract personnel have been ineffective

It would seem that the auditors did not understand the background of the issue of early pensioners. It was originally foreseen that the contractor would identify overseers. That idea was subsequently cast aside. In the selection of staff assigned to monitor the crude oil exports from Iraq, one clearly needs experienced and motivated individuals capable of working efficiently in the sometimes, arduous conditions in Iraq.

It is also not correct that that CVs of contractor personnel are not reviewed. Whenever Saybolt sent a recommendation, it was reviewed by the appropriate staff at OIP and then forwarded to the Oil Overseers for their comments. OIP has at times questioned the selection of candidates for various reasons, including experience, language skills, and geographical distribution. This was all discussed during the daily contacts between Saybolt and OIP. Candidates were withdrawn by Saybolt from time to time following these discussions, and so there was no need for "rejection" by OIP.

In-house versus outsourcing of services

As was stated in the introductory comments, the Memorandum of Understanding between the Secretariat of the United Nations and the and Government of Iraq on the implementation of the Security Council resolution 986 (1995), Annex II, paragraph 4, provides that the "sale of petroleum and petroleum products originating in Iraq will be monitored by United Nations independent oil experts appointed by the Secretary- General of the United Nations to assist the 661 Committee. The monitoring of oil exports will be carried out by independent inspection agents at the loading facilities at Ceyhan and Mina al-Bakr and, if the 661 Committee so decides, at the pipeline metering station at the Iraq-Turkey border, and would include quality and quantity verification. They would authorize the loading, after they receive the information from the United Nations oil experts that the relevant contract has been approved, and report to the United Nations".

It would therefore not be consistent with the above quoted provisions were the OIP to replace the independent inspection agents with United Nations personnel. It should also be pointed

out that nowhere in the United Nations is there an occupational group for petroleum engineers, experts or technicians. To create such an occupational group and 20 posts at the P-4 level for a temporary programme, and then subject those posts to the normal United Nations recruitment and placement procedures, would not be feasible. There is also the related cost of deploying these 20 P-4 staff members, i.e., transportation, accommodation, communication, etc.

In regard to the recommendations by the auditors, the memorandum forwarding the draft audit report stated, *inter alia*, that OIOS considered recommendations 3, 4, 6, 8, 9, 16, 17, 21, and 23 contained therein as being of critical importance. In light of the introductory remarks above, as well as the comments on specific paragraphs, it will be necessary to review each of the recommendations as stated hereunder:

> **Recommendation 3:** Establish a contract management unit in Iraq whose functions should include reviewing invoices' supporting documentation, verifying Contractor's attendance records, monitoring additional requests for equipment and services by the Contractor and providing input for evaluation of the services provided (AF01/30/6/003).

This recommendation fails to take into consideration the fact that this would require additional resources and staffing, which are extraneous to UNOHCI's mandate and would not necessarily be agreed to by the Government of Iraq.

> (i) **Recommendation 4:** OIP management should recover the overpayment of $370,000 as indicated in Annex 1, from the Contractor in subsequent billings (AF01/30/6/004)

This recommendation should be reviewed by OIOS. The $370,000 seems to be significantly overstated. Ironically, Saybolt's review of its invoices revealed undercharging that may cancel any overcharging.

> **Recommendation 6:** OIP management should in future contracts with the Contractor (or any other contractor) separate the communication expenses from the man-day tariff structure and reimburse these on presentation of detailed documentation (e.g. invoices from service providers) (AF01/30/6/006)

The recommendation is noted for the negotiation of future contract proposals.

> **Recommendation 8:** OIP management should take steps to stop payment of personal telephone calls of the Contractor staff and recover the amounts overpaid which is estimated at $109,000 for the first nine phases of the programme (AF01/30/6/008).

The contract is an all-inclusive, and there is no evidence that the contractor has separately charged OIP for private calls. Further, it would be contrary to the terms of the contract to demand such reimbursement.

> **Recommendation 9:** OIP management should recover overpayments for accommodation and transportation of approximately $471,000 from the Contractor (AF01/30/6/009)

The contract is all-inclusive, therefore under the terms of the contract, there is no reimbursement due.

> (i) **Recommendation 16:** Implement procedures for procuring urgently required services, which should include: obtaining quotations from other suppliers; checking the reasonableness of quotations based on actual costs; and negotiating costs with the selected supplier (AF01/30/6/016).

As stated above, OIP maintains constant contact with professional societies and industrial organizations and is, therefore, current on the costs of services. However, the recommendation is noted.

> **Recommendation 17:** OIP management should obtain details of "audit visits" undertaken by the Contractor and if no such visits have taken place, recover an estimated amount of $270,000 for 36 such required visits up to phase nine (AF01/30/6/017).

It is more effective and efficient to have an overall team leader positioned within Iraq that have total responsibility for auditing functions on an on-going basis of review and action, rather than only periodic "audit" visits, which are after all *post facto*. In this regard, OIP does not consider that any recovery is due.

> **Recommendation 21:** OIP management should negotiate with the Contractor to recover approximately $1 million paid for equipment in excess of its actual cost and to stop further payments for the equipment cost component in the current Contract (AF01/30/6/021).

This recommendation is rejected. OIP is bound by the terms of contract between Saybolt and the United Nations. However, the recommendation will be considered for future negotiations of contract proposals.

> **Recommendation 23:** OIP management should consider the option of engaging UN staff members at the appropriate level, which is clearly a much more economical alternative to contracting

Saybolt Eastern Hemisphere B.V. - Rotterdam

Memorandum

To	: Office of the Iraq Programme
Attention	: Mr. B. Sevan
Cc	: Ms. Stephani Scheer
From	: Peter W.G. Bolts
Subject	: OIOS Audit No. AF2001/30/6: Audit of the management of the oil inspection services Contract.
Date	: December 24, 2001

We refer to the draft audit reports as mentioned above, which we received on December 13, 2001. Although you mention in the covering note that the auditors spoke to us in Rotterdam, this is not the case. We only provided some information to our team-leader in Baghdad, in respond to questions addressed to him. At that time, we encouraged through our team-leader the auditors to contact us in Rotterdam. Unfortunately this never occurred.

Given the fact that the Executive Summary is overlapping the main body of the document, we will limit ourselves to the latter.

I. Introduction

In the introduction reference is made to our current contract, mentioning the present staffing levels. It should however be noted that Amendment No. 1 to Contract No. PD/CO114/01/00 allows us to deploy two additional spare parts inspectors. Given the fact that the GOI has refused to allow any additional staff on a permanent basis, we occasionally deploy more staff when considered absolutely essential to cope with peak periods of work. It must be underlined that under present circumstances the current requirements significantly exceed the allowed number of spare parts inspectors.

III. Audit Scope

Although we noticed that the auditors undertook site visits to some of the locations where our staff are located, they unfortunately did not visit Mina Al Bakr to witness first hand the very difficult conditions under which our staff are forced to operate, which we will refer to later. In addition, we underline that our Headquarters have not been directly contacted to discuss any of the contentious matters referred to in their report.

IV. Audit Findings and Recommendations

9 (i) Saybolt maintains throughout the year the following staff on site:

Ceyhan – Turkey	:	5 Staff members
Mina Al Bakr – Iraq	:	6 Staff members
Zakho – Iraq	:	3 Staff members

(ii) Given the fact that there is a historical precedent in charging, the invoice covers always the period between the 28th day of the previous month until the 29th day of the month the invoice is prepared. Thus the invoice prepared at the end of June covers the last few days of May until the 28th of June inclusive. After review of all invoices, we found one incorrect invoice, issued for the month June 1999. This irregularity does not appear in any of the other invoices reviewed.

10 (i) A review per invoice is attached for your reference.

(ii) Irrespective of the maximum allowed spare parts inspectors, during the initial stages of this work we only deployed sufficient staff to effectively carry out the requirements of the 661 Committee, as there is an obvious time delay in ordering and physical arrival of spare parts and equipment.

(iii) We refer to our review per invoice.

12 It must be noted that given the fact that time is essential, that our inspectors have to transmit there reports from the location where they are based. We are unaware that there are options to link in to the UN telecommunication system from locations such as Mina Al Bakr. In addition to that communication is not limited to the use of the various satcom units alone. There is also daily on-line time from our HQ in Rotterdam to the various locations in the field, to transmit data such as the authorisation documentation for crude oil loadings.

14. Essentially we feel that our contract has been awarded on the basis of a competitive tender.

16. OIP is well aware that Saybolt has subcontracted the services for transportation and accommodation within Iraq. Initially this was done directly with the Ministry of Oil, which was proven to be in contravention with UN regulations. It was then decided to subcontract this service through a company in Jordan, which to date still is the case.

17. For good order's sake there is no free transportation and/or accommodation within this contract.

18. The auditors refer to the provision of transportation to the spare parts monitors, which was originally arranged through UNOCHI and taken into consideration in our fee structure. When the United Nations concluded that this was proven an ineffective solution, it was decided that Saybolt could purchase three vehicles and operate them independently. The vehicles will remain the property of the United Nations. Saybolt has never quoted for the provision of transportation of the spare parts monitors.

20. A side-remark is that equipment purchased under this arrangement have in numerous cases been replaced by Saybolt. Are there any guidelines as to how we should cope with this?

26. Given the importance of this contract, it was decided that it would be more effective and efficient to appoint an overall team leader positioned within Iraq to have total responsibility for auditing functions on an on-going basis of review and action. In addition to that, visits were made by Executives from Rotterdam as and when required.

33. Essentially we feel that our contract has been awarded on the basis of a competitive tender. Side-remark is that equipment is an ongoing expenditure, such as laboratory consumables, replacing laboratory equipment, medical equipment, upgrading communication equipment and/or computers, gear for new staff etc. etc.

36. It would seem that the auditors did not understand the background of the issue of early-pensioners. This approach was chosen, when the proposal had to contain the provision of oil overseers as well. This requirement was however deleted, and therefore is irrelevant. In the selection of staff assigned to monitor the crude oil exports from Iraq, one clearly needs experienced and motivated individuals capable of working efficiently in the sometimes-arduous conditions in Iraq.

38. Again a side-remark: The United Nations in promulgating the UNSCR 986 decided to subcontract the monitoring of Crude Oil exports from Iraq, to a Worldwide independent specialised company. The appointment of the successful bidder was by competitive tender. In addition to the 20 inspectors on-site, a much larger pool of staff is needed to maintain the 7 day's per week 24 hours a day operation, which is common practice in the oil business. It goes without saying that conditions at Mina Al Bakr are far from ideal. This is illustrated in virtually every weekly report, which is published to the United Nations. Accordingly, it is not realistic to assume that staff is prepared to work at this platform on the conditions mentioned by the auditors.
Additionally, a specialised team of 4 full time employees is involved in the ongoing management of the project, and in giving advice and guidance to the OIP on all matters pertaining to the Oil Industry in Iraq.

for oil inspection services keeping in mind the relevant SCRs and MOU with the GOI (AP01/30/6023).

This recommendation is inconsistent with the relevant Security Council resolutions and the MOU.

ANALYSIS OF SAYBOLT INVOICES

ANNEX I

Audit. Oct 1997.

From: Peter Boks on 10/28/97 06:26 PM
To: Awedons@un.org
cc:
Subject: UN Audit

Steve,

Please find herewith our comments on your telefax dated 27 October 1997:

1) Letters of Credit.

Letters of Credit are often not opened until the last moment and have to be processed via BNP Paris, thence to their correspondent Bank in New York and then to the UN Overseers for their approval after which we are advised in writing and loadings are allowed to commence. We note the Auditors comments but feel that this is a subject that should be addressed by the Overseers.

We do all we can to assist, and remain in close contact with the Overseers on this matter to ensure that vessels are not delayed.

2) Trafigura Claim.

A number of points are raised in this section.

My letters to Catoni-Persa (dd May 26th 1997) and to J J Stephanides (dd 27 May 1997) address the issue of Saybolt working jointly for buyer as well as UN. It is a moot point whether Catoni-Persa working independently for the buyer creates a "conflict of interest", and captioned letter to J J Stephanides also advises that (in contradiction to the statement by the UN Auditor that acting as agent for the seller and buyer is not consistent with normal commercial practices) this is indeed a normal commercial practice.

If required we could furnish evidence of this procedure for perusal by means of commercial sale/purchase confirmations, between buyer and seller, which clearly
mention under the heading inspection:

quality/quantity to be determined by mutually acceptable independent inspectors,
whose findings to be final and binding for both parties, safe fraud or manifest
error, costs to be shared 50/50 buyer/seller.

3) Shell International Trading & Shipping - "Nikoloas" loading.

Our previous report to the UN advises the sequence of events regarding this loading.

The question from the UN Auditor seems to revolve around the statement "how a different crude was loaded"?

Our answer is as follows:-

3.1. The Botas terminal was originally designed primarily as a loading terminal.

3.2. There has never been more than one valve separation between

the discharge and the loading line systems, a factor which was noted during initial site visits regarding the metering systems.

3.3. The vessel "Gebze" was discharging, for the account of Tupras, during the initial stages of the loading of "Nikoloas".

3.4. On completion of "Gebze" discharge Botas approached the Saybolt team stating they had observed a 30,000 barrel shortage in received quantity from the vessel, and that they were concerned as to it's eventual destination.

3.5. The Saybolt team initially checked the valves separating the discharge line used for the "Gebze" from the loading line used for the "Nikoloas". The one valve separating the two systems was registering closed on the terminal electronic system but proved to be slightly open owing incomplete seating.

3.6. We then stopped the "Nikoloas" loading, ullaged (measured) the ship's tanks and checked the shore tanks allocated for the UN loading. This exercise revealed that, at that stage, there was a 30,000 barrels apparent gain on the "Nikoloas". The UN team then contacted Rotterdam, and Rotterdam the buyer, advising them of the problem.

3.7. After some deliberation it was decided that the cargo already loaded to the "Nikoloas" should be discharged back to shore, replaced with uncontaminated oil, and eventually to be used in a forthcoming transfer to the Kirrikale refinery.

COMMENT

The Botas terminal was not specifically designed for the use it is being put to. It is a state of discepair and the UN/Saybolt team acts to its best ability bearing in mind these contraints, as there are no functioning metering systems and the storage tank calibrations are old and unreliable. The agreed format for monitoring loaded volumes is vessel's figures adjusted for VEF and OBQ.

In the case of the "Nikoloas" the UN/Saybolt team carried out their monitoring role and when the problem became apparent, as a result of their intervention, Saybolt took steps to advise all parties to ensure that the "Nikoloas" loading was in line with UN requirements.

Kindest regards,

Peter Boks

Saybolt International B.V. - Rotterdam

Telefax

SAYBOLT
A Core Laboratories Company

Fax number receiver : 00 1 212 963 1300
To : United Nations Headquarters, New York
Attention : Mr. Steve Avedon
From : Saybolt International B.V.

Subject : UN Audit reply
Date : October 27, 1997

Dear Steve,

In reply to your fax dated 24 October 1997, we would like to comment as follows;

Which of the two figures is closer to the actual quantity?

In view of the non-functional metering system, it is, as you know our procedure to measure:

1. The storage tanks before and after loading of a cargo (for reference and check).

2. The vessel is measured after loading, whereas the vessel's measurements are adjusted by Vessel's Experience Factor (VEF) and On Board Quantities (OBQ).

The measurements described under point 1. serve as reference and check, and the figures are recorded, and archived, against possible future requirement but owing to the relatively long time span since the storage tanks were independently calibrated the control mechanism described under point 2. is considered the more accurate determination, in the absence of accurate metering facilities, for monitoring purposes.

The difference of 26,851 barrels GSV can in our opinion be attributed to the loading of the Tv. "Histria Prestige". This vessel arrived in Ceyhan after an extended period in dry dock during which alterations were made to the deck ullage points to allow use of MMC-type measuring apparatus. The vessel's calibration charts, as presented, were not adjusted for this structural alteration.

On completion of loading there was an apparent difference between the vessels figures (by reference to calibration charts) and shore figure, as follows: -
Vessel 986,182 barrels
Shore 958,106 barrels
Which equates to 28,076 barrels or 2.85 %.

How has the difference been adjusted?

After consultations with the UN Oil overseers and local SOMO representatives it was decided not to deviate from the procedure and that on establishment of the outturn of the vessel an adjustment with the client would be made. (Either by volume on a future lifting, or financially.

SAYBOLT
A Core Laboratories Company

This adjustment is in view of the difference (26,851 barrels) over the entire period in our opinion justified.

The adjustment has however as far as we know not yet been made.

Did not the buyers claim refund?

Obviously the buyers are, as a rule not involved in the measurements that are done for reference/check by Saybolt in conjunction with their tasks as UN observers. Moreover the bill of lading is based on the vessel's measurements adjusted by Vessel's Experience Factor (VEF) and On Board Quantities (OBQ).

However in the case of Tv. "Histria Prestige" the buyer has claimed refund, as they noticed consistent with the differences observed in loadport, an outturn loss at the discharge port.

Why difference arose?

Explanation is given earlier.

Could Saybolt have prevented this difference?

Separate from the acceptable differences which will always occur, in view of the relatively long time span since the storage tanks were independently calibrated or measurement error's with temperature readings or soundings, the difference in the case of Tv."Histria Prestige" exceeded the acceptable difference and it was brought to the attention of all parties concerned. Subsequently it was decided not to deviate from the procedure.

It is therefore that Saybolt can not be blamed for this difference.

Steve, I trust this answers the queries, please contact me in case you need some clarification.

Best regards,

Peter Boks

(22)

Forward with dy 9.30

To: Mr. J. Stephenson
Dy. Director (OFA)
UNHQ/NY
Room: S-2478

From: BB Pandit
Team Leader, External Auditor
Room No. C-480
Tel: 963-1353
Fax No.: 212-963-9011

Date: 22nd Oct. 1997

Subject: *CHECK OF OIL CONTRACTS*

Ref: UNAUDIT/ESCROW/7

TO BE REPLIED: WITHIN 2 DAYS.
NO. OF PAGES 12.

During our test check of records related to sale of Iraqi oil, we noted that in all 81 contracts (in some contracts repeat loadings effected and separate LOCs opened for each shipment) signed between SOMO and various oil companies had been approved by SC Committee 661 in between 12 Dec. 96 and 8 May 97 during the initial 180 days of the programme.

We noted that the general scheme & procedures laid down in UNSCR 986 (1995) for approval of oil contracts including advising SC Committee 661 on the pricing mechanism were in place as also reported by the Secretary General in his report of 2 June 97 to the Security Council.

Pursuant to the SCR 986 (1995) the sum of proceeds from sale of Iraqi oil including financial and other transactions directly related to it was not to exceed a total of one billion United States Dollars 90 days and this provision was to remain in force for an initial period of 180 days. Pipe line tariff charges for the transport of Iraqi petrol and petroleum products in Turkey were covered by sale of an additional amount of oil.

We note from accounts that the total proceeds from sale of Iraqi oil during initial 180 days period amounted to 2.011 Billion US$ and the proceeds from sale of additional oil to meet pipe line fee amounted to 138 million US$.

The pricing mechanism is related to the crude and the destination and is adjusted up or down during the period of contract in the same direction and magnitude cent for cent per barrel as the changes in the published price for Arab light crude oil as announced by the producer applicable for the same destination and month of loading. The prices are related to the quotations as published in the PLATTS Crude oil Marketwire.

(21)

We noted in the test check that there was by and large no inconsistency in the pricing mechanism.

As per Article 6 of Section one of the sale contract the LOC is to be established, confirmed and accepted at least seven days prior to loading date. We noted that this requirement had not been observed in all cases. In response to our observation we were informed that no loading had been permitted without a confirmed LOC.

During our discussion with the officers of the SOMO at Bagdad, they were critical of the LOC procedures. Their analysis had revealed that 80 per cent delays in shipments of oil were due to delay in confirmation of LOCs.

We feel that time is the essence of this provision. We recommend that the LOCs be established, confirmed and accepted at least seven days prior to loading date in accordance with the provisions of the sale contract.

We were informed that two claims, details here below, had been made against SOMO.

Claim of Trafigure Ltd. - LC # 703831

The loading of the above vessel at Ceyhan was completed on 26 March 97 for the account of Trafigura Beheer BV, Amsterdam against Contract # H/81/13 and LC # L703831. In the absence of metering system the vessel figure of 986,182 barrels was taken as loaded quantity and invoiced by SOMO. Vessel quantity on arrival at port of destination was reported as 990,153 barrels. Trafigure Ltd., however, claimed to have been overcharged by 28,000 barrels approx. valuing US$ 1,000,000.

We note that the Treasurer had on 18 April 97 suggested reservation of US$ 1,000,000 till the claim was resolved. This had not however been done. We were informed that the inspection agents viz. SAYBOLT had reached an agreement on the exact quantity of oil shifted and therefore, there was no need to reserve funds as suggested earlier.

We note from the oil overseers letters dtd. 25 April 97 that the claim was to be settled by SOMO and Trafigure and feel that till such settlement the reservation of US$ 1,000,000 should have been made. We recommend that the anticipated liability be provided in accounts.

We further note from the overseer's letter dtd. 25 April 97 that the Inspecting Agents viz. SAYBOLT work at the same time for the UN and the buyer. While giving there views, the Legal Division opined on 16 May 97 that for SAYBOLT to act as Inspection Agent for both the UN and the purchaser creates a conflict of interest which cannot be permitted. This was more important as the contract with SAYBOLT, SCR 986 and the MOU described the Inspection Agents as 'Independent' and representing the purchaser violates that status. They further considered that such activities contravened the provisions of the

general terms and conditions of contract which requires the contractor to refrain from any action which may adversely affect the UN and to fulfil its commitments with the fullest regard to the interest of the UN. the Legal Division had further recommended to get a written confirmation from Saybolt that they would comply with the requirement of not representing purchasers.

We may be informed of the action taken by the UN Secrt. in this regard.

To our understading also, action of Saybolt to act as an agent for both the seller and the buyer is not consistent with the normal commercial practice.

2. Shell International Trading and Shipping Co. - Nikolaos loading at Ceyhan

We were informed that the loading of contaminated cargo belonging to Turkish State Oil Co. (TOPRAK) was noticed by the buyer during the course of loading in March 97. Nearly full cargo load had to be pumped back ashore and the vessel reloaded. This involved additional time and use of additional bunkers throughout the pumping operation. For the detention of vessel at the loading port the buyer had lodged on 9 May 97 a claim of 90,473 US$ with the UN. We note from the Oil Overseer's letter dated 28 May 97 that the claim was not entertained by the UN, not being a party to the oil sales. The company was however, advised to address the claim to the seller.

In view of the responsibilities of SAYBOLT mentioned in Article 4 of the contract between the UN and the SAYBOLT, they are required to monitor the export of Iraqi oil.

We fail to understand how a different crude was loaded with the Inspection Agents stationed to monitor on site the movement of oil. This may be clarified to us.

****

File No : A:\obj12.wpd

9) R586 INVESTIGATIONS
APR/AUG 2001

Section 1 - Summary

Subject:	"Exeter" loading investigations
Dates:	May 16th, 2001 and August 27th, 2001
Location:	Mina al-Bakr, Persian Gulf
Description:	Actions taken

December 20th, 2001

Core Labs Administration
U.S. Headquarters,
6316 Windfern – 77040
Houston
Texas
U.S.A.

FAO: Kinga Doris – Assistant General Counsel

RE: T V "Essex"

Dear Kinga,

As per our telephone conversation of yesterday, regarding the matter of the vessel t.v. "Essex", please find attached copies of documents from the working file held in Rotterdam.

Should you need any assistance on the identification of any of these documents please feel free to call me. I am normally based out of the Saybolt Crude Division in London, but will be traveling in Iraq during the earlier parts of January, 2002.

Kindest regards,

Graham Brett

cc Peter Boks, Saybolt, Rotterdam

Graham Brett
11/23/2001 04:49 PM

To: NB12@Saybolt, NB13@Saybolt
cc: Peter Boks@Saybolt, richard_barnes@saybolt.com, Mannus Jansen@Saybolt
Subject: REVISED DAILY REPORTING PROCEDURES - CEYHAN & MINA AL-BAKR

Gentlemen,

You will no doubt all be aware of the alleged illegal loadings from Mina al-Bakr
involving the vessel "Essex", and the revised
procedures that have been
instituted at both Ceyhan and Mina al-Bakr to
prevent the possibility of such occurrences in
the future.

Bearing in mind that the Saybolt monitoring
operations at Ceyhan and Mina
al-Bakr are under the closest scrutiny from the
United Nations, it is
particularly disappointing to have to advise you
that the quality of reporting to this office and
to the UN Oil Overseers has, of late,
significantly deteriorated.

Examples, in no particular order of merit, are:

1) Time logs with no completion, or sailing,
times
2) Sailing wires with incorrect Bill of Lading
dates, and incorrect notification
of barrels loaded. The Office of the Iraq
Program of the United Nations has written to
Saybolt on this matter.

I do not have to labour the point that this
level of performance is unacceptable.

We are a professional company appointed by a
major humanitarian concern to carry
out an important task. If we are not seen to act
professionally, especially so
soon after alleged illegal activities have taken
place under our very noses,
then we will all suffer the consequences.

In our monitoring function we are the "eyes and
ears" of the United Nations, and the quality and
content of our reporting function is the only
benchmark by which the United Nations can judge
our performance. Once discredited, confidence is
hard to rebuild.

Since the inception of the "Oil for Food"
program in late 1996 Saybolt has done a
tremendous amount of good work. Unfortunately it
is only our mistakes that are noticed, and of
late there have been too many. Mistakes and
omissions will not be tolerated.

THE FOLLOWING ACTIONS WILL NOW BE TAKEN:

A) As from receipt of this message, both the
Ceyhan and Mina al-Bakr operations will advise,
as part of the daily report, comprehensive time

log activities per vessel covering at minimum the following times, split over a number of daily entries as they occur. I expect to see all these times reported; further pertinent details regarding de-ballasting etc can be added as appropriate:

END OF SEA PASSAGE/ARRIVAL AT ANCHORAGE
NOTICE OF READINESS TENDERED
PILOTS ON BOARD
LEFT ANCHORAGE
FIRST LINE ASHORE
ALL FAST BERTH No ?
NOTICE OF READINESS RECEIVED
GANGWAY IN POSITION
FREE PRATIQUE GRANTED
OBQ SURVEY COMPLETED
LOADING ARMS/FLEXES CONNECTED
COMMENCED LOADING
COMPLETED LOADING
LOADING ARMS/HOSES DISCONNECTED
ULLAGES AND SAMPLES COMPLETED
DOCS ON BOARD
VESSEL SAILED

B) As from receipt of this message, the sailing wire to the UN Oil Overseers MUST be counter-checked by at least one other member of the monitoring team before despatch.

C) The sailing wire will now be signed by two members of the Saybolt monitoring team, as follows:
C.1) The inspector who prepares it, and,
C.2) The inspector who checks it.

D) Whenever you have a problem, need advice, or require guidance on anymatter, call, I, or Peter Boks, are always available; we need to know about, and react to, problems BEFORE they happen, rather than after.

For the record, my contact numbers are:
Office 44-207-222-0171
Mobile 31-653-975896
Home 44-1707-271794
E-mail
graham.brett@saybolt.nl

We have an important job to do, and we must all ensure we work together as a team to provide the level of professional service expected of us.

Thank you,

Graham Brett

If you are satisfied with our services do tell others. If you are NOT satisfied,

please do tell us:
http://www.saybolt.com/compleint.naf/

All our activities are carried out under our general terms and conditions and in accordance with our code of practice. The general conditions can be consulted at http://www.Saybolt.com/ ,and will be sent upon request free of charge.

The information in this message is confidential and may be legally privileged. It is intended solely for the addressee(s). Access to this message by anyone else is unauthorised. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. All results and data contained in this document are subject to our general terms and conditions and are valid only when supported by an original document.

Nov 22, 2001

You will no doubt all be aware of the alleged illegal loadings from Mina al-Bakr involving the vessel "Essex", and the revised procedures that have been instituted at both Ceyhan and Mina al-Bakr to prevent the possibility of such occurrences in the future.

Bearing in mind that the Saybolt monitoring operations at Ceyhan and Mina al-Bakr are under the closest scrutiny from the United Nations, it is particularly disappointing to have to advise you that the quality of reporting to this office and to the UN Oil Overseers has, of late, significantly deteriorated.

Examples, in no particular order of merit, are:

1) Time logs with no completion, or sailing, times
2) Sailing wires with incorrect Bill of Lading dates, and incorrect notification of barrels loaded. The Office of the Iraq Program of the United Nations has written to Saybolt on this matter.

I do not have to labour the point that this level of performance is unacceptable.

We are a professional company appointed by a major humanitarian concern to carry out an important task. If we are not seen to act professionally, especially so soon after alleged illegal activities have taken place under our very noses, then we will all suffer the consequences.

In our monitoring function we are the "eyes and ears" of the United Nations, and the quality and content of our reporting function is the only benchmark by which the United Nations can judge our performance. Once discredited, confidence is hard to rebuild.

Since the inception of the "Oil for Food" program in late 1996 Saybolt has done a tremendous amount of good work. Unfortunately it is only our mistakes that are noticed, and of late there have been too many. Mistakes and omissions will not be tolerated.

THE FOLLOWING ACTIONS WILL NOW BE TAKEN:

A) As from receipt of this message, both the Ceyhan and Mina al-Bakr operations will advise, as part of the daily report, comprehensive time log activities per vessel covering at minimum the following times, split over a number of daily entries as they occur. I expect to see all these times reported; further pertinent details regarding de-ballasting etc can be added as appropriate:

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NOTICE OF READINESS TENDERED
PILOTS ON BOARD
LEFT ANCHORAGE
FIRST LINE ASHORE
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DOCS ON BOARD
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C.1) The inspector who prepares it, and,
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D) Whenever you have a problem, need advice, or require guidance on any matter, call. I, or Peter Boks, are always available; we need to know about, and react to, problems BEFORE they happen, rather than after.

For the record, my contact numbers are:

Office	44-207-222-0171
Mobile	31-653-975896
Home	44-1707-271794
E-mail	graham_brett@saybolt.nl

We have an important job to do, and we must all ensure we work together as a team to provide the level of professional service expected of us.

Thank you,

Graham Brett

Peter Boks/Seybolt/NL
02/18/2002 04:45 PM

To seybolt_portugal@ip.pt
cc Graham Brett/Seybolt/NL@Seybolt
bcc
Subject Mr. [redacted] Oliveira

Dear Jorge,

Unfortunately, we have to discontinue Mr. Armando [redacted]'s participation in the UN Program. Please let me know if you have an alternative candidate.

The reason is a recent error of judgement, which we can not tolerate from a team leader.

I look forward to hearing from you.

Kindest regards,

Peter Boks

If you are satisfied with our services do tell others. If you are NOT satisfied, please do tell us:
http://www.seybolt.com/complaint.nsf/

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Graham_Brett@seybolt.nl
02/27/2002 05:36 PM

To seybolt_portugal@ip.pt
cc Peter Boks/Seybolt/NL@Seybolt, Richard Barnes@Seybolt
bcc
Subject MESSAGE FROM PETER BOKS

FAO MR JORGE GONCALVES

Dear Jorge,

As per message from Peter Boks regarding Armando [redacted], please be advised that the matter to which he refers involves the loading of the vessel "CLOVELY" at Mina al-Bakr. The Letter of Credit approval for this vessel expired before the vessel berthed, and Armando and I discussed this matter after which I talked at some length with the United Nations Oil Overseers in New York, and then sent the message below to Armando. The UN Oil Overseers instructed me that this vessel should not commence loading without the necessary Letter of Credit amendment, and to keep them advised.

I think you will agree that the message is quite unambiguous - it says:

1) The L/C approval for the "CLOVELY" has expired on Feb 13th, 2002, and this vessel may not commence loading until an amendment has been received from the UN Oil Overseers.

The message further says that "if you have any problems, call me".

Nevertheless I came into my office on the following day to find that the vessel "CLOVELY" had commenced loading the morning of Feb 15th. At this time there was no Letter of Credit amendment, and I had not received any call at home.

I therefore called Armando and asked him why the vessel had commenced loading. He stated that SOMO had decided to load the vessel although he had advised them that this was not agreed to by the UN Oil Overseers , and that he had issued a "statement of facts" to SOMO which had been accepted.

I asked him why he had not called me. He said he did not think there was anything I could do about the situation. I asked him on what grounds he felt he could make decisions on behalf of the United Nations. He said he was sorry that he had not called me as instructed.

The situation then required me to call the United Nations Oil Overseers in the middle of their night-time to advise them that, contrary to their specific instructions, the vessel had commenced loading without them being informed.

The amendment to the Letter of Credit was not available until Saturday am CET.

I think further comment would be redundant.

Kindest regards,

Graham Brett

Graham Brett

14/02/2002 17:22
To: NB13@Saybolt
cc: Peter Boks@Saybolt

Subject: L/C's

Dear Armando,

Reference our recent conversation please note that I have discussed the Letter of Credit approvals for the vessels "CLOVELY" and "FRONT CENTURY" with the UN Oil Overseer Alexander Kramar as follows:

1) The L/C approval for the "CLOVELY" has expired on Feb 13th, 2002, and this vessel may not commence loading until an amendment has been received from the UN Oil Overseers.

2) The L/C approval for the "FRONT CENTURY" is valid until Feb 14th, 2002 and if the vessel is load-ready before this approval expires (ie 23:59 hrs Eastern Standard Time and 08:00 hrs local time Iraq) it may commence loading. If the vessel is not ready to commence loading by this time then it will have to await an amendment to the L/C approval.

If you have any problems, please call me at home (my mobile has ceased to function so please call the land-line on 44-1707-271794).

Kindest regards,

Graham Bratt

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http://www.saybolt.com/complaint.nsf/

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If you are satisfied with our services do tell others. If you are NOT satisfied, please do tell us:

661 COMMITTEE MEETING
UN NY NOV 5 TO 8TH, 2001
ACTION PLANS

THINGS TO DO:

1. Write/update Saybolt operational procedures for Mina al-Baqr and Ceyhan, based on API Chapter 17 Crude Oil Loading requirements, and factoring in additional requirements resulting from 661 Committee Meetings, for submission to OIP and then 661 Committee, to specifically include:
   - sealing of ship's manifold on completion of UN approved loading volume,
   - inclusion of seal numbers on vessel's Notification Letter, and the checking of seal numbers by UN monitors before vessel sails,
   - re-measurement of vessel if seals visually tampered with on "before sailing" check in conjunction with vessel and SOMO loading master, with advice to UN Oil Overseers if loaded volume increased over original measurements used for Bill of Lading calculations, for further guidance and possible M.I.P. intervention,
   - leaving one man on board after loading to remain on vessel until vessel sails, to precautionary basis
   - extra care with vessel's having >100,000 barrels ullage on completion of loading.

2. Prepare Action Plan for submission to OIP, for consideration by the 661 Committee, to include item 1 points above, and:
   - recommendations for operational, calibrated metering system at Mina al-Bakr, possibly for Bill of Lading calculation purposes,
   - checking of seals prior to discharge,
   - independent outturn certification per parcel of UN approved cargoes
   - bimonthly briefing to the committee on previous period's under-performance

3. Tighten up procedures and daily contact with Team Leaders at Mina al-Bakr and Ceyhan, to include twice daily telephone contact and discussion of the handling of vessel's with >100,000 barrels ullage after loading.

Weekly.

4. Team Leaders to advise, verbally and by "e-mail", of any problems encountered during a loading including OBQ and VEF disputes.

5. Arrange audit of Mina al-Baqr (and Ceyhan??) crude oil loading operations. In retrospect, possibly better carried out by Kees Paardekooper (or his new replacement)?

John Fitzsimons

6. Arrange two sessions in which recommendations will be briefed.

Review of staffing levels

Section 2 - Summary

Subject:	"Exeter" loading investigations
Dates:	May 16th, 2001 and August 27th, 2001
Location:	Mina al-Bakr, Persian Gulf
Description:	Legal papers and correspondence

Peter Boks
02/26/2003 03:40 PM

To: sevan@un.org
cc:
Subject: Tv. "Essex"

Dear Benon,

Just to advise you that two investigators visited our offices regarding the illegal crude oil loadings from Mina Al Bakr in 2001. Apart from an interview they laid claim to the following documents:

- Our Report on the alleged loadings of Crude Oil from Mina Al Bakr outside the UN Oil for Food Porgramme dated October 17, 2001
- four photograph's from Mina Al Bakr
- two maps of the region
- a copy of our time sheet and ullage report of the loading dated 16 May 2001

From the discussions, it became clear that Saybolt is not suspect and that they are still investigating whether Trafigura will face criminal prosecution.

Kindest regards,

Peter

25/2/2003

ECD De heer Boer
M.V.d. Lans.

Tv. "Essex"

Documenten. overzicht TUC.
MAB
4 photo's MAB
time sheet 4/c beladning
Rapport aan de VN.
Ullage report.
overzicht kaartje

memory. Our stance towards this legislation is very much fashioned by recent experience. We will do better for the future because we believe in a better system of economic policy—not only for the ethanol industry but for every single industry and company in this country that wants to do things the right, fair and decent way.

Mrs HULL (Riverina) (11.47 a.m.)—I have sat here and been accused of a whole host of measures by the member for Werriwa concerning, certainly, my election campaign. I find the attack and the personal approach of the member for Werriwa in this debate on the Energy Grants (Cleaner Fuels) Scheme Bill 2003 and the Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments) Bill 2003 to be quite outstanding. It is just incredible to hear the member for Werriwa speak of this company, Trafigura, as being a small business. Trafigura is not a small business. Trafigura is not in a small country town.

I will never walk away from defending small businesses and their rights in employment in country areas. The member for Werriwa consistently moves on with his economic rationalism, his economic pathway to reform and his competition policies and process that only ever benefit city jobs. The only people who benefit from economic rationalism and from economic pathways to reform are those with jobs in the city. There are more city jobs and fewer country jobs. It is there. It is documented. The only people who are losers are the people whom I represent. I will never stand back or move away from supporting those people who live and work in country New South Wales and country Australia.

The member for Werriwa continually indicated that Trafigura is a small business and that, following McEwenism, the National Party came in and took away the rights of the small business. I have an excerpt from the *Wall Street Journal* web site that indicates that we had some significant difficulties with the food for oil program and some difficulties with Iraq gaining an illegal $9 million by sneaking thousands of barrels of oil past UN inspectors at an oil platform off the coast of Iraq. In speaking about this process and the oil tanker named the *Essex*, the article states:

> The Essex was chartered by Trafigura Beheer BV, a Dutch-based oil trading company with major operations in London. Trafigura had purchased its oil from a middleman, Ibex Energy France, which in turn had bought it from SOMO, the Iraqi government's oil monopoly. The entire cargo was eventually sold to U.S. refiners.

This article indicates that, in a sworn affidavit in a lawsuit between the two companies in the British High Court of Justice, Ibex's general manager said that Trafigura and Ibex split the proceeds 60-40, with Trafigura getting roughly $383,000. In his affidavit, the same gentleman said:

> ... the scheme was cooked up by Trafigura to make up for an earlier loss on an Iraqi oil deal that fell through in 1999.

We could go on. There is more. But I do not want to waste the time of the House in dealing with allegations from the *Wall Street Journal* web site. I merely want to say that the portrayal of this company as a small business and the attack on me as representing small business does not equate to the facts. I will not say 'the truth', because that is generally the opposition's call—to call for truth. I just say that they are not generally the facts and that the member for Werriwa has utilised parliamentary privilege in here this morning to ensure that he could stand there and indicate that which was not fact. Not only that, he also smeared and slurred National Party people—great National Party people—from earlier times.

Today I want to speak about the Energy Grants (Cleaner Fuels) Scheme Bill 2003.

MONITORING OF CRUDE OIL EXPORTS FROM IRAQ

The measurement of crude and refined petroleum product volumes and weights is carried out internationally to recognized published standards resulting in uniform reporting thus allowing accurate comparison between loaded and discharged volumes for fiscalization and loss control activities.

The standards adopted are those published by various technical committees of experts acting independently under the guidance of non-profit making international standards organizations such as the American Petroleum Institute (API) and the Institute of Petroleum (IP).

The monitoring of crude oil exports from Iraq differs from normal international practices in that:-

1. There are currently no internationally acceptable measurement systems operating in either of the loading facilities involved in the "Oil for Food" contract; the exported quantities are therefore ascertained by reference to the loading vessel's calibration charts.

2. The monitoring role requires that all crude oil exported from Iraq under the "Oil for Food" program is fully accounted for, and that no diversion of the oil from this intended use can be made.

LOADING TERMINALS.

Crude Oil Exports from Iraq are currently delivered to sea-going vessels from either the Ceyhan Tank Farm in Turkey, at the end of the Iraq/Turkey pipeline (ITP), or from the Mina Al-Bakr oil terminal at the head of the Gulf and are reported to the UN Overseers on a ship-by-ship basis.

LOADED VOLUMES.

The volume delivered at each loading is calculated by reference to the vessels calibration charts adjusted for any volume of oil and water ascertained on board prior to loading (the OBQ figure) and the vessels experience factor (VEF). This system, as previously agreed with the Iraqi authorities, is required as there are no accurate and "in calibration" metering systems operating at Ceyhan or Mina Al-Bakr, or accurate tank calibration charts at Ceyhan.

DELIVERIES FROM IRAQ.

Deliveries from Iraq to Turkey, via the ITP, are monitored out of Iraq via the MS-1 metering station at Zakho, and into the Ceyhan Tank Farm, Turkey, and reported to the UN Overseers on a 24 hr basis.

REPORTING PROCEDURES

All loadings to vessels are monitored by Saybolt staff at both installations, and a full loading report is issued to the UN Overseers from the Saybolt Rotterdam office, who monitor and collect all oil measurement and movement data, reporting direct to the UN Overseers both by Fax and electronically by the UN Database which is updated automatically every 12 hrs.

1. CEYHAN

Storage Tanks

There are 12 tanks in the terminal available for receiving and delivering of crude oil with a capacity of approximately 780,000 US Barrels each; at the moment tank D-602 is out of order. Maximum usable capacity is currently 7,480,000 US Barrels

Measurement

The storage tanks have Enraf level indication (automatic tank gauging system) but it is unreliable and is not acceptable for calculation of vessel's loaded quantities, or for quantities delivered by the ITP from Iraq. All such measurements are therefore effected by hand measurement.

The metering system is not functioning, although the meter provers have been re-calibrated at the commencement of the "Oil for Food" program.

Loading facilities

There is one jetty with four loading platforms for vessels from 25,000 Mt. to 300,000 Mt.

There are 3 segregated lines for loading from the terminal and one line for discharging into Tupras Terminal, and the discharge of ballast.

The in-line sampling apparatus is not efficient, and needs replacing. Manual line samples are therefore drawn by the Saybolt inspector every 10% of the loading, for quality analysis.

Quantification of oil received from Iraq via the ITP.

Every 24 hours a comparison is made between the Enraf (auto-gauge) figures and those advised from MS-1 on the border of Iraq.

Both manual measurements and temperatures of the shore tanks are recorded before and after receiving from the ITP, and volumes ascertained calculated to Gross Standard Volumes.

A comparison of received quantity c.f. the MS-1 measured quantity is made on both a daily and monthly basis. Any unusual discrepancies are investigated and resolved.

Loading of vessels

Prior to commencement of loading, Saybolt ensures - in conjunction with the UN Overseers in New York - that for each cargo there is written evidence of a current contract between the buyer and SOMO; there is a Letter of Credit in place (approved by the Overseers); and that the volume to be loaded is fully covered by the Letter of

Credit.

After berthing the vessel is inspected and any residues of previous cargoes left on board - the "OBQ" quantity (either oil of water) - is determined by the Saybolt inspector.

The Vessel Experience Factor (VEF) is agreed with the master of the vessel and is used for calculating the Bill of Lading figures.

The nominated shore tanks will be manually measured and manual temperatures taken, for comparison only.

The in-line sample container will be inspected for cleanliness.

After loading the vessel will be manually measured and temperatures taken.

The in-line sample will be collected and analyzed by the Saybolt team. The Relative Density will be used for calculation of the Bill of Lading Figures; gross and net figures are calculated.

The utilized shore tanks will be manually measured and manual temperatures taken for comparison only.

The Bill of Lading figures will calculated taking into account the OBQ and VEF measurements, and after comparison with the shore tank figures, advised to the Iraq personnel present at Ceyhan.

Pipeline transfer to Kirrikale Refinery, Ankara:-

The same process occurs except that the oil is transferred to the Kirrikale Refinery rather than loaded in to a vessel

2. MINA AL-BAKR

Mina al Bakr is located about 50 km out sea from the Port of Al Fao. It is a steel structure about 1000 meters long.

The Terminal consists of two loading platforms with two berths per platform inter-linked with mooring platforms, generator platforms and an accommodation block. At the northern end is the platform supporting the accommodation block and at the southern is the platform supporting a Helicopter landing pad.

The Main Loading platforms support all crude oil pipes, meter skids, chiksan loading arms, independent control rooms and emergency generators. Platform A is the northernmost platform.

Berth numbers 1 and 2 are located at Platform A, berths 3 and 4 are located at Platform B. Berth No. 3 is designed to accommodate the larger ships up to 300,000 deadweight

tons plus and berths 1, 2 and 4 can accommodate ships up to 250,000 deadweight tons.

In between the loading platforms are other platforms for Main Generators and for mooring dolphins. There are two generator platforms with two diesel-powered generators per platform. The total number of platforms making up the terminal is 12.

The Terminal was commissioned in 1972. It was destroyed during the Iran/Iraq war during the eighties. At the end of this war the accommodation block and Loading Platform A were rebuilt by international contractors, however, during the 1991 war both were again destroyed. Since the 1991 war the terminal has been completely rebuilt by Iraqi labor only. Construction materials, pipes and equipment have come mainly from the resources of the South Oil Company. These resources have been extremely limited and there is still a lot evidence remaining of the war damage.

There are two 48-inch diameters Crude Oil Sea Lines from Al Fao that extend to the terminal. A 48-inch diameter branch line from each sea line is connected to each loading platform.

Loading arrangements.

On Each Loading platform are two berths, equipped with four 16-inch diameter steel hydraulically operated chiksan loading arms.

Metering. The Meter Skid on platform A consists of Turbine meters with local and remote readout. The Meter Skid on Platform B consists of P/D meters with local and remote readout. There are prover loops fitted at each platform.

Sampling. Berth No. 4. On platform B has a 'Welker' automatic sampling device. This device is old and relies only upon pre-set grab settings and therefore is not accurate when loading rates are fluctuating as much as they do on this terminal. It is not time/rate/flow proportional. There are no automatic sampling devices at any other berth. Sampling each shipment is carried out by drawing from a sampling pipe on the main Crude line at each berth at pre-determined intervals. It has been considered that under the present circumstances and conditions that this is the only way a representative shore sample may be obtained but this is far from ideal or accurate.

Bills of Lading and Cargo Documents.

Calculations are based upon the ships measurements of quantity of crude oil loaded, less any volumes found on board before loading (OBQ), the resultant standard volume then has the Vessel Experience Factor (VEF) applied. For calculation purposes ASTM tables 24A and 29 are used for volume and weight determination.

3. ZAKHO.

The Zakho metering station is situated close to the border between Northern Iraq and Turkey and is therefore entirely suited as being the point at which the exported volumes from Iraq are ascertained. There are two pipelines that run from Iraq into Turkey, one (40") is currently in use, the second (46") is not used and has no current metering facilities in operation.

40" Kirkuk Crude Oil Metering Station

Three of the four crude oil meters/flow computer combinations are operational and functioning. The fourth flow meter/computer combination and summator (Danscan - which is faulty) cannot be used owing to lack of spare parts and this system is currently mechanically isolated from the pipeline flow.

The original telecommunications and data acquisition system (SCADA) which had been designed to communicate data and safeguard the installations between the metering station MS-1, IT1/2 Pump stations/tank farms and Ceyhan in Turkey have been destroyed. Operators at MS-1 are working blind with no pumping/pressure data with respect to up/downstream pumping operations and have only one unreliable/inaudible telephone link. The 40" pipeline flow capacities at this moment have been also de-rated (32 bar minus 30%) due to pipeline leakages at design operational pressures (52 bar).

46" Kirkuk / Basrah Crude Oil Metering Station

The metering station is mechanically isolated (spaded off) from the main pipeline and is non-operational. It is presently being repaired and prepared for future use together with the 40" pipeline to Ceyhan.

Metering Operations.

All meters are read once every hour, and collated into twelve-hour batches. Every 24 hrs (i.e. two batches) a comparison is made with the received quantity in Ceyhan. All data is recorded locally both in hard copy and electronically, and sent to Rotterdam on a 24 hr basis.

As a further back up (in case of catastrophic meter failure) the storage tanks at IT1-A (where the oil for transfer to Turkey is bulked prior to transfer) are gauged every 12 hrs and volumes calculated by reference to their calibration charts. This volume is then compared to the metered volume over MS-1.

The metered volumes recorded at MS-1, and the received volumes in Ceyhan, both daily and cumulatively per program, are reported electronically to the UN Overseers on a daily basis.

Report on alleged loadings of Crude Oil from Mina Al Bakr outside the United Nations Oil for Food Program.

Preamble

On 9 October 2001, the United Nations Oil Overseers received a letter from a Mr. Chiladakis Theofanis. Mr. Theofanis was the Master of TV "Essex" which has frequently loaded Basra Light Crude Oil at Mina al-Bakr.

According to Mr. Theofanis, there have been two occasions whereby after completion of the UN approved loading operation, and after the UN Inspectors left the vessel, additional volumes were loaded on board the vessel. Mr. Theofanis enclosed with his letter supporting evidence.

The Loading Platform at Mina al-Bakr

Mina al Bakr is located in the Persian Gulf about 50 km offshore from the Port of Al Fao. It is a steel structure about 1000 meters long. The Terminal consists of two loading platforms with two berths per platform inter-linked with mooring platforms, generator platforms and an accommodation block. At the northern end is the platform supporting the accommodation block and at the southern is the platform supporting a Helicopter landing pad.

The Main Loading platforms support all crude oil pipes, meter skids, chiksan loading arms, independent control rooms and emergency generators. Platform A is the northernmost platform.

Berth numbers 1 and 2 are located at Platform A, berths 3 and 4 are located at Platform B. Berth No. 3 is designed to accommodate the larger ships up to 300,000 deadweight tons plus and berths 1, 2 and 4 can accommodate ships up to 250,000 deadweight tons.

In between the loading platforms are other platforms for Main Generators and for mooring dolphins. There are two generator platforms with two diesel-powered generators per platform. The total number of platforms making up the terminal is 12.

The Terminal was commissioned in 1972. It was destroyed during the Iran/Iraq war during the eighties. At the end of this war the accommodation block and Loading Platform A were rebuilt by international contractors, however, during the 1991 war both were again destroyed. Since the 1991 war the terminal has been completely rebuilt by Iraqi labour only. Construction materials, pipes and equipment have come mainly from the

the terminal manager, and a Bill of Lading for the amount of US Barrels 1,799,735 or gross metric tonnes 247,851.254 was presented by the Mina al-Bakr terminal and signed by the Master. The same quantities were reported by the UN monitors to the UN Oil Overseers.

After the completion of this loading, and all documents were signed and the UN monitors had left the vessel, loading was resumed after one hour without informing the UN monitors. The vessel loaded an additional 229,756 barrels, after which the vessels tanks were re-measured. The revised ullage report was signed by the master and the terminal representative, and a second Bill of Lading was issued by the terminal covering the additional quantity, which was signed by the Master. By comparison with the "official" Bill of Lading this document can be seen to be prepared with a different font/type-face and has no SOMO logo. Another document entitled "Total Quantity on Board", verifying the additional quantity loaded on top of the initial quantity which was allowed by the Letter of Credit approved by the United Nations, was signed by the terminal representative and the representative of Falcon Navigation, the Greek representative of Trafigura who was aboard the vessel at that time.

The vessel then proceeded to the East Coast, USA, where part of the cargo was discharged at the Loop, and the balance at South Sabine. On arrival at the Loop the vessel's cargo tanks were measured by the charterer's cargo inspector and the receivers cargo inspector who confirmed the cargo ob board to be 2,034,358 barrels or some 234,623 gross barrels in excess of the volume measured in the vessels tanks by the United Nations monitors at Mina al-Bakr on completion of the loading.

2. 2nd Loading

Vessel was fixed by Trafigura to load 1,800,000 barrels Basrah Light at Mina al-Bakr terminal. The same procedure as the first loading was followed. On completion of the loading, the volume of oil was measured in the normal way by the vessel, the terminal manager and the UN monitors. The vessel's ullage report was signed by the Master and the terminal manager, and a Bill of Lading for the amount of US Barrels 1,788,820 or gross metric tonnes 246,475.319 was presented by the Mina al-Bakr terminal and signed by the Master. The same quantities were reported by the UN monitors to the UN Oil Overseers.

After the completion of this loading, and all documents were signed and the UN monitors had left the vessel, loading was resumed after one hour without informing the UN monitors. The vessel loaded an additional 271,884 barrels, after which the vessels tanks were re-measured. The revised ullage report was signed by the master and the terminal representative, and a second Bill of Lading was issued by the terminal covering the additional quantity, which was signed by the Master. Another

document entitled "Total Quantity on Board", verifying the additional quantity loaded on top of the initial quantity which was allowed by the Letter of Credit approved by the United Nations, was signed by the terminal representative and the representative of Falcon Navigation, the Greek representative of Trafigura who was aboard the vessel at that time.

The vessel is scheduled to discharge the cargo at South Sabine, US Gulf Coast on, or about, October 14th, 2001.

The Master of the vessel at the time of both the above loadings has submitted to the United Nations Oil Overseers copies of all relevant documents.

The Facts

1st Loading

This loading was covered by the United Nations Oil Overseers Letter of Credit Approval dd May 7th, 2001 confirming a Letter of Credit (BNP Ref No D727182) for Euro 38,500,000 to be issued on behalf of Ibex Energy France against Contract No M/09/81 for 1,800,000 barrels +/- 5% of Basrah Light Crude Oil to USA on MT "Essex" or sub with latest shipment date of May 25th, 2001.

The vessel berthed on Berth No 1 at Mina al-Bakr, commenced loading at 17:45 hrs 13/05/01 and completed loading at 01:50 hrs 16/05/01 and the flexible hoses (chiksan arms) were disconnected at 02:10 hrs 16/05/01.

Measurement of vessels tanks and subsequent calculations were completed at 04:00 hrs 16/05/01, and loaded volumes submitted to the SOMO shipping office at 06:00 hrs 16/05/01. The vessel subsequently sailed at 19:00 hrs 16/05/01.

At no time after the completion of the loading of the volume approved by the United Nations Oil Overseers were the United Nations monitors advised by the terminal that a further loading was contemplated.

2nd Loading

This loading was initially covered by the United Nations Oil Overseers Letter of Credit Approval dd July24th, 2001 confirming a Letter of Credit (BNP Ref No D729174) for Euro 46,000,000 to be issued on behalf of Ibex Energy France against Contract No M/10/08 for 2,000,000 barrels +/- 5% of Basrah Light Crude Oil to USA on MT "Stena Companion" or sub with latest shipment date of July 26th, 2001.

This was later amended as per Amendment No 2 dd August 20th, 2001 changing the number of barrels to be shipped from 2,000,000 to 1,800,000, changing the name of the vessel from "Stena Companion"/sub to "Essex"/sub and extending the validity date to October 13th 2001 and the latest shipment date to August 30th, 2001.

The vessel berthed on Berth No 1 at Mina al-Bakr, commenced loading at 15:00 hrs 25/08/01 and completed loading at 19:20 hrs 27/08/01and the flexible hoses (chic-san arms) were disconnected at 19:50 hrs 27/08/01.

Measurement of vessels tanks and subsequent calculations were completed at 22:00 hrs 27/08/01, and loaded volumes submitted to the SOMO shipping office at 24:00 hrs 27/08/01. The vessel subsequently sailed at 11:00 hrs 28/05/01.

At no time after the completion of the loading of the volume approved by the United Nations Oil Overseers were the United Nations monitors advised by the terminal that a further loading was contemplated.

Remarks

It is not uncommon that on completion of a loading the vessel remains on the berth alongside the terminal (sometimes with the hoses still connected) for the following reasons:

- The vessel is waiting for the next high tide before sailing,
- The pilots and/or tug-boats are not available (these craft are used for staff transfer to and from shore)
- The weather conditions, especially strong winds, are such that the pilots will not move heavily laden vessels.
- Malfunction of the hydraulic systems, may require manual operation to disconnect the loading arms.

The subsequent investigation

In order to thoroughly investigate the allegations made by the Master of the vessel "Essex" on both the loadings reported above, the Team Leader who was present at both loadings, and who is a Saybolt employee for 6 years, previously Petrogal loading master for 16 years) was flown to the Saybolt Head Office in Rotterdam.

He confirmed that the standard Saybolt procedures for the calculation of volume loaded to vessels under the Oil for Food Program was applied in both cases, and that nothing untoward was noted during the procedures. The actual tank measurements on the first loading of the "Essex" were carried out by one of the Saybolt inspectors and the measurements and

calculations on the second loading were carried out by the Team Leader himself.

It is normal practice that on completion of measurements and calculations the monitor returns to the Saybolt office (in the accommodation module and facing due North) to complete the calculations which are then passed on to the SOMO representative for the Bill of Lading preparation; and to prepare the official "Notification" document which is then returned to the vessel where the Master signs for receipt.

The Team Leader added that, as is the case on Mina al-Bakr (and indeed most off-shore loading platforms) he had met with Captain Chiladakis Theofanis over dinner on more than one occasion and noted that he was a steady, middle-aged man who smoked a pipe. On the second loading he did not appear nervous but commented that this was his last trip and that he was looking forward to his forthcoming retirement after completing the voyage in question. At no time did the Team Leader meet with, or was introduced to, a representative of Falcon Navigation.

The Team Leader was closely questioned as to how, on two separate occasions, the loading hoses had been re-connected to the TV "Essex" and several hundred thousand barrels of oil loaded without the United Nations monitors noticing these events. The team Leader, who was visibly shocked by the events as described to him, answered that on completion of their monitoring duties the Saybolt staff tended to remain within the accommodation module as the external temperatures at that time of the year (May 37-42oC, August 42-46oC both with 100% humidity) were such that any outside activity meant severe discomfort, and was therefore avoided. The monitoring staff tends to keep to themselves within the accommodation module, and rarely venture outside unless there is a vessel to be attended.

The Team Leader confirmed that a loading could take place without the monitors hearing as one needed to be within a few feet from the incoming sea-lines to hear/feel the vibration of the moving oil. At this point there are also thermometers recording the temperature of the incoming oil, which are easily visible and would show a high reading if oil was flowing. The Saybolt office and the majority of the monitors accommodation faces North and therefore there is no "line of sight" to the berths; the Team Leader's accommodation, below which is the Saybolt mess room, is on the East side of the accommodation module but the view to Berth No 1 is limited by the window construction (the mess room is set back on a floor below the accommodation) there is no "line of sight" to the centre of the vessel where line re-connection would be noted.

In his professional opinion, the Team Leader considered that the alleged volume of oil loaded to the TV "Essex" after the official loading on both occasions would, under normal circumstances, take 5 to 7 hours but could

have been accomplished within 3 to 4 hours, but was astonished at the potential risks taken by those parties involved in that it would only have taken one monitor to walk down the platform to witness the operation taking place. Additionally such an operation would require the positive involvement of shore personnel to stop and start the pumps to deliver the oil and to ensure the availability of oil, terminal staff to connect and disconnect the loading arms, re-measure the vessel after the additional loading and prepare the documentation; and the positive involvement of both officers and crew on the vessel.

Finally the Team Leader confirmed that the United Nations Monitoring personnel present on Mina al-Bakr during both events were all responsible and hard-working staff with no evidence of any personal problems whatsoever.

Recommencement of loading would therefore only be noticed by the United Nations monitors if there was occasion to walk South along the platform towards the 4 berths and the helicopter pad at the South end. This would only be required if a vessel was berthing or completing loading, or at the specific request of SOMO.

The choice of when to carry out such an additional loading – when there is no other activity on the platform requiring the presence of the United Nations monitors - would therefore be of paramount importance, to which would also apply a number of other factors including:

- A vessel on which the officers and crew were willing to become involved in an illegal activity, and which would have sufficient capacity to load a significant extra volume of oil after loading the official UN approved volume without exceeding the limited draft availability at Mina al-Bakr,
- A buyer in the chain of sale that was capable of arranging such an illegal activity with the supplier, and had the capacity to sell the extra oil and – presumably – obtain payment and distribute the proceeds,
- The implicit involvement of the supplier, both on the platform and on shore,
- The availability of Berth No 1 (used in both loadings in question) as this was the berth least likely to be overlooked from the accommodation module by the United Nations monitors.

An investigation into the berthing situation at Mina al-Bakr either side of the two loadings reveals that on the first loading the "Berge Borg" sailed at 15:30 hrs on May 15th, 2001 after which the "Essex" continued loading until completion of the official parcel loading at 01:50 hrs on May 16th, 2001. At this time there were no other vessels berthed, and 3 vessels on the anchorage as follows:

a) "Kraka" arrived 01:50 hrs May 14th, 2001
b) "Astro Beta" arrived 10:00 hrs May 14th, 2001 and confirmed by SOMO
c) "Skopelos" arrived 17:30 hrs may 15th, 2001 and confirmed by SOMO

Normal SOMO procedure would be to berth vessels in laycan rotation; following this there were attempts to berth the "Astro Beta" during the day of May 16th, 2001 which failed as a result of very strong winds; berthing of this vessel was also cancelled during the day of May 17th, 2001.

As a result of the above, we may conclude that it was a deliberate decision to delay berthing of the "Astro Beta" to make certain that chances of Saybolt staff attending the platform's were minimised.

The second loading of the TV "Essex" commenced on Berth No 1 at 15:00 hrs on August 25th, 2001 at which time the "Settebello" was loading on Berth No 3. The "Settebello" completed loading at 22:55 hrs on August 26th, 2001 and sailed at 11:30 hrs on August 27th, 2001. In the meantime the "Barao de Maua" had berthed on Berth No 4 at 06:35 hrs on August 27th, 2001 and the tanks were inspected at 08:00 hrs August 27th, 2001 but the loading arms were not connected as SOMO stated they were waiting for the laycan to commence. The loading arms were connected at 11:45 hrs on August 28th, 2001 and loading commenced at 11:45 hrs August 28th, 2001.

The loading of the "Essex" completed at 19:20 hrs on August 27th, 2001 meaning that from this time until the time she sailed at 11:00 hrs on August 28th, 2001 no monitors were required on the platform as the hoses were not connected to the "Barao de Maua" until 11:45 hrs on August 28th, 2001.

Also here, we may conclude that it was a deliberate action, all the more as we have noticed that initially the TV. "Stena Companion" was nominated to load 2,000,000 bbls +/- 5 % under the contract #M/10/08 (nomination was dated 24 July 2001) and on 20 August 2001 the nomination was changed in 1,800,000 bbls to be loaded on Tv. "Essex".

The implications on other loadings

For the purposes of this investigation it was considered necessary to review all loadings from Mina al-Bakr during Phase 9, and Phase 10 to date. These two periods were chosen as they coincide with the heightening of tension surrounding the loadings exemplified by the issue of port charges, extra payments outwith the Oil for Food program direct to the supplier and the issue of bi-monthly pricing (OSP) policy.

All loadings during these two Phases were therefore investigated and the results are summarised on the attached spreadsheet.

For each vessel we calculated (where published) the difference between the published 95% loading volume capability, and the volume of oil actually

loaded. Loadings where sufficient space to load more than 100,000 extra barrels was available were highlighted (any volume below this being considered not worth the risk involved).

For each of these vessels we considered the draft available (the maximum draft available at Mina al-Bakr is 21.00 metres on the top of the tide) and deleted those where the actual sailing draft after the official loading was close to this limit.

We then considered the amount of time available between the end of the official loading and the sailing time and vessels where there was insufficient time to engage in a second loading were deleted; where there was a sufficient "window" (time period) to consider a second loading further loadings were deleted if there was other berthing or completing activity on other berths requiring the physical presence of monitors.

This investigation suggested that it was extremely unlikely that further unapproved loading(s) could have been effected during Phases 9 and 10.

Actions taken since the information on these two unofficial loadings was advised

1. On completion of all loadings at Ceyhan and Mina al-Bakr after the disconnection of the shore-side loading hoses all valves on the vessel at the loading manifold are to be sealed, and the seal numbers noted.
2. The seal numbers are noted on the "Notification" document presented to the vessel before sailing, which is signed by the Master, which should be checked as being intact prior to discharge.
3. If the vessel does not sail immediately on completion of loading and the normal formalities, these seals will be checked before the vessel sails. If found to be broken the vessel will be re-measured and the United Nations Oil Overseers informed accordingly of any significant changes.

Recommendations

In addition to the above actions it is recommended that the United Nations consider making it a requirement of the contract holders submitted by SOMO and approved by the United Nations Oil Overseers that they ensure that no further loadings take place on top of approved cargo volumes and that they undertake to supply documentary evidence of the vessels measurements on arrival at discharge port, and the official shore discharge figures compared to the Bills of Lading issued by SOMO.

APPENDIX No 1

Monitoring of Crude Oil Exports from Iraq

The measurement of crude and refined petroleum product volumes and weights is carried out internationally to recognised published standards resulting in uniform reporting thus allowing accurate comparison between loaded and discharged volumes for fiscalization and loss control activities.

The standards adopted are those published by various technical committees of experts acting independently under the guidance of non-profit making international standards organisations such as the American Petroleum Institute (API) and the Institute of Petroleum (IP).

The monitoring of crude oil exports from Iraq differs from normal international practices in that:

1. There are currently no internationally acceptable measurement systems operating in either of the loading facilities involved in the "Oil for Food" contract; the exported quantities are therefore ascertained by reference to the loading vessel's calibration charts.

2. The monitoring role requires that all crude oil exported from Iraq under the "Oil for Food" program is fully accounted for, and that no diversion of the oil from this intended use can be made.

LOADING TERMINALS.

Crude Oil Exports from Iraq are currently delivered to sea-going vessels from either the Ceyhan Tank Farm in Turkey, at the end of the Iraq/Turkey pipeline (ITP), or from the Mina Al-Bakr oil terminal at the head of the Gulf and are reported to the UN Overseers on a ship-by-ship basis.

LOADED VOLUMES.

The volume delivered at each loading is calculated by reference to the vessels calibration charts adjusted for any volume of oil and water ascertained on board prior to loading (the OBQ figure) and the vessels experience factor (VEF). This system, as previously agreed with the Iraqi

authorities, is required as there are no accurate and "in calibration" metering systems operating at either Ceyhan or Mina Al-Bakr, or accurate tank calibration charts at Ceyhan.

DELIVERIES FROM IRAQ.

Deliveries from Iraq to Turkey, via the ITP, are monitored out of Iraq via the MS-1 metering station at Zahko, and into the Ceyhan Tank Farm, Turkey, and reported to the UN Overseers on a 24 hr basis.

REPORTING PROCEDURES

All loadings to vessels are monitored by Saybolt staff at both installations, and a full loading report is issued to the UN Overseers from the Saybolt Rotterdam office, who monitor and collect all oil measurement and movement data, reporting direct to the UN Overseers both by Fax and electronically by the UN Database which is updated automatically every 12 hrs.

****
*** TX RAPPORT ***
****

VERZENDING OK

TX/RX NR	1813
TEL. AANSLUITING	00703488472
ID AANSLUITING	
ST. TIJD	24/10 13:24
DUUR. T.	05'32
PAG.	18
RESULTAAT	OK

Page 1

CHILADAKIS THEOFANIS
IRINIS 27-29, tel: (01) 6392097
AYIA PARASKEVI 153.41
ATHENS, GREECE

To,
UNITED NATIONS
1 UN PLAZA, DC1-1572
NEW YORK, NY 10017
U.S.A.

ATHENS
SEPTEMBER 21ST 2001

Attention: Mr Morten Buur Jensen

Subject : T/T ESSEX, Loading at AL BAKR Oil Terminal IRAQ, ignoring UN loading instructions.

Companies involved :

A. TRAFIGURA LONDON, CHARTERERS/TRADERS
TLX: 921187/9222166

B. ELKA LONDON, OWNERS OF T/T ESSEX
TEL: 44 171 258 3537 FAX: 44 171 724 1390

C. SOMO LONDON, IRAQI OIL COMPANY, TLX : 212198

D. EUROPEAN NAVIGATION, ATHENS, OPERATORS FOR T/T ESSEX
TEL: (01) 8981581, FAX : (01) 8981588

E. FALCON NAVIGATION, ATHENS, REPRESENTATIVES OF TRAFIGURA
TEL: (01) 9607230 FAX: (01) 9616801

FIRST LOADING MAY 16TH 2001 (U.N. code : missing)

The above named vessel (T/T ESSEX) was fixed by TRAFIGURA to load

12/10 01 VRI 09:56 FAX 0031104609260 SAYBOLT INT. 001

****
*** TX RAPPORT ***
****

VERZENDING OK

TX/RX NR	1582
TEL. AANSLUITING	0008717724344
ID AANSLUITING	
ST. TIJD	12/10 09:47
GEBR. T.	08'26
PAG.	20
RESULTAAT	OK

05/08/01 TUE 10:28 FAX 212 963 1628 UNSG NYK +++ SAYBOLT 001

UNITED NATIONS **NATIONS UNIES**

SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT

S/AC.25/2001/OIL/1330/LC.156 7 May 2001

TO: MS. SUZANNE BISHOPRIC TREASURER	FROM: THE OIL OVERSEERS UNDER SECURITY COUNCIL RESOLUTION 986 (1995)
FAX NO.: 3-2086	FAX NO.: (212) 963-1628
	REF.: OIL-FOR-FOOD ARRANGEMENT
TOTAL NUMBER OF TRANSMITTED PAGES INCLUDING THIS PAGE: 1	

SUBJECT: LETTER OF CREDIT

PLEASE BE ADVISED THAT THE OVERSEERS HAVE CONFIRMED THAT THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT (BNP Paribas REFERENCE D727182) IN THE AMOUNT OF EURO 38,500,000 TO BE ISSUED ON BEHALF OF IBEX ENERGY FRANCE (CONTRACT #M/09/81) CONFORMS TO THE TERMS AND CONDITIONS OF THE CONTRACT PREVIOUSLY APPROVED.

1. IBEX ENERGY FRANCE from MINA AL-BAKR covering 1,800,000 bbls ±5% of BASRAH LIGHT CRUDE OIL to USA on M /T "ESSEX" or SUB.

(Shipment Date: AT THE LATEST 25TH MA

S023803

"N813" <Nb13@saybolt.com> on 08/31/2001 09:26:21 AM

To: Graham Brett/Saybolt/NL@Saybolt, Peter Boks/Saybolt/NL@Saybolt
cc:

Subject: Re: 2482/01 - Mina Al Bakr Week Report for Wk: 35/2001

Date : AUGUST 31, 2001
Time : 10:15 LT

Dear Graham,

Report for Week No. 35, 2001
Saybolt/UN Monitoring Staff on station:

Armando Oliveira
Gordon Schoeman
Sergey Rosadyk
Rogerio da Sousa
Ralph Murray

On Basrah rosthouse :
Danny Singson

Vessels Loaded During the Period: 25/08 to 31/08 (Fri-Thurs)

Name	Load Date	BBls
BERGE BOSS	24/08	2,082,740
SETTEBELLO	26/08	2,131,002
ESSEX	27/08	1,787,407
BARRO DE MAUA	29/08	1,879,436
MARIA A. ANGELICO.	30/08	1,557,073
TOTAL		9,437,658

CHEVRON MAGASAKY LOADING

Terminal Manning
Terminal fully manned (app. 80 persons)

Mooring Boats/Tugs
No mooring boats on station at the terminal.
Tugs "TAJ AL MARAK", "ALTAMADY" and new tugs "FATTEH AL MOBEEN" and "ALRAYYAH" on stand-by.

Power
Only One power failure during the week.(+- 3 minutes)
Generators are working on alternating basis.

Transport to / from terminal
Tug boats and Passenger-boat used for transportation of personnel to Fao.
Relief schedule is on Saturday (pilots), Sunday and Wednesday, but schedule is unreliable.

S023806

The passenger-boat is used only after the 'Crane'(near Kor-Al-Amaya), and tugs used for Fao are restricted to pass the river bar at high tide and sometimes only at daylight high tide.
Main effect of this is that personnel due out on rotation leave the terminal 4/5 days earlier than would normally be necessary, in order to assure they can meet their travel/flight schedules.
Reliability of scheduled service is further hampered by unstable weather conditions.

Safety aspects are also heightened, particularly when personnel transfer 'boat to boat' or 'boat to terminal'.
Safety considerations: NIL . Increasing need to transfer from tug to tug off MAB terminal.
The two tugs draw alongside and there is a scramble across.
No safety provisions. Very dangerous in unstable weather conditions.
No safe gangway or means of access available at either shore or terminal location for staff to embark or disembark.

Services
****
The Water supply this week was without problem. Now we have only cold water, and quality found to be acceptable, except for the purpose of drinking. Some discoloration detected.
The new R.O.Unit is working without problems.
NOTE : Some parts of the old one still remained at MAB.
Potable bottled water is still in supply.

Food
****
Terminal food this week improved a little bit , they supplied fresh fruit and some fresh vegetable.(The variety is not to much, but the fruit and vegetable are fresh).

All UN staff meals are made by us or self catering on board vessels.

Housekeeping
****
Standard of cleanliness remains moderate.
Excessive outside oil.
During the last week a slight decrease of the outside oil; also constant lack of sufficient water doesn't make it easy to keep the interior clean.

Infestation
****
Insect population is still evident, through decreasing or increasing due to ambient temperatures. NO de-infestation carried out this week.
Although Saybolt accommodations is kept clean and sprayed regularly by Saybolt staff, insects as cockroaches are still present (but decreasing)in living room and Saybolt rooms.

Safety
******
At this moment the installation of platforms(launch davits) for two life-boats near the accommodations, is completed stopped.
The two Life-Boats are at this moment positioned at Platform B.

NOTE : SINCE DEC of 2000 THE WORK IS COMPLETED STOPPED.

The Lights are being checked and changed/replaced. No accidents.

Refer to numerous previous reports over the last years concerning Fire and Safety.

No fire drill or safety exercises observed this week.
It needs to be stated here & on every report, that there seems to be no local contingency plan for emergencies such as outbreak of fire, serious illness or accidents to staff. Indeed any type of local plan

to deal with various emergencies remains unknown to us.

NOTE: The gangway of Platform B(pier 3) continuous without working properly.
Sometimes it very dangerous to use (high tide & vsl not commenced ldng / low tide & vsls completed ldng).

Environmental conditions
****
TERRIBAL GARBAGE AND WASTE CONTINUES TO BE DISPOSED OF INTO THE SEA.
LUB OIL WASTE FROM GENERATORS DUMPED TO SEA REGULARLY.

Other remarks
****
The relationship between Saybolt/UN. staff and local terminal personnel remains very good.

Hydraulic leaks
****
Hydraulic leaks from gangways and pump units for operating the loading arms continues.
During this week some efforts were made to fix this problem, but the Lac of spare parts difficult the operation.
Situation same as previous week, Oil spill is collected for refilling but surroundings affected by spill.
Sawdust received from vessels alongside used to prevent spreading of spills,implication to safety of personnel.

Some of the leaking of Hydraulic oil can be repaired if they have spare parts to change, also if the leaking of oil into the ground were collected with sand and after removed to drums.

SATELLITE COMMUNICATION
****
Our satcom unit didn't served SOMO representative during the week.

FAX/COPIER : No problems found.
****

AUTO SAMPLING APPARATUS.
****
No new apparatus.

LOADING RATE.
****
During this week - From 39,000 to 69,000 Bbls/Hr

Nothing further officially to report at this time.

Kind regards,
Saybolt/UN Team, Mina Al Bakr.

- att1.htm

Peter Boks
10/17/2001 01:38 PM

To: N31cga@cusnc.navy.mil
cc:

Subject: Tankers possibly associated with Essex

Dear CDR Hansen,

Further to our telcon regarding your list, I can confirm that following vessel's
have been loading at MABOT:

Date	Vessel	Gross Standard Volumn	Perc. of Capacity
03/15/01	Swan Sea	1,900,430 barrels	approx. 98 %
05/13/01	Swan Sea	1,889,615 barrels	approx. 98 %
07/19/01	Dorset	1,621,362 barrels	approx. 86 %

The above would lead us to believe that the Tv. "Dorset" is suspect, also because the Draft prior to saling was Fore 18.5 m and Aft 19.0 m.
However given the limited time for loading the vessel with additional barrels, this seems very unlikely.

Time log:

Operation	Time	Date
Completed loading	09:05	07/19/01
Loading arms disconnected	09:25	07/19/01
Ullages taken etc. and calculation o/b completed	11:00	07/19/01
Documents delivered to SOMO	12:30	07/19/01
Documents deliverd on board	13:30	07/19/01
Vessel sailed	16:00	07/19/01

Kindest regards,

Berth 3. + independent surveyor.

Peter Boks

TK "Shawran" alongside Berth 1.
14.24 hrs 19/7.

All our activities are carried out under our general terms and conditions and in accordance with our code of practice. The general conditions can be consulted

Peter Boks
10/09/2001 11:19 PM

To: sevan@un.org
cc: "Michel Tellings" <"Michel_Tellings/OIP_OIP.UN-MAILHUB"@inthub.un.org>, "Alexandre Kramar" <kramara@un.org>, "Stephani Scheer" <scheer@un.org>, "Morten Buur-Jensen" <jensenm@un.org>

Subject: Re: Alleged Loadings of Crude outside UN Control

Dear Benon,

I confirm receipt of Morton's email and will investigate this matter throroughly. Will revert
asap.

Kindest regards,

Peter Boks

"Morten Buur-Jensen" <jensenm@un.org> on 10/09/2001 08:44:29 PM

"Morten Buur-Jensen" <jensenm@un.org> on 10/09/2001 08:44:29 PM

To: "Benon Sevan" <sevan@un.org>, PB@Saybolt
cc: "Michel Tellings" <"Michel_Tellings/OIP_OIP.UN-MAILHUB"@inthub.un.org>, "Alexandre Kramar" <kramara@un.org>, "Stephani Scheer" <scheer@un.org>

Subject: Alleged Loadings of Crude outside UN Control

Benon,

Today we recieved documents which indicate that on two occasions oil has been loaded at Mina al Bakr outside of Saybolts control on vessels which also carried UN official shipments.
The total amount involved is aproximately 500,000 barrels (which represents $8 million approximately).

We have brought this to the attention of Saybolt who are investigating the case.

We will keep you informed of the outcome.

Oil Overseers.

All our activities are carried out under our general terms and conditions and in accordance with our code of practice. The general conditions can be consulted at http://www.Saybolt.com/ ,and will be sent upon request free of charge.

The information in this message is confidential and may be legally privileged. It is intended solely for the addressee(s). Access to this message by anyone else is unauthorised. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. All results and data contained in this document are subject to our general terms and conditions and are valid only when supported by an original document.

"Morten Buur-Jensen" <jensenm@un.org> on 10/09/2001 08:44:28 PM

To: "Benon Sevan" <sevan@un.org>, PB@Saybolt
cc: "Michel Tellings" <"Michel_Tellings/DIP_DIP.UN-MAILHUB"@intlhub.un.org>, "Alexandre Kramar" <kramara@un.org>, "Stephani Scheer" <scheer@un.org>

Subject: Alleged Loadings of Crude outside UN Control

Benon,

Today we recieved documents which indicate that on two occasions oil has been loaded at Mina al Bakr outside of Saybolts control on vessels which also carried UN official shipments.
The total amount involved is aproximately 500,000 barrels (which represents $8 million approximately).

We have brought this to the attention of Saybolt who are investigating the case.

We will keep you informed of the outcome.

Oil Overseers.

Sutherland
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October 25, 2001

VIA FACSIMILE

United Nations Oil for Food Overseers
c/o Office of the Iraq Programme
First Avenue
DC1 Room 1516
New York, NY 10017

Re: m/v Essex

Dear Sirs:

I am writing on behalf of my client, Trafigura Beheer BV ("Trafigura") to seek your assistance in resolving the urgent matter of the Iraqi crude oil aboard the m/v Essex.

Trafigura is an oil trading company incorporated in the Netherlands with offices in Amsterdam, Lucerne and London. Trafigura regularly has purchased Iraqi crude oil from third parties who hold contracts with SOMO under the Oil for Food Program, and has sold many cargoes to U.S. refiners. Until this latest cargo loaded on the m/v Essex, it has not encountered any problems.

In August, Trafigura purchased the Essex cargo from Ibex Energy, which is based in Paris but which apparently is incorporated in Tortola, BVI. Trafigura purchased the cargo in two pieces under two separate contracts. The first contract is for approximately 1.8 million barrels. Ibex then asked Trafigura whether it would take another approximately 200,000 to 300,000 barrels to top off the ship on a delivered outturn basis. This is reflected in a second contract. Ibex provided Trafigura with a copy of its allocation of 7 million barrels of Basrah from SOMO and the contract provides that the oil is to be under the UN allocation. Trafigura had no reason to believe that anything was amiss with the purchase or unauthorized by the UN.

As you know, the vessel loaded on August 27, 2001. There are two bills of lading endorsed by SOMO, one for 1,787,407 barrels and one for 271,669 barrels. Trafigura paid for the large parcel by setting up a letter of credit on Ibex's behalf in favor of the UN account at BNP-Paribas. (Ibex did not have its own credit to do this.) Trafigura paid Ibex for the second parcel directly at Ibex's direction.

WO 37360.1

Trafigura sold one million barrels of the oil loaded onto the Essex to a U.S. refiner, Koch Petroleum, for delivery to its facility in Corpus Christi, Texas and one million barrels to a PdVSA affiliate, Petromar, S.A., for delivery to its refinery in Curacao (Refineria ISLA (Curacao) S.A.). The vessel arrived at Corpus Christi last week and discharged the one million barrels into two 500,000 barrel lightering vessels. The first lightering vessel was discharged into Koch's tankage.

Before the second one could discharge, Koch received information from PdVSA that there could be a problem with some of the oil not being covered by the UN Oil for Food Program. PdVSA had been informed through the U.S. Embassy in Caracas, as well as received communications from Mr. E. M. Rosenda, the inspector of import duties and excises in Curacao. Koch has not been contacted by the U.S. government. Koch then contacted my client. This was the first time that Trafigura learned that authorities were questioning whether some of the oil may not have been sold through the Oil for Food program.

Koch refuses to let the second lightering vessel discharge and will not pay Trafigura for any of the oil (even the oil that was discharged) because it is afraid that the Treasury Department's Office of Foreign Assets Control will come back and accuse it of sanctions violations. The second lightering vessel is sitting in the port at Corpus Christi and is costing my client over $35,000 a day and the shipowner wants its vessel back.

I am told that the vessel Essex arrived at Curacao yesterday and was inspected by the Curacao authorities. I have not been able to find out what happened and the UN will not talk to me about it. I heard third-hand that the vessel is not being allowed to berth and discharge. PdVSA (Petromar) will not allow discharge of the oil until approved by the Curacao government and the UN, and also will not pay Trafigura for the oil. The vessel owner has notified Trafigura that it will charge my client for all demurrage and other expenses attendant the delay. I do not know how long the vessel will be permitted to sit at anchorage at Curacao or what the Curacao authorities are doing.

My client has paid over $45 million for the oil and needs to get paid from its customers soon or its banks may force it to cease business. We have offered to the State Department and to the UN to put any money that was not properly paid to the UN account (assuming that is the case) in escrow pending resolution of this matter so that we can get the oil discharged and vessels returned to their owners. The UN Office of Iraq Programme will not discuss this matter with us directly, and the State Department now says that it cannot advise us, as the U.S. government has not asserted jurisdiction over the Essex. We are now trying to seek assistance of the Netherlands authorities.

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME – BUREAU CHARGE DU PROGRAMME IRAQ

THE EXECUTIVE DIRECTOR
LE DIRECTEUR EXECUTIF

REF: ED/2001/GEN/5

31 October 2001

Dear Ms. Rudy,

I should like to refer to your letter dated 29 October 2001, which was received at this Office late in the evening on that day, and your subsequent letter of 30 October, received yesterday afternoon, informing us that Trafigura had "cancelled the charterparty with the vessel owners". I should like to make it absolutely clear that the contract for oil approved by the Security Council Committee established by resolution 661 (1990) was between Ibex Energy S.A. and SOMO. This approval had nothing to do with Trafigura's arrangements with Ibex, and the United Nations is not a party to the contract between them.

The questions raised in your letter of 29 October 2001 concerning the legality of the Essex oil would have to be investigated by a State or States having jurisdiction over this matter. In my letter of 27 October 2001, I advised that Trafigura seek the assistance of the Dutch authorities in this regard, which I understand you have done.

You will also recall that, in my letter of 27 October 2001, I informed you that this matter had been brought to the attention of the Security Council Committee established by resolution 661 (1990), which is responsible to monitor the sanctions regime imposed on Iraq by the Security Council. The findings of a relevant investigation will also have to be brought to the attention of that Committee.

It follows from the foregoing that, as the Security Council Committee has not thus far taken any action regarding the contract of Ibex, that contract continues to be valid. In the absence of any action by the Committee, the matter of the Berge Odel oil is a matter between Trafigura and Ibex, in which the United Nations Secretariat cannot involve itself.

Ms. Beverly J. Rudy
Counsel to Trafigura B.V.
Sutherland, Asbill & Brennan LLP
1275 Pennsylvania Ave., NW
Washington, DC 20004-2415

With regard to the cancellation of the letter of credit, I should like to draw your attention that the letter of credit is irrevocable, and it has been confirmed by BNP Paribas. As noted above, since no action has been taken with respect to the approved Ibex contract, that contract remains valid, and, accordingly, the United Nations cannot agree to the cancellation of the letter of credit.

Sincerely yours,

Benon V. Sevan
Under-Secretary-General

One United Nations Plaza, Room DC1-1526, New York, NY 10017 Tel: 1 212 963 5707 Fax: 1 212 963 1964 http://www.un.org/Depts/oip

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Facsimile

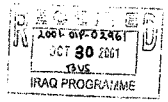
CONFIDENTIAL

Date: October 30, 2001 **Pages (including cover):** 2

TO:

Recipient Name	Firm/Company	Fax	Telephone
Benon V. Sevan Under-Secretary-General	Office of the Iraq Programme United Nations	212.963.8968	212.963.4341
Steven Katz	Office of Legal Counsel United Nations	212.963.3155	212.963.5353

FROM: BEVERLY J. RUDY **Email address:** brudy@sablaw.com
Telephone: 202.383.0685 **User number:** 2239 **Client number:** 18526.0002
Message:



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October 30, 2001

VIA FACSIMILE
Mr. Benon V. Sevan
Under-Secretary-General
Executive Director
Office of the Iraq Programme
United Nations
New York, NY 10017

Re: Trafigura Beheer B.V. — *t/t Berge Odel*

Dear Mr. Sevan:

In reference to my letter dated October 29, 2001, I am writing to update you on events concerning the vessel *t/t Berge Odel*, which was nominated to lift a cargo of approximately 1.8 million barrels of Basrah light crude under contract to purchase from Ibex. Due to the issues arising from the *Erex*, we had requested that the UN provide us with written assurances that lifting of the cargo would not violate any applicable UN procedures.

Trafigura today canceled the charterparty with the vessel owners. In view of the lack of definitive guidance and assurances from United Nations, including documentation that the oil is properly authorized to be sold to Ibex under the Oil for Food programme, Trafigura could not assume the legal risks of loading a cargo that did not comply with the relevant procedures and UN resolutions.

Thus, Trafigura had no choice but to declare to the vessel owners that the charterparty contract was frustrated. The Company also could not take the risk of incurring continuing demurrage in excess of USD $40,000 per day until the matter is resolved. In accordance with this decision, Trafigura also has requested that its bank, BNP Paribas (Paris), arrange with the UN to cancel the letter of credit in favor of the UN account which had been posted on Ibex's behalf.

Sincerely,

Beverly J. Rudy
Counsel to Trafigura Beheer B.V.

cc: Steven Katz, Esq.

S023800

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME - BUREAU CHARGE DU PROGRAMME IRAQ

THE EXECUTIVE DIRECTOR
LE DIRECTEUR EXECUTIF

REF: ED/2001/GEN/4

27 October 2001

Dear Ms. Rudy,

I should like to thank you for your letter dated 25 October 2001 written on behalf of Trafigura BV, concerning Iraqi crude oil aboard the m/v Essex.

As you already have been informed, on 24 October 2001, this Office brought the matter to the attention of the Security Council Committee established by resolution (1990), without prejudice to the allegations made and the comments thereon by the Government of Iraq. It is my understanding that the Committee intends to review the matter in early November.

In connection with the difficulties you have referred to in your above letter, Trafigura may wish to seek the assistance of the Dutch authorities. I have noted that you have already contacted the Dutch authorities to seek their assistance.

Benon V. Sevan
Under-Secretary-General

Ms. Beverly J. Rudy
Counsel to Trafigura B.V.
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October 29, 2001

VIA FACSIMILE

Mr. Benon V. Sevan
Under-Secretary-General
Executive Director
Office of the Iraq Programme
United Nations
New York, NY 10017

Re: Trafigura Beheer B.V. — Urgent Guidance Requested Regarding *t/t Berge Odel*

Dear Mr. Sevan:

I received your October 27, 2001 letter and thank you for your prompt response. I understand that a meeting of the 661 Sanctions Committee is scheduled to take place early next week to review the matter and we will assist the Committee in any way we can. To that end, I am in the process of drafting a letter explaining my client Trafigura's understanding of the chronology of the liftings in question aboard the *t/t Essex*.

I am writing for your further assistance regarding the vessel *t/t Berge Odel*, which Trafigura chartered some time ago to load a cargo of approximately 1.8 million barrels of Basrah light crude under contract to purchase from Ibex (which we are told by Ibex is covered by Ibex's 7 million barrel Basrah light allocation). The vessel was en route to the Persian Gulf when Trafigura learned of the problems regarding the *Essex*, and was supposed to arrive at Mina Al-Bakr this past weekend. Trafigura has instructed the vessel to sit at anchorage and postpone proceeding to the SOMO terminal for lifting by Ibex in order to first obtain assurances from all appropriate UN authorities that the lifting is in compliance with all 661 Sanctions Committee procedures, and will be continuously supervised by the UN or its contractors so as to prevent any issues as have occurred with the *t/t Essex*.

Trafigura's bank, BNP Paribas (Suisse), has posted a letter of credit for the entire volume of the loading to the BNP Paribas, New York Branch, Euro Sub Account, Account Number 0200-201752-002-05. BNP Paribas also is concerned about compliance with UN procedures at the loadport and we understand that the bank has contacted the United Nations as well.

The vessel is now accruing demurrage of over USD $40,000 per day, and Trafigura must decide very shortly whether to cancel the charter party, notwithstanding a potential risk of incurring

damages to the vessel owner for breach. I would greatly appreciate it if the UN could give us some definitive guidance in writing as to whether it will allow Ibex to lift this parcel of 1.8 million barrels, or whether such remaining portion of Ibex's allocation will be cancelled. Given the experience with the *Essex*, I also would appreciate if you could inform me what written authorizations that the UN can provide us so that we know that Ibex is authorized to procure the entire cargo from SOMO, and that the cargo has been properly loaded and approved by the United Nations.

Sincerely,

Beverly J. Rudy

Beverly J. Rudy
Counsel to Trafigura Beheer B.V.

cc: Steven Katz, Esq.

United Nations / Nations Unies
INTEROFFICE MEMORANDUM / MEMORANDUM INTERIEUR

TO: The Oil Overseers
A:
and

Mr. Teklay Afeworki, Senior Finance Officer,
Treasury

DATE: 5 November 2001

REFERENCE:

THROUGH:
S/C DE:

FROM: Ms. Vicien-Milburn, Deputy Director
DE: In charge of the General Legal Division, OLA

SUBJECT: Stand-by letter of credit opened by Trafigura
OBJET:

URGENT

1. I refer to a memorandum from Mr. Afeworki of 2 November 2001 to the Oil Overseers. Attached to that memorandum is a copy of a "stand-by letter of credit" opened by Trafigura Beheer B.V. in favour of the UN, for an amount of EUR 6,438,930.99. The letter of credit is styled as a "stand-by" letter of credit, and purports to cover 271,669 barrels of Basrah light crude. It was apparently transmitted by Trafigura's bank to BNP-Paribas which, in turn, forwarded it to Treasury under cover of a BNP-Paribas memorandum of 2 November 2001. Mr. Afeworki's memorandum listed this office as a "cc" addressee, and contained a request that we provide advice with respect to the letter of credit.

2. In its cover memorandum, BNP-Paribas notes that the letter of credit does not follow the required standard format of letters of credit for the purchase of Iraqi oil under Security Council resolution 986 (1995). BNP-Paribas further states that, as the letter of credit gives no destination, it cannot confirm the dollar value of the letter of credit. Further, BNP-Paribas states that it cannot add its confirmation to the letter of credit.

3. It appears that this letter of credit may relate to the matter of 229,756 barrels of oil loaded onto the vessel "Essex", which Mr. Sevan has brought to the attention of the 661 Committee in his letter of 24 October 2001 to the Chairman of the Committee. From information previously provided to us

concerning this matter, including a fax dated 21 September 2001 from the master of that vessel to the UN, the loading of this oil might not have been monitored or verified by the UN independent inspection agents, as required by the 661 Committee Procedures, paragraph 15, and the MOU between the UN Secretariat and the Government of Iraq, Annex II, paragraph 4. We also understand that payment for the oil has not been made into the UN Iraq Account.

5. From the information provided to us, we understand that this portion of oil may be covered by an approved contract between Ibex and SOMO, and that Trafigura has agreed to purchase this oil from Ibex. We further understand that, even though this oil was allegedly loaded in violation of the procedures referred to above, Trafigura has provided the "stand-by letter of credit" as a means of guaranteeing payment for the oil in the event that it is not otherwise paid for, e.g., by Ibex. Thus, the "stand-by letter of credit" provides that it is payable against presentation of a letter signed by the UN Treasurer stating that the payment of the oil covered by the letter of credit has not been made within 180 days from the issuance of the letter of credit, and that no third party has by that date either irrevocably committed to pay the amount or provided other security allowing the Treasurer to confirm that such funds will be received.

6. We understand that the Committee is scheduled to meet on Tuesday, 6 November 2001, to discuss this matter. Accordingly, we suggest that the letter of credit and the correspondence from BNP-Paribas be brought to the attention of the Committee for that meeting, and that the Oil Overseers, which are to report any irregularities to the Committee (see 661 Committee Procedures, paragraph 15), be prepared to inform the Committee of the relevant facts relating to this loading and shipment, including, *inter alia*, information as to any other letters of credit issued or payments made for the oil in question.

7. If the Committee determines that the loading of the oil was not in conformity with applicable requirements and procedures under Security Council resolution 986 (1995), the 661 Committee Procedures or the MOU, the export of the oil would be a violation of the sanctions regime against Iraq. Pursuant to Security Council resolution 778 (1992), paragraph 2, the oil should be sold at fair market value and the proceeds paid into the escrow account provided for in Security Council resolution 706 (1991) and 712 (1991). Conceivably, such oil could be sold to Trafigura. However, it would have to be determined whether

the amount of the "stand-by letter of credit" presented by Trafigura represents fair market value for the oil in question. The Oil Overseers should be prepared to advise the 661 Committee in this regard. Moreover, it should be pointed out that, if the "stand-by letter of credit" were accepted as payment for the oil, funds would not be received until at least 180 days after the date of its issuance, which was 1 November 2001.

cc: Mr. Golitsyn

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November 2, 2001

VIA FACSIMILE

Mr. Benon V. Sevan
Under-Secretary-General
Executive Director
Office of the Iraq Programme
United Nations
New York, NY 10017

Re: Trafigura Beheer B.V. — t/t *Essex*

Dear Mr. Sevan:

In further reference to your letter dated October 27, 2001, I am writing to provide you and the Security Council Committee established by Resolution 661 concerning the situation between Iraq and Kuwait ("Sanctions Committee") with information presently available to my client, Trafigura Beheer B.V. ("Trafigura"), regarding the loading of Basrah light crude oil at Mina Al-Bakr on the vessel t/t *Essex*. The information is current to the best of our knowledge, as of the date of this letter.

We would appreciate it if you would pass this letter on to the members of the Sanctions Committee in advance of their meeting to review this matter.

1. **General Background**

Established in 1993, Trafigura is an oil and metals trading company incorporated in the Netherlands, with offices in Amsterdam and Lucerne, Switzerland. The parent company Trafigura Beheer trades worldwide through a network of offices managed by its Lucerne headquarters. Trafigura AG, a Swiss company affiliate based in Lucerne and with a branch office in Stamford, Connecticut, focuses on trading with U.S. counterparts. Trafigura Beheer's oil operations principally are managed and operated out of the London office of Trafigura Ltd, another affiliate.

Over the past few years, Trafigura regularly has purchased Iraqi crude oil from third parties who hold contracts with SOMO under the Oil for Food Programme and has sold many cargoes to U.S. refiners. Until this latest cargo loaded on the t/t *Essex*, it was not aware of and did not encounter

any problems with its suppliers, and in particular with Ibex Energy France ("Ibex"), or with Ibex's compliance with the procedures for oil purchases established by the Sanctions Committee. Trafigura has entered into several purchase and sale contracts with Ibex France since 1997, including two contracts to purchase Kirkuk in 1999, without incurring any commercial or legal difficulties.

2. **The First *Essex* Cargo**

In April 2001, Ibex France offered Trafigura a cargo of approximately 1.8 million barrels of Basrah light crude, FOB Mina Al-Bakr, and provided it with a copy of its allocation, UN Ref. S/AC.25/2001/OIL/1330/COMM.81, Contract No. M/09/81. The cargo was sold by Ibex's affiliate, Ibex Energy (Bermuda) Ltd. It would have been standard industry practice for Trafigura to pay Ibex through a letter of credit, as Ibex is the contract holder liable for remitting the funds to the UN. However, as Ibex did not have the credit facility to post such a large letter of credit, it asked Trafigura to arrange for the letter of credit payable to the UN on its behalf.

Ibex then asked Trafigura if it would subcharter space on the vessel for a top-off parcel of 200,000 to 300,000 barrels, which Ibex wanted to sell to a U.S. buyer on its own. Trafigura agreed, but shortly thereafter Ibex informed Trafigura that it had found it difficult to locate a U.S. buyer and needed Trafigura to purchase the parcel. Trafigura agreed to do so but preferred to take the extra oil on a delivered outturn basis so that it would not assume the risk of in-transit cargo loss (which has been excessive for Mina Al-Bakr liftings destined for the United States). However, for credit security and insurance reasons, Trafigura wanted to acquire title to the crude oil and thus agreed to a purchase the oil FOB, adjusted for outturn volume.

Ibex executed a detailed warranty to Trafigura that the second parcel was covered by the UN allocation, that it had complied with all UN and national regulations and that all proceeds would be paid into the UN account. The language of this warranty is similar to those customarily used in U.S. contracts to purchase Iraqi-origin crude oil from both contract holders and downstream third-party purchasers.

Ibex was able to finance the purchase of the smaller parcel from SOMO based on its own credit and requested that Trafigura pay it directly and post as security a standby letter of credit for the payment with its bank, Credit Agricole Indosuez, Geneva Branch. This bank also is one of Trafigura's major banks. To avoid a conflict of interest, Trafigura's policy is not to instruct a bank to open a letter of credit that is at the same time the supplier's bank to receive the letter of credit payment. Additionally, Swiss banking law provides an automatic right of offset without prior notice to the account holder. Thus, Roundhead, Inc., a wholly-owned Trafigura subsidiary domiciled in the Bahamas (which does not have an account at Credit Agricole Indosuez Geneva), made the purchase of the second parcel and resold it in a back-to-back transaction to Trafigura. A different branch of Credit Agricole Indosuez opened the standby letter of credit for Roundhead. Trafigura explicitly informed the bank that the standby letter of credit requested by Ibex is to be issued under the full risk and responsibility of Trafigura Beheer.

The vessel completed loading on May 16, 2001 with 2,027,622 net U.S. barrels of cargo (based on ship's figures) and sailed for the United States. Trafigura received copies of the customary shipping documents required by its contract with Ibex for payment, and the bank issuing the letter of credit to the UN received copies of the documents required for presentment in the letter of credit. The full cargo was paid for 30 days after bill of lading date. The cargo was discharged partially at the Louisiana Offshore Oil Port and purchased by Marathon Ashland Petroleum LLC and partially via two lighter vessels sold to Koch Petroleum Group LP ("Koch") at Corpus Christi, Texas.

3. **The Second *Essex* Cargo**

3.1 Contracts and Loading

In late July, Ibex offered Trafigura another cargo of Basrah light and provided a copy of its SOMO allocation for seven million barrels, dated July 13, 2001. Trafigura entered into a contract to purchase approximately 1.8 million barrels. Ibex represented to Trafigura that the oil would be covered by its approved allocation, and the contract between the parties provides that the crude oil is "to be lifted under contract number M/10/08, UN Ref: S/AC/25/2001/OIL/1360/COMM.08."

Ibex then asked Trafigura whether it would purchase another approximately 200,000 to 300,000 barrels on a delivered outturn basis to top off the ship, as with the prior *Essex* cargo. Ibex did not ask that Trafigura transport the cargo for it with the view toward selling the cargo itself, but Trafigura did not think that this was unusual as it is customary in the industry for smaller oil companies to purchase part cargoes in order to establish a good credit history. The separate contract for this parcel (in the name of Roundhead, Inc.) likewise provided that the crude oil is "to be lifted under contract number M/10/08, UN Ref: S/AC/.25/2001/OIL/1360/COMM.08." Trafigura had no reason to believe that anything was amiss with the purchase or unauthorized by the UN. For both parcels, Trafigura paid Ibex the official selling price in effect at the time of loading, plus a premium.

The vessel began to load at the terminal on August 25, 2001. Trafigura received two bills of lading endorsed by SOMO, one for 1,787,407 barrels and one for 271,669 barrels. Trafigura paid for the large parcel by setting up a letter of credit on Ibex's behalf in favor of the UN account at BNP-Paribas. As explained, Trafigura assumed that Ibex did not have its own credit to do this. Trafigura paid Ibex for the second parcel directly at Ibex's direction as with the first cargo.

Trafigura obtained the customary shipping documents, including (1) two separate bills of lading issued and endorsed by the vessel Master, Captain Chiladakis Theophanis and (2) an ullage report signed by the vessel Master and the SOMO Terminal representative present at the loading, with typewritten dates and times. After the vessel sailed, Trafigura obtained a reconciliation of the total quantity loaded on the vessel based on the combined bills of lading, the ullage report and a verbal verification from Captain Manoulis Manoussaki, Trafigura's on-site loss control

representative, who attended the loading of the t/t *Essex*. Trafigura appointed Captain Manoussaki to attend the loading because historically there have been substantial unexplained losses on cargoes loaded from the Mina Al-Bakr terminal of around 10,000 barrels between the vessel figures and discharge figures into receivers' facilities in the United States.

Captain Manoussaki informs us that the vessel berthed at Al-Bakr on August 25 and that the port authorities, the SOMO representative and Saybolt surveyors boarded at the same time. The loading commenced on August 25 and was interrupted by the Terminal on August 27. Both the Saybolt surveyor and the SOMO representative boarded the vessel to measure the cargo loaded onboard by that time. When these measurements were completed a short while later, the loading resumed for another seven hours until the Terminal gave a stop load order to the vessel Master.

On completion of loading on August 28 of both parcels, the Saybolt surveyor and the SOMO representative boarded the vessel again and prepared ullage reports for the total cargo onboard, which were signed by the SOMO representative and the vessel Master. The SOMO representative presented the two sets of bills of lading, which the vessel Master signed. To ensure that the entire cargo complied with UN procedures, Captain Manoussaki asked the SOMO representative to issue a letter verifying the total quantity onboard. This letter was signed by the SOMO representative and Captain Manoussaki. Given these official documents and verbal confirmation from Captain Manoussaki, Trafigura could only surmise that both parcels were within Ibex's allocation and were properly authorized by the Saybolt inspector to load; it had no reason to believe otherwise.

3.2 Payment Information

Trafigura arranged for payment for the first parcel, 1,787,407 net U.S. barrels at the official selling price per barrel of 23.701 Euro, directly to the UN account, Euro sub account number 0200-201752-002-05 with BNP Paribas, New York Branch in the total amount of 42,363,333.31 Euro (USD equivalent $39,211,501.31). Trafigura instructed its bank, the Basel branch of BNP Paribas (Suisse) S.A., to issue an irrevocable documentary letter of credit, Ref. LCIM 5181892/GROG, by order of Ibex Energy France in favor of The United Nations. The letter of credit was paid on September 25, 2001 through BNP Paribas, Paris to BNP Paribas, New York into the referenced Euro sub account of the UN Account.

Ibex requested that Trafigura pay it for the second cargo of 271,669 U.S. net barrels directly and asked that Trafigura post a standby letter of credit in favor of Ibex Service & Equipment Ltd, Tortola, BVI, which had purchased the product from its parent Ibex Energy. For the credit and banking reasons explained above, Trafigura paid Ibex Service and Equipment Ltd from Trafigura's Euro account with Credit Agricole Indosuez, London Branch, into Ibex Service's account with Credit Agricole Indosuez (Suisse) S.A.

3.3 Sale to Koch

Trafigura sold one million barrels of the oil loaded onto the *Essex* to Koch for delivery to its facility in Corpus Christi, Texas and one million barrels to a Petroleos de Venezuela affiliate, Petromar, S.A. (hereinafter "PDVSA"), for delivery to its refinery in Curaçao, Refineria ISLA (Curazao) S.A. The *Essex* arrived at Corpus Christi anchorage on October 14. By October 18, 516,990.55 barrels was discharged into the first lighter vessel *m/t Aldebaran*, and approximately 525,000 barrels onto the second lighter vessel *m/t Bornas* (shore figures are not yet available because the lighter vessel has not yet discharged). Title to the oil passed to Koch as the oil crossed the outgoing vessel flange. Ullage reports provided to Trafigura show that after the second lighter, 1,002,660 U.S. net barrels remained on the vessel.

The product lightered onto the *Aldebaran* was discharged into Koch's tankage at the Ingleside terminal. Before the *Bornas* could discharge, Koch received information from PDVSA that there could be a problem with some of the oil not being covered by the UN Oil for Food Programme. PDVSA had been informed through the U.S. Embassy in Caracas and had received communications from Mr. E. M. Rosenda, the inspector of import duties and excises in Curaçao. We understand that the U.S. government did not and has not contacted Koch. Koch then contacted Trafigura. This was the first time that Trafigura learned that authorities were questioning whether some of the oil might not have been sold or paid through the OH for Food Programme.

Koch refuses to let the second lightering vessel discharge and will not pay Trafigura for any of the oil (even the oil that was discharged) because it fears that the Treasury Department's Office of Foreign Assets Control ("OFAC") will accuse it of sanctions violations. The second lightering vessel is sitting in the port at Corpus Christi and is costing over $35,000 a day in demurrage. The shipowner is insisting that Trafigura return the vessel. Koch has sought guidance from OFAC and permission to import the cargo and pay Trafigura.

3.4 Sale to PDVSA and Disposition of Cargo on t/t Essex

The *Essex* arrived at Curaçao on Wednesday morning, October 24, with approximately one million barrels onboard. The ship's agent in Curaçao tells us that the following four persons boarded the vessel on her arrival: Mr. H.A. Windevelde (Coast Guard), Messrs. E. AJ Sambo and S.J. Nicia (Customs) and Mr. Fitzroy A. Dorant (United Nations). These individuals are reported to have measured the cargo, taken ullages, obtained copies of the vessel's cargo documents, log book, oil record book and obtained the original vessel Certificate of Registry and Tonnage Certificate (presumably so that the vessel could not sail).

On Friday, October 26, Mr. H. de Jong, a Curaçao Public Prosecutor, advised the vessel owner's representative that the vessel was cleared insofar as his jurisdiction was concerned and could proceed with berthing and discharge, if PDVSA agreed. The Prosecutor has returned to the vessel its original Certificate of Registry and Tonnage Certificate. The vessel owner is waiting for Trafigura to give discharge instructions, but Trafigura is unable to do so as PDVSA has not

yet authorized discharge. PDVSA will not allow discharge of the oil until approved it by the Curaçao government and the United Nations oil overseers or other UN authorities, and also will not pay Trafigura for the oil. PDVSA also has informed Trafigura that it will hold Trafigura liable for all consequential losses, including demurrage, sustained as a result of the uncertified oil.

Trafigura's counsel in Curaçao, the Spigthoff law firm, has been working with the Curaçao Public Prosecutors, Messrs. H. de Jong and G. Joubert, as well as Mr. H.C.R.M. Wijkerslooth, who is director of the Cabinet of the Governor of the Netherlands Antilles, and his colleague Mr. Benschop, to achieve a speedy resolution of this matter. Although it is an innocent party in the matter and has already paid for the unauthorized oil, in order to seek the expeditious governmental approval of the discharge and sale of the entire cargo of oil Trafigura has posted a letter of credit guaranteeing payment of almost USD $6 million to the UN account, which represents the official selling price of the second parcel at the time of loading.

Upon receipt of the letter of credit (which was issued and confirmed yesterday), the Attorney General of the Netherlands Antilles confirmed in writing that there will be no further prosecution proceedings in Curaçao. A copy of the letter is attached. He also has requested from the Bureau of Foreign Affairs of the Netherlands Antilles and the Ministry of the Foreign Affairs of the Netherlands written confirmation of their approval. We understand that this written approval will be issued on Monday, November 5.

As noted, PDVSA refuses to accept the cargo unless it receives written approval from the United Nations. Meanwhile, the vessel owner has notified Trafigura that it will hold it accountable for all demurrage and other expenses attendant the delay. The cost of demurrage is in excess of USD $40,000 per day. We do not know how long the vessel will be permitted to sit at anchorage at Curaçao.

4. **Consequences to Trafigura and Other Purchasers of Iraqi Crude under the Oil for Food Programme**

Given the facts known to us, it appears that Ibex, with the complicity of several parties, simply purchased the second parcel outside of its allocation and did not remit the funds to the UN Account. Trafigura purchased the oil with customary assurances from its supplier that the entire cargo was approved under the UN Oil for Food Programme and received customary documentation supporting that fact. There would not have been any way to know that Ibex had lifted oil outside of the Oil for Food Programme.

The cost to Trafigura is potentially enormous. Trafigura has paid over USD $45 million for the oil, and it must obtain payment from Koch and PDVSA soon or its banks may force it to cease business. In addition, to obtain release of the oil, Trafigura has assumed the obligation to make a second payment of USD $6 million for the value of the unauthorized oil. Trafigura also may be liable for demurrage on the *Essex*, the Koch lighter vessel and on a vessel *Berge Odel*—a vessel that it had chartered for lifting of another cargo from Ibex but which it cancelled given the

absence of UN assurances that the Ibex lifting would be authorized. Now Trafigura faces the costs of cancellation of the charter party. The total cost to Trafigura of this debacle could exceed USD 59 million, exclusive of the cost of attempting to recover its losses from the various parties involved.

We are mindful that the Sanctions Committee does not ordinarily communicate with private oil companies. However, this is an unprecedented situation, and we believe that the Sanctions Committee should be aware of how an innocent party can be defrauded and how SOMO is able to cheat the system. Although we are not privy to all the facts and the appropriate officials need to complete their investigation, the complicity or inaction of various parties likely contributed to this situation.

First, the vessel Master signed all the bills of lading and shipping documents. The originals of the bills of loading should have been remitted to SOMO and Saybolt, the UN inspector, for presentation under the letter of credit opened in favor of the UN Iraq Account. The master kept the full set of the bills of lading of the 271,000 barrels onboard and when he disembarked from the vessel while it was en route, he kept one of the original bills of lading.

Second, all of the shipping and loading documents were endorsed by the SOMO terminal representative and had to have involved the active participation of SOMO and the loading terminal.

Third, Ibex lifted oil outside its allocation and failed to pay the UN Account. This could not have been done without it organizing the scheme, the banking channels and the loading and documentary instructions.

Fourth, if Ibex's bank was aware that the payment received through the letter of credit was covering Iraqi oil, no payment should have been authorized other than to the UN account with BNP Paribas.

Fifth, a vessel of this size cannot load significant volumes of oil without the knowledge of the UN-appointed inspector. According to Trafigura's loss control representative onboard the vessel, it took seven hours to load the 271,000 barrels. This loss control representative confirms that Saybolt came onboard after completion of the full loading of both parcels, and all required documents were then signed. We do not think it credible that a vessel can remain on the berth with pipes connected for seven hours without question or knowledge of the UN-appointed inspectors. loading arms were disconnected at 19:50 27/8

5 X
time
hrs
show
different

Without changes to the procedures, other purchasers of Iraqi crude easily could find themselves in Trafigura's position. The cost of recovering the resulting losses is sure to be significant and with uncertain success given that, at present, the allocation holders are small companies whose assets are difficult to reach. We know of no SOMO account outside of Iraq except the controlled UN account. In any event, the liability of other parties will be difficult to prove absent a finding of criminal wrongdoing.

CHILADAKIS THEOFANIS
IRINIS 27-29, tel : (01) 6392097
AYIA PARASKEVI 153.41
ATHENS, GREECE

To,
UNITED NATIONS
1 UN PLAZA, DC1-1572
NEW YORK, NY 10017
U.S.A.

ATHENS
SEPTEMBER 21ST 2001

Attention: Mr Morten Buur Jensen

Subject : T/T ESSEX, Loading at AL BAKR Oil Terminal IRAQ, ignoring UN loading instructions.

Companies involved :

A. TRAFIGURA LONDON, CHARTERERS/TRADERS
TLX: 921187/9222166

B. ELKA LONDON, OWNERS OF T/T ESSEX
TEL: 44 171 258 3537 FAX: 44 171 724 1390

C. SOMO LONDON, IRAQI OIL COMPANY, TLX : 212198

D. EUROPEAN NAVIGATION, ATHENS, OPERATORS FOR T/T ESSEX
TEL: (01) 8981581, FAX : (01) 8981588

E. FALCON NAVIGATION, ATHENS, REPRESENTATIVES OF TRAFIGURA
TEL: (01) 9607230 FAX: (01) 9616801

FIRST LOADING MAY 16TH 2001 (U.N. code : missing)

The above named vessel (T/T ESSEX) was fixed by TRAFIGURA to load at AL BAKR oil terminal IRAQ, a cargo of 1,800,000 bbls Basrah light crude oil.
As per attached doc 1, vessel loaded 1,800,000 bbls Basrah light crude oil, Ullage report (doc 1) signed by Master and Terminal manager, B/L (doc 2) issued and signed by Master verifying the quantity the vessel was fixed to load 1,800,000 bbls or 247,847.80 metric tons.

After the completion of loading of 1,800,000 bbls and all the documents signed the UN cargo inspectors left the vessel.
Loading resumed after about one hour without informing the UN cargo inspectors and was completed when the vessel loaded the additional 229756 bbls.
Ullage report (doc 3) was signed by Master and Terminal Representative, B/L (doc 4) was issued and signed by Master, (doc 5) was signed by Terminal Representative and by FALCON representative opt Manoussakis Manolis verifying the additional quantity was loaded on top of the quantity which was allowed by letter of credit issued by U.N.
After loading vessel proceeded to LOOP where she discharged part of her cargo and then proceeded to South Sabine where she discharged the balance of cargo.
On arrival at the LOOP the vessel was measured by charterer's cargo inspector (doc 6) as well as by SGS receiver's cargo inspector (doc 6a) and the total quantity of cargo the vessel has on board found to be 2,034,358.00 bbls or 280,121.07 metric tons, thus more than the letter of credit about 229756 bbls.

SECOND LOADING AUG 27TH 2001 (U.N.code: S/AC25/2001/OIL/1360/LC23)

The vessel T/T ESSEX was fixed by TRAFIGURA to load a cargo of 1,800,000 bbls Basrah light crude oil from Al Bakr oil terminal, IRAQ.
The same procedure as the first loading was followed.
As per (doc 1) and (doc 2) vessel loaded 1,788,820.00 bbls equal to 246,475.319 metric tons.
As per (doc 4) vessel loaded additional 271,884.00 bbls or 37,461.957 metric tons which was over the U.N. letter of credit.
Vessel is proceeding to U.S. GULF (South Sabine) to discharge and she is expected to arrive there on or about October 14th 2001.

Attachments

first loading : doc 1, doc 2, doc 3, doc 4, doc 5, doc 6, doc 6a.

second loading : doc 1, doc 2, doc 3, doc 4, doc 5.

I will be very glad if I can be helpful to any additional information and or clarifications required concerning the above.

Thanking you, I remain,

Yours faithfully

Cpt Chiladakis Theofanis

cc: AMERICAN EMBASSY
Vassilissis Sophias 91
Athens, Greece

cc: U.S. Coast Guard
MSO Houston-Galveston
P.O.Box 446
Galena Park, tx 77547-0446

713 - 671 - 559

PONC01160501

MASTER'S COPY NOT NEGOTIABL

BILL OF LADING

doc 2

KBL/3113

Shipped in apparent good order and condition by SOMO in the S/S - M/T called the "ESSEX" Whereof CAPT.CHILADAKI S.THEOFANIS is Master for this present voyage now lying at the Port of AL-BAKR TERMINAL,IRAQ. IRAQ CRUDE OIL (BASRAH LIGHT) In Bulk

	Cubic Meters	U.S. Barrels	Long Tons	Metric Tons
Gross	286134.460	1799735	243936.08	247851.254
Net	285319.836	1794385	243725.28	247637.017

and to be delivered (subject to the undermentioned conditions and exceptions) in like good order and condition at the Port of KUWAIT or as near thereto as she may safely get (always afloat) unto order SHIP PATTERSON/PATTEN or to their assigns upon payment of freight as per charter party, all conditions and exceptions of which charter party, including the negligence clause, are deemed to be incorporated in this Bill of Lading.

The Ship has liberty before or after proceeding on the voyage to proceed to and stay at any port or ports in any order for any purpose and not withstanding that same may be out of the direct route to the port of discharge, with liberty to sail without pilots, and to tow or be towed and to tow and assist vessels in distress or otherwise in all positions, and to deviate for the purpose of saving life or property.

In witness whereof the Master of the said ship has affirmed to FOUR Bills of Lading, all of this tenor and date, one of which being accomplished the others to stand void.

"ON BAR OF BOARD"
"FREIGHT PAYABLE BY BUYER AS ARRANGED"

Dated at AL-BAKR TERMINAL this SEVENTH day of MAY 2001

SHIP "ESSEX" MONROVIA

Ullage Statement

OPS#13

EUROPEAN NAVIGATION INC.	Issue No.	Effective Date	Issued By	Approved By G.M	Page No.
	01	1/10/1997	DPA		1 of 1

doc 3

SHIPS NAME: T/T "ESSEX"

1st Copy to be kept on board with the 2nd Copy to be sent to the Company's Operation Department

PORT OF	AL BAKR	DATE & Time	6.00 a/
Cargo Name	BASRAH LIGHT	Voyage No	13 TH
Dens or A.P.I.	31.51	Tables Used	6A
Terminal	AL BAKR	Berth No.	1

AFTER LOADING

Draft Fwd: 19.58 | Draft Aft: 19.58 | Draft Mid: 19.58

TANK No.	ULLAGE Obs	ULLAGE Corr	T.O.V Barrels	FREE WATER Dip	FREE WATER Volume	G.O.V Barrels	TEMP °F	V.C.F. 54A	G.S.V Barrels
1C	1.60	1.16	96,190	0.09	235	95,955	99.9	0.9832	94,343.02
2C	1.59	1.15	290,224	0.08	811	289,413	99.5	0.9820	284,203.97
3C	1.51	1.07	72,389	0.01	13	72,376	97.5	0.9829	71,138.79
4C	1.63	1.19	144,886	0.03	136	144,750	98.7	0.9824	142,182.53
5C	1.63	1.19	144,886	0.03	136	144,750	99.7	0.9819	142,110.16
6C	3.86	3.42	199,620	0.00		199,620	98.2	0.9826	196,146.32
7C	1.62	1.38	214,979	0.00		214,979	99.0	0.9822	211,152.78
8C	1.60	1.16	144,615	0.08	336	144,280	97.9	0.9827	141,783.67
1P	2.24	1.80	72,113	0.08	91	72,022	96.8	0.9833	70,818.91
S	1.54	1.10	74,245	0.00		74,245	96.1	0.9836	73,027.30
3P	5.99	5.55	78,258	0.05	163	78,095	96.8	0.9832	76,782.62
S	6.19	5.75	77,604	0.03	97	77,507	96.7	0.9833	76,212.31
5P	1.67	1.23	92,341	0.04	115	92,226	96.8	0.9832	90,676.31
S	1.67	1.23	92,341	0.03	86	92,254	96.8	0.9832	90,704.60
7P	2.18	1.74	90,422	0.00		90,422	95.9	0.9836	88,939.38
S	1.59	1.15	92,265	0.00		92,265	96.3	0.9835	90,742.85
9P	5.44	5.00	48,060	0.00		48,060	95.9	0.9836	47,272.25
S	5.41	4.97	31,272	0.00		31,272	97.7	0.9826	30,733.80
SLP	2.81	2.47	13,336	0.42	94	13,242	96.3	0.9835	13,023.17
10S	0.00	-0.44							
Lines			1,574			1,574	96.8	0.9832	1,547.27
TOTALS			2,071,619		2,383	2,069,267	97.9		2,033,842.22

Total Observed Volume (bbl)	2,071,619.37
Less Free Water	2,383
Gross Observed Volume (bbl)	2,069,266.54
Gross Standard Volume (bbl)	2,033,842.22
Less O.B.Q. & Slops	0
[redacted]	[redacted]

Weight Factor (Tbl 13)	0.13770
Trim Correct. Applied	N/A
List correct. Applied	N/A
DSQ	1557.7
[redacted]	[redacted]

Chief Officer's Signature | Terminal Representative | Surveyor's Signature

MONROVIA

SOMO PONC02160501

doc 4

BILL OF LADING

BBL/3113

Shipped in apparent good order and condition by SOMO on the S S - M/T called the ESSEX whereof CAPT. CHILADAKIS, PANAGIOTIS is Master for this present voyage now lying at the Port of AL BAKR TERMINAL, IRAQ IRAQ CRUDE OIL (BASRAH LIGHT) in Bulk

	Cubic Meters	U.S. Barrels	Long Tons	Metric Tons
GROSS:	36,473.094	229,409	31,094.10	31,595.16
NET:	36,445.703	229,237	31,067.20	31,565.83

and to be delivered (subject to the undermentioned conditions and exceptions) in like good order and condition at the Port of "USA" or as near thereto as she may safely get (always afloat) unto order ROUNDHEAD, INC. or to their assigns upon payment of freight as per charter party, all conditions and exceptions of which charter party, including the negligence clause, are deemed to be incorporated in this Bill of Lading.

The Ship has liberty before or after proceeding on the voyage to proceed to and stay at any port or ports in any order for any purpose and not withstanding that same may be out of the direct route to the port of discharge, with liberty to sail without pilots, and to tow or be towed and to tow and assist vessels in distress or otherwise in all positions, and to deviate for the purpose of saving life or property.

In witness whereof the Master of the said ship has affirmed to THREE Bills of Lading, all of this tenor and date one of which being accomplished the others to stand void.

"CLEAN ON BOARD"

"FREIGHT PAYABLE BY BUYER AS ARRANGED"

Dated at AL BAKR TERMINAL this SIXTEENTH day of MAY 2001

MONROVIA

doc 5

TOTAL QUANTITY ON BOARD

TOTAL QUANTITY LOADED ON BOARD VESSEL Essex

ON (10/5/2001) AS FOLLOWS:-

	GROSS	NET
CUBIC METERS :	322,601.813 -	322,165.539
U.S. BBLS :	2,029,144 -	2,027,632
LONG TONS :	275,030.118 -	274,192.428
METRIC TONS :	279,444.412 -	279,202.892

SIGNATURE

SIGNATURE

Nov 22, 2001

You will no doubt all be aware of the alleged illegal loadings from Mina al-Bakr involving the vessel "Essex", and the revised procedures that have been instituted at both Ceyhan and Mina al-Bakr to prevent the possibility of such occurrences in the future.

Bearing in mind that the Saybolt monitoring operations at Ceyhan and Mina al-Bakr are under the closest scrutiny from the United Nations, it is particularly disappointing to have to advise you that the quality of reporting to this office and to the UN Oil Overseers has, of late, significantly deteriorated.

Examples, in no particular order of merit, are:

1) Time logs with no completion, or sailing, times
2) Sailing wires with incorrect Bill of Lading dates, and incorrect notification of barrels loaded. The Office of the Iraq Program of the United Nations has written to Saybolt on this matter.

I do not have to labour the point that this level of performance is unacceptable.

We are a professional company appointed by a major humanitarian concern to carry out an important task. If we are not seen to act professionally, especially so soon after alleged illegal activities have taken place under our very noses, then we will all suffer the consequences.

In our monitoring function we are the "eyes and ears" of the United Nations, and the quality and content of our reporting function is the only benchmark by which the United Nations can judge our performance. Once discredited, confidence is hard to rebuild.

Since the inception of the "Oil for Food" program in late 1996 Saybolt has done a tremendous amount of good work. Unfortunately it is only our mistakes that are noticed, and of late there have been too many. Mistakes and omissions will not be tolerated.

THE FOLLOWING ACTIONS WILL NOW BE TAKEN:

A) As from receipt of this message, both the Ceyhan and Mina al-Bakr operations will advise, as part of the daily report, comprehensive time log activities per vessel covering at minimum the following times, split over a number of daily entries as they occur. I expect to see all these times reported; further pertinent details regarding de-ballasting etc can be added as appropriate:

END OF SEA PASSAGE/ARRIVAL AT ANCHORAGE
NOTICE OF READINESS TENDERED
PILOTS ON BOARD
LEFT ANCHORAGE
FIRST LINE ASHORE
ALL FAST BERTH No ?
NOTICE OF READINESS RECEIVED
GANGWAY IN POSITION

FREE PRATIQUE GRANTED
OBQ SURVEY COMPLETED
LOADING ARMS/FLEXES CONNECTED
COMMENCED LOADING
COMPLETED LOADING
LOADING ARMS/HOSES DISCONNECTED
ULLAGES AND SAMPLES COMPLETED
DOCS ON BOARD
VESSEL SAILED

B) As from receipt of this message, the sailing wire to the UN Oil Overseers MUST be counter-checked by at least one other member of the monitoring team before despatch.

C) The sailing wire will now be signed by two members of the Saybolt monitoring team, as follows:
C.1) The inspector who prepares it, and,
C.2) The inspector who checks it.

D) Whenever you have a problem, need advice, or require guidance on any matter, call. I, or Peter Boks, are always available; we need to know about, and react to, problems BEFORE they happen, rather than after.

For the record, my contact numbers are:

Office	44-207-222-0171
Mobile	31-653-975896
Home	44-1707-271794
E-mail	graham_brett@saybolt.nl

We have an important job to do, and we must all ensure we work together as a team to provide the level of professional service expected of us.

Thank you,

Graham Brett

MINA AL-BAKR AUDIT
NOV 27 2002

Saybolt UN Iraq. Mina Al Bakr.

Report .

Following Report based on observations from field trip to Mina Al Bakr; November 27th to 30th, 2002.

General Observations.

Saybolt Monitors Areas.
The office space appears tidy and well organized with all reference notices and files to hand. Working space remains limited. Storage space shows signs of the increased number of files produced over the year. Suggest steps are taken to organize the archive files and have these sent to Baghdad for storage.

Office equipment:
Toshiba laptop 2220 CDS (external screen used due to breakdown of attached screen).
Operates as main unit – SRS Reports, All communications (nb13), All office filing.
Toshiba laptop. 4000 CDT. Back up unit. SRS Reporting system and Outlook express. Programs were checked but should be run to ensure successful operation.
Toshiba 205CDS. Used for observers purposes.
Thrane and Thrane satcom.
Canon LBP800 B&W Lazer printer.
Canon B100e Facsimile unit.
2 Motorola Handset VHF Radio units. (Batteries operational but will need renewal for full performance time.)
All equipment in operational order.
New desktop unit is under order in Baghdad.

Staff accommodation maintained at 5 accommodation cabins, 1 office cabin, Daytoom, Kitchen and storeroom.

General Accommodation Areas and facilities.
Considerable renovation work has been carried out since last report (12/01). Significant improvement in the condition of walkways and platform due to the delivery of hydraulic seals and 'o' rings for the hydraulic valves. Walkways were found free of hydraulic oil films normally apparent, improving safety and cleanliness concerns. Terminal fabric has recently undergone extensive sandblasting against corrorion and will be repainted with recent MOU delivery of specialist epoxy paints.

Water supply is still restricted due to the breakdown of the 2nd 'Jubail' RO unit. Supply of the necessary spare part is presenting problems. A third RO unit is now operational but can only supply approximately 20 M3 per day, approximately half the terminal requirement. Water is available for the kitchen and is rationed for accommodation areas, to approximately 30 minutes per day in the evening, including limited hot water.

Good supply of fresh fruit and drinking water was evident during the visit period, though Saybolt staff took all meals on board visiting ships during the visit period.

Transportation.
Access to the terminal remains unsafe and unreliable due to the poor condition of available marine transport. Particularly in event of poor weather conditions. If the crew boat is out of service, transport by available tug is further restricted by tide. This continues to pose significant additional danger in the necessary event of emergency medical evacuation.

Terminal observations.
Walkways are considerably improved as noted above. Safety rails remain absent in a number of areas. General housekeeping showed an improvement, though sections of damaged structures remain on walkways. The davits for the escape boats are still in the process of being rigged outside the accommodation area.

- **Observations on Office Procedures.**

Notice boards are well utilized and presented for easy reference as required.

Team leader commented of lack of electronic archiving of SRP reports which is now being addressed. It was discussed to have a CD burner installed with the new computer unit for archiving procedure for report back up purposes, which will become an integral part of the report procedure.

Procedure for removal of archive files to Baghdad will be implemented.

Review of documentation produced and kept on file per loading includes the following:

- **Ship Loading Report. Hard Copy File Report.**

Saybolt / UN Mina Al Bakr Documents.
Shipment Report Cover Sheet. (Contains document checklist).
Gross & Nett calculations for Bill of Lading. (Total & B/L splits)
UN Letter of Credit. (Shipment details).
UN Resolution 986 – Sailing Information Advice.
UN Notification Letter.
UN Letter – VEF.

Saybolt Report Documents;
Loading Summary Report.
Ullage Report, Loadport.
OBQ Report.
Vessel Experience Report (VEFL).
Time Log.
Quality Certificate
Meter Report, Uncompensated.

Saybolt Field Reports.
Vessel's Measurement Report.
Vessel Time Sheet.
Bunker Report. Fuel Oil. (Handwritten Reference copy only).
Bunker Report. Diesel Oil. (Handwritten Reference copy only).

Ships Documents (Reference Copies).
Ship Measurement Report. (Tnk ref hts, OBQ; Ullage, etc).
Ship Experience Factor Log.
Ship's Particulars Data. Including Ships Cargo Tank Capacities.
Ships Cargo Tank Capacities (Separate document).

Optional Documents.
Idle/Void Space Report (In event deadfreight space).
Ship's Crew List.

Summary comment.

In contrast to the previous visit and report, where specific issues required addressing, a more general overview of the teams activities, reporting and conditions was made.

Since the previous visit, 6 copies of API Chapter 17.1 and 17.2 have been provided to Mina Al Bakr.

General observations indicated that all necessary reporting requirements are covered, though a number of the specific issues raised in the previous report remain necessary to highlight as certain inconsistencies remain. It was stressed to staff that source data needs to be clearly recorded, particularly in view of the staff rotation' where staff not associated with an inquiry may need to report

or clarify issues. This includes the laboratory analysis notebook, showing clear development of calculations to results as well as ship deck notes.

Inspection on vessels immediate arrival is being performed. (Cases where vessels berth but await instructions to load).

The fixing of seals to both Port and Stbd manifolds prior to tank measurement was noted. The procedure being to check the integrity of the seals prior to the vessel sailing, particularly in cases where the vessel has remained alongside for some hours.

It was noted that staff currently have only one glass thermometer for use on deck. More to be ordered with next equipment consignment. No Saybolt tank measurement equipment is available on the terminal. One MMC tape remains in storage, out of service. (This should be sent to Saybolt Fujeirah for repair. My preference would be to replace with a calibrated steel tape and glass thermometer.)

The laboratory is well maintained and equipment in good order. No results are published on Pour point and hence no testing is currently performed. I am not aware at this time of when these tests ceased or on what basis.

Relations with the Iraq terminal personnel are satisfactory. No problems were advised or noted.

In a final meeting with the Saybolt Mina Al Bakr staff, prior my departure the above points were raised in general discussion. Staff were asked to comment on any terminal work or conditions related problems, difficulties experienced. No specific issues were raised. It was noted in the discussion that conditions at the terminal remain difficult, due to the lack of available water and food supplies, as well as the general living conditions and isolation of the terminal.

My thanks to Jan-Erik Simonsen, Rogerio DeSouza, Danny Singson, Heiki Uuemaa, Sergey Alexiov and Martin Groen for their kind hospitality and co-operation.

Richard Barnes
Saybolt Baghdad.
2/12/02.

VISIT TO BOTAS TERMINAL, CEYHAN
AUGUST 27 – 30, 2002

STAFF ON-SITE DURING VISIT:

Gijs Snoeij	Acting Team Leader
Pedro Goncalves	
Valeriy Poudov	
Gerhard van der Veen	Chemist
Vladimir Pitsik	

During this visit I:

1. Took part in discussions with Gijs Snoeij on a "one-to-one" basis.
2. Took part in discussions with the whole team.
3. Visited with senior staff members of the Botas terminal.
4. Visited the ships agency, Bouiros, at Iskenderun
5. Toured the Botas Terminal, the jetty and control rooms, and inspected the automatic sampling systems (Jiskoot, one per shore line), the metering systems (Daniel), and the Saybolt laboratory.
6. Met with SOMO officials based at Botas.

For ease of reference I will follow the headings established by Paul Edwards (PE) in his de-briefing report on departure from Ceyhan, commenting as necessary.

CARS:

When Gijs Snoeij (GS) handed over the operation to PE, he passed on a note regarding the fact that the cars needed servicing, and that the tyres were in poor condition. Both cars are approaching 3 years of age and have covered 90,000 and 95,000 kilometres respectively. They lead a hard life and will probably need replacing within the next 18 months should the "O4F" contract still be running. GS agrees that the servicing and tyres should have been undertaken during the recent slack period. The following items have been attended to:

- The flame arrestor missing from one vehicle has been re-fitted.
- The very poor condition of the tyres reported by PE, and not denied by GS, resulted from the fact that on this vehicle's previous service, although new tyres were requested, they had not been fitted. All worn tyres have now been replaced.
- The cars were, and are, washed weekly when they are re-fuelled. Even a short journey on the poor roads results in a thick coating of dust.
- The servicing will be carried out as per manufacturer's schedules and, when considered necessary by resident team leader, I recommend should be serviced at more regular intervals.

OFFICE SPACE & FURNITURE:

PE's comments on the conditions he noted on arrival were no doubt correct, and have been confirmed by team members; the action he took has resulted in an acceptable office work environment.

- PE has made a written request to Botas regarding office refurbishment and replacement floor covering, dated 19/08/02. We await further action.
- The request regarding the repair to chairs had already been delivered prior to PE's arrival, and has already been acted upon.

The staff room adjoining the office, although small, is the only recreational area available to our team and is therefore constantly in use; the TV/Video is situated there. Nevertheless, the resident team leader must ensure the office area is kept in a clean and tidy condition.

OFFICE TOOLS:

Further on the notes from PE:

- The desk-top "HUIB" (inherited from Petrak) is used for daily reports to London/Rotterdam, and the creation of SRS reports.

- The desk-top "GIJS" is used for shore tank calculations and other routine monitoring and office administration operations.
- The lockable petty cash box will now be kept in the team leader's room, rather than in the office.
- The weekly/monthly "back-up" of the office computer (on ZIP drive) will be kept in the team leader's room.
- The old notebook computer (no screen, needs a monitor to operate) is used to run simple programs such as calculation of shore tank quantities; the local opinion is that it is not worthwhile repairing.

OFFICE ADMINISTRATION:

PE has arranged the boxing up, labelling and storage of old hard copy files stored in the second office in a neat and professional manner.

- The new ZIP filing system is used to back up the SRS reports and the contract details currently (10 ships a month) on a monthly basis.
- When busy (30 ships a month) this should revert to a weekly back up.
- The ZIP drive should be kept in the team leaders room (ie separate from the office).

LABORATORY:

The benching, which was previously tiled, is currently under replacement with marble-topped benching by Botas, who have also replaced the windows and doors making the two rooms weather-proof, and improved the electrical wiring, power sockets and lighting.

As to PE's comments:

- The calibration certificates for the thermometers have been located.
- Even though the MMC tape is only used once a month for temperature checks of the Enraf system, the spares have been ordered via Rotterdam office and will be fitted on arrival, thus making the tape fully functional again.

I have reviewed the comment made by PE on the desirability of an air-conditioning unit for the laboratory with Gerhard van der Veen, the resident chemist. I concur with the recommendation as the Pour Point apparatus has difficulty in reaching –18oC in ambient temperatures of 30/40oC. However, as this situation has existed for the past six years it seems foolish to rush into Saybolt expenditure in view of the fluid political situation. The team leader will therefore request Botas, now that the necessary repairs to the windows and doors are complete, to consider installing a suitably sized wall air-conditioning unit for one of the two rooms. If they agree, all well and good. If not we should consider this a longer-term Saybolt requirement if the "O4F" scheme continues through another summer.

ITEMS THAT REMAIN TO BE ADDRESSED:

Auto sampler:

- It appears that the newly-installed Jiskoot auto-samplers do not always fill the 18 litre sample vessels, thus creating doubts about the sample integrity.
- I have mentioned this to the Terminal Manager who has promised to investigate and make available the sample report printouts from the control room.
- I visited the jetty control room and the technician present did not know how the achieve this, nor did he fully understand the importance of setting the sample "grab-size" to ensure a complete sample. Casual inspection suggests that all is required is to input the sample control computer with the intended loading volume, and the software will adapt the sample "grab-size" to create an 18 litre overall sample. There seems to be a massive educational shortfall with the terminal staff very few of whom know any English whatsoever.
- The team leader/chemist should ensure that the sample vessel is full after each loading; if not the Botas management should be advised in writing.

VEF Letter to vessels:

- Under review by CGB/PB, and until further notice not to be issued. CGB to advise Mina al-Bakr accordingly.

Incorporation of Excel documents into SRS:

- Not immediately necessary, and subject to what happens to SRS system under review by management.

Botas costs for food/accommodation.

- Best left to local discussions between Catoni Persa and Botas (see later as well).

Air conditioning in laboratory:

- Discussed above.

Uniforms:

- Discussed with team, uniforms to be worn when working and on-call in terminal.
- As staff are mainly resident on the terminal, reasonable dress code is to be observed within terminal boundaries, notwithstanding dress code adopted by local Botas staff. The fact that they choose to wear T-shirts and flip-flops, and are not reprimanded, (whereas we are) does not mean we should follow their poor example.

Safety:

- Medical kits are considered superfluous; there is a well-equipped hospital on the Botas terminal available to our staff.
- Fire equipment can only be supplied by Botas.

BOTAS MANAGEMENT:

On 28/08/02 I had an appointment to meet with the new manager, Mr Recep Arslantay. I was accompanied to his office by Mr Adam Malci (tank farm manager), met Mr Metin Bekmez (ITP chief engineer) and then introduced to Mr Ata Ezici (deputy GM and technical manager) who advised Mr Arslantay had gone on holiday! No apologies were offered.

Mr Ezici speaks absolutely no English, and was most obviously not best pleased at being interrupted. A Botas loading master was summonsed to act as interpreter. We discussed:

- In-line sampler. Ezici promised to revert with solutions before my departure. (This, not unexpectedly, did not transpire and will need to be followed up by the team leader)
- Metering. Ezici states system "nearly" ready for use on Bill of Lading calculations. I reminded him that the prover loop would need to be calibrated by an international inspection agent before fiscalisation use, and any change from the present system would have to be discussed and approved by the 661 Committee. He was not impressed.
- Letters to Saybolt regarding Rules and Regulations". Ezici says that the same letters are sent to all contractors and staff on the site and that we are not be singled out for special treatment. Additionally, he states he is only carrying out instructions received from Ankara.

As noted by PE, and fortified by above, the attitude of the Botas mangement and staff seems to be hostile towards the Saybolt team, and is certainly interpreted as such by our people who nevertheless try as far as possible to ignore the perceived injustices

SOMO:

Met with Mr Salim (ex NOC), Mr Zia and Mr Jalal all of whom I know from SOMO, Baghdad and from previous visits to the North.

- Their major concern is with the retroactive pricing and the (apparent) effect on sales.
- They are more than happy with the service provided by Saybolt in Ceyhan.
- They would like to know when permission will be given to use Khor al-Amaya; interesting discussion ensued.

CONCLUSION:

I will report under separate cover on a number of the issues that I have discussed locally with Gijs Snoeij and the team.

Certainly PE's recommendation that regular visits are made by management should be acted on. In the meantime I would add that, taking PE's comments in the light in which they were made, he is in many respects correct in that an air of complacency has developed in the Ceyhan operation. I have voiced this opinion to Gijs Snoeij who, out of loyalty to his team leader, deigns to comment further than to say that "this is the man's nature". I have told GS that things must improve, and that I/you will state the same to Huib de Bruin. Only a repeat visit can ascertain whether things have improved.

I would recommend this is done before the end of this year.

C G Brett
August 30th, 2002

MINA AL-BAKR AUGT
DEC 16 2001

From: "Richard Barnes" <richard_barnes@saybolt.com> on 05/12/2004 07:52 PM
To: "Graham Brett" <graham_brett@saybolt.com>
cc:

Subject: MAB Reports

Dear Graham,

Please find attached, 2 most recent reports from MAB. Earlier ones are only on hard copy. (My computer does not go back that far.

Kind regards,
Richard

SAYBOLT - FAST TO THE POINT.

If you are satisfied with our services do tell others. If you are NOT satisfied, please do tell us!
http://www.saybolt.com/complaint.naf/

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Any data or results included in this message or an attachment contains original information that may not be modified or altered in any way that would change the content or the original information.

From: "Richard Barnes" <richard_barnes@saybolt.nl>
To: <Peter_Boks@saybolt.nl>, <Graham_Brett@saybolt.nl>
Subject: MAB Report1201
Date: Fri, 21 Dec 2001 12:43:15 -0000
MIME-Version: 1.0
X-Priority: 3
X-MSMail-Priority: Normal
X-Mailer: Microsoft Outlook Express 5.00.2919.6600
X-MimeOLE: Produced By Microsoft MimeOLE V5.00.2919.6600
Content-Type: multipart/alternative;
boundary="----=_NextPart_000_0000_01C18A1D.0F6BEB20"

Saybolt UN Iraq. Mina Al Bakr.

Report 19.12.01.

Following Report based on observations from field trip to Mina Al Bakr; December 16th to 18th, 2001.

General Observations. Saybolt Monitors Areas.

It was impressive to see the improvements to Saybolt staff common areas, raising the standard of accommodation facilities in the Kitchen and Day room areas.

The office space is also better utilised allowing for more workspace. All these areas were found tidy and well organised.

Whilst the dayroom offers good space for the current team of 6 staff, the kitchen/dining area remains cramped for this number. The office space and two staff cabins are without heating. The dayroom airconditioning is currently out of order.

General Accommodation Area.

Terminal facilities remain adequate though in poor condition, with continuing concerns over safety facilities and procedures. The 2 'RO' units currently supply sufficient water, though the quality can by poor in appearance, likely due to lack of cleaning of the storage tank. Hot water supply is inadequate, with little available over the period of visit; Dec 16th to 19th.

The general standard of housekeeping at the terminal has improved with recent painting of internal and external accommodation areas. The general level of cleanliness in the accommodation areas has improved. Also staff kitchen and Dinning area.

Food storage areas remain a concern due to poor condition of surfaces and cooling equipment, fresh vegetables, fruits etc spoil quickly. Supplies are only replenished on a weekly basis which leaves little food of any quality available in the latter part of the week.

Transportation.

Access to the terminal is still provided by tug boat, often with a mid trip boat change. This remains an unreliable procedure due to restrictions of tide vs. tug draft requirements. Boarding the tug boats remains dangerous, with no gangway access at any point of transfer. (Particularly so in bad weather conditions).

Terminal observations.

Walkways remain dangerously slippery due to constant film of hydraulic oil in evidence. Areas around the loading arms are additionally hazardous from both hydraulic and crude oil spills. High humidity in the summer and rain in the winter months compounds this danger.

General housekeeping showed an improvement, though sections of damaged structures remain on walkways, fire extinguishers were noted in poor condition and without proper fixings/check labelling.

The davits for the escape boats are in the process of being rigged outside the accommodation area, though

delayed due to the failure of the barge crane, currently in Umm Qasr for repair.

A new gangway access has been provided on berth 3, replacing the previously damaged unit.

- **Observations on Office Procedures.**

All new procedures are documented and the individual instructions are posted on various notice boards in the office. It is recommended that the various instructions are compiled in a less fragmented way, to form a checklist for use on each loading. This is underway and will also form a convenient basis should further updates / instructions be forthcoming.

The practice of overwriting previously sent messages should stop. Templates for all regular communications should be developed in either 'Word' or 'Excel'.

A full Office checklist of requirements for each loading should be developed with reftrence to 'template' documents involved . This should be sequensial and commence with L/C vs. Contract check to final transmission of Sailing Advice / Loading Report.

Review of documentation produced and kept on file per loading includes the following;

- **Ship Loading Report. Hard Copy File Report.**

Saybolt / UN Mina Al Bakr Documents.

Shipment Report Cover Sheet.

Gross & Nett calculations for Bill of Lading. (Total & B/L splits)

UN Letter of Credit. (Shipment details).

UN Resolution 986 – Sailing Information Advice.

UN Notification Letter.

UN Letter – VEF.

Saybolt Report Documents;

Loading Summary Report.

Ullage Report, Loadport.

OBQ Report.

Vessel Experience Report (VEFL).

Attention Graham Brett, Saybolt London on behalf of the United Nation

Dear Sirs,

We attended two consecutive loading at Botas-Ceyhan, in august 2002, the M/T "Kronviken" and the M/T "Bergina".
On both occasion the use the VEF used was questionable.

For the "Kronviken" the VEF as calculated by us and your representative was not taken into account on the fact that the vessel did not load a cargo equal to a minimum of 90% of the vessel capacity.
As per ASTM/IP/ISO standards there is so far no mention of a minimum capacity loaded to be taken into account for the validity of a VEF.
Although the subject was brought up during the last PMLA meeting, it was confirmed then on the IFIA technical bulletin 02-1 that API chapter17-1, IP PMM part XVI and ISO 13740 should apply; which means that no limitation in volume loaded against vessel capacity should be taken into consideration.

For the "Bergina" this vessel usually loaded in the North Sea as she was designed and built for that purpose.
As you know in the North Sea Bill of Lading are based on meters (which is acceptable) and due to access limitation and the heavy rolling vessels are never checked after loading and therefore no ship's figures after loading are available.
At disport of course independent surveyors measure vessels and ship's figures on arrival are known.
As a comparison between B/L and load-port ship's figures cannot be done, we do strongly believe that no VEF can be used as, as per ASTM/IP/ISO standards a VEF can be considered as acceptable only if we compare either the B/L and the load-port ship's figures or the Outturn and the disport ship's figures (LVEF – DVEF).
On this particular case you instructed your representative to compare the B/L against the DVEF, which is not understandable by the loss control department of TOTALFINAELF.

This came after the first vessel we attended at Botas-Ceyhan (Georgios S on October 2001) where the VEF was used when the vessel was only on her fifth voyage were 5 qualified voyages could not be found and the VEF therefore not applicable.

We are surprised that a world well established company as Saybolt (this is partly why you won the bid to be the U N representative on the oil for food program we guess) do not follow the establish rules in the oil market and we wonder about your impartiality.
No need to mention that the "loss" was substantial, on the 3 cases, for our company.

Best regards

Jean Cadinot

Project – Saybolt UN. Ceyhan CONFIDENTIAL

De-briefing report

Dear Graham,

Rather than spend too much time on expensive phone calls I think it may be more expedient to write you some debriefing notes first so that we have something to refer to when we speak. By so doing you will also have some guidelines to refer to during your visit.

1) **Cars.** As already fully described in recent messages. Both were in a very unsafe condition and not properly cleaned or taken care of. Bodywork damage can be seen on them as evidence from minor accidents.

In addition 34 YG 742 had not been fitted with a flame arrestor to the end of the exhaust pipe. This is a local Botas safety regulation; the Team Leader had been advised by letter from Botas Management on 11 Nov 2001 (No.11628) to do so.
Action Taken
Renewals and repairs carried out to bring cars back to a safe and roadworthy condition (refer to messages already sent)
Flame arrestor fitted.
Car cleaning routine established.
Saybolt Company "Logos" stuck on the car for clear representation and identification purposes.

2) **Office Spaces and furniture.** In an absolutely disgusting and deplorable condition. There was the "coffee bar" actually in the office. The Carpet was stained, oily, burnt by cigarette ends and generally dirty.
All four office chairs were broken and in poor condition.
Walls are marked. The office Notice board was full of out of date notices.
On the doors were incorrect Saybolt Logos and signs that dated back to 1997.
Action Taken.
The coffee bar was moved immediately to the TV lounge area and out of the office.
The photocopier that was in the lounge area was bought back into the office.
Floors carpets cleaned and scrubbed twice. Unfortunately not all the stains and burns could because of being so ingrained they still look dirty. Renewal is the only alternative.
Botas Staff repaired all chairs upon a simple written request.
Door rugs and rubber mats were bought.
A cleaning routine has been established with the contract cleaning staff.
The result now offers a somewhat more pleasing and professional view.
There is still a lot of room for improvement although to achieve the desired effect, a complete redecoration and refurbishment would be required.
A request by letter has been made to Botas management for office refurbishment.

3) **Office Tools** There are two desktop computers in the office and one "notebook" kept as a spare.
Both computers were very dirty on the outside and festooned with old notes and bits of sticky tape. The keyboards were really dirty and full of tobacco bits and cigarette

SAYBOLT NB_07 at SAYNLRDM@comail
08/30/1998 07:37 PM

To: Graham Brett at SAYNLRDM@comail, Peter Boks at Saybolt@comail, SAYBOLT NB_02 at SAYNLRDM@comail
cc:
Subject: Station Review - Ceyhan.

Date : August 30, 1998
To : Mr Peter Boks
: Mr Graham Brett
: Team Leader. Mr Heinz Schunko. Saybolt UN. Ceyhan.

Subject : Station Review - Saybolt UN. CEYHAN

Dear Peter,
Between August 17 and August 21 I visited Saybolt UN. in Ceyhan.
The following is the report of my review whilst I was there.

Operations
==========
Export shipments.

Marine Vessels:
+++++++++++++++
There is a regular loading programme going on at this present time. Shipments are mainly within the 1,000,000 bbls range. This means on average at least 1 ship per day is being loaded and at least one ship per day is arriving on the berth.
Upon my arrival at Ceyhan Port on August 18 there were three ships alongside all at various stages of loading. Time alongside for each ship averages about 24 hours. All loading is done by gravity, no pumps are required.

Our team is carrying out full inspections on each ship. Shore tanks are also measured before and after use in order to have a comparison back up. Bill of lading figures are based upon ships figures with Vessel Experience Factor applied when applicable. This method is in accordance with the agreement made between the GN and with SOMO.

It was noted that very little measurement or Bill of Lading calculation is being carried out by Terminal staff who are relying solely upon the figures as determined and advised by the UN Monitors.
No official papers are being passed in any shape or form between Saybolt UN and the Terminal or with Saybolt UN and SOMO.

Although this is contrary to the terms as laid out in the Contract with the UN it is an evolved solution to ensure that everything runs smoothly and efficiently. At the present time there is simply not the expertise amongst the terminal staff to carry out any coherent procedure to determine Bill of Lading quantities.
The terminal operations manager states that in the future it may be possible for them to issue Bills of Lading in accordance with Internationally recognised Metering procedures.

Only one UN Monitor is in attendance on board the ship at the end of loading. Ship's tanks strappings are not being double checked by another of our staff before leaving the ship. This procedure is contrary to what has already been requested by myself.

Transfer to Turkish Tanks (Kirikale)
++++++++++++++++++++++++
All tanks on the location of Ceyhan (13 off) belong to Iraq. Just outside the Terminal perimeter fence are three tanks that belong to Turkey which feed the Kirikale refinery.
Regular transfers are being made each month from Ceyhan tanks to Kirikale tanks. Saybolt UN team is monitoring these transfers, exported quantities are determined from shore tank measurements carried out on

the Ceyhan Tanks only.
No comparison is made from Kirikale tanks which are being inspected and measured by the Caleb Brett Inspection Company.

Import from Iraq.
~~~~~~~~~~~~~~~~~
There is a regular reception of between 900,000 and 1000,000 barrels per day to Ceyhan Tanks.
Of the 13 tanks in the complex 12 are in service being filled and emptied as required. The average size of each tank is about 650,000 bbls.

Monitoring the amount imported from Iraq is carried out by manual inspection of tanks by the UN Team members.

On some occasions, due to the present demand for exporting the oil much more quickly than before, it can be difficult to demand the required 24 hours settling before measurement takes place. Terminal Operators do their best to comply with this requirement.

Filing Systems :
~~~~~~~~~~~~~~~~
A comprehensive filing system is in place in the office.
All day to day messages and correspondence are filed.
Files are kept with regards Crude imported and exported together with daily, weekly, and monthly comparisons.

All SIP reports from the beginning of the Food for Oil programme have been retained on file.

SIP Reporting :
~~~~~~~~~~~~~~~
A full SIP report is completed for each shipment(SIP DOS Version).
A briefer report, concerning only the ship side of the inspection is sent to Holland for onward distribution to the UN. These reports are discarded at regular intervals.

Investigation reveals that the ship reports are calculated in one computer and the shore tanks reports in the other. Therefore to date no permanent records have been kept as a back up on diskettes.

All UN staff present were fully experienced and conversant with the SIP programme.

Terminal Relations:
~~~~~~~~~~~~~~~~~~~
Appear to be on the whole very good and a regular exchange of information takes place.

Perhaps the greatest barrier that exists is language. Amongst the Turkish staff there are very few who can understand or speak the English language. This can cause minor problems, particularly at 'operator level'.

Most local communication takes place with the Pilots who also act as the loading Masters. All the Pilots speak English and have a good relationship with Saybolt UN. They do, however, sometimes forget that the Team members are UN Monitors and not Inspectors.
This has caused misunderstandings when information and documents are requested which we are not at liberty to release to them.

SOMO Relations:
~~~~~~~~~~~~~~~
Relationship with SOMO and the Iraq North Oil Company staff remains extremely good. Once again they are relying on the UN Team a lot to supply them with information. However this is not a serious problem once our situation is clarified to them.

Code of conduct:
~~~~~~~~~~~~~~~~
With the present UN Team on the terminal the Code of Conduct has been kept fairly well. Uniform is worn during the working day and when Staff are attending ships. There is no evidence of any person on the terminal being upset with our staff's conduct, in fact quite the opposite.

Conditions :
~~~~~~~~~~~~
Living conditions are reasonable. All staff live in a Hotel type of building on the terminal. The building is over ten years old, each room is spacious and air-conditioned with a balcony.
It is noted that furniture and carpets look old although in a reasonable state of repair.

All meals are consumed on the terminal at a special restaurant in a separate building. Meals served are reasonable although the service can be very erratic.

The office space is in another separate building which is together with the Turkish Operations staff, the Pilots and SOMO.
Therefore communication can be kept at a very personal level.

For recreation there is a small club which also serves various alcoholic beverages. There is also a fully equipped private beach, complete with a small cafe. The beach has its own staff for safety and cleaning. It is kept open to all installation staff and their families.

Installation staff live in various types of accommodation all over the terminal, it is estimated that a total of about 500 men, women and children live in the Terminal.

Housekeeping :
~~~~~~~~~~~~~~
Hotel rooms are cleaned daily. There is also a laundry service which is not at all reliable, most of the UN staff were hand washing there own laundry except for items that required ironing, this service could be improved considerably.

Restaurant service and menu is not up to standard. Often menu items are not available and I witnessed myself the very slow service for the evening meal. It took almost two hours to serve and consume three courses. None of the waiters or service staff can speak a word of English which exaggerates the problem.

I have suggested that the Team Leader makes sure that all complaints are made known to the local Catoni Persa manager and to ensure that he explains everything to the Terminal management BEFORE he pays any bills.

It also appears that there are no copies of invoices for payment of accommodation, meals etc., with the Team Leader. All bills are in Turkish which the Catoni Manger interprets to the Team Leader and asks for his signature before this person pays the bills. understand that Catoni Persa then forwards their own invoice to Saybolt International in Holland. There is no copy whatever on the terminal for reference or cross checking.

I suggest this is changed in order that a better control is maintained. Interpreted receipts should be in the Team Leader's possession for reference.

The Terminal Management should be made more aware that the Team Leader is responsible for Team welfare and expenditures. For all I know the terminal may even be thinking that Catoni is paying the UN Team's bills

out of their own pocket and that they are responsible.

Computers:
==========
It is noted that both computers originally supplied to Ceyhan in 1996 have been replaced by Toshiba 'Satellite' computers with 'Windows 95' as the disk operating system. This is different from other Saybolt UN locations where Windows 3.11 is still in use. Any Team member assigned to Ceyhan has to first familiarise himself with a different system before he can work.

The contents and operation of both computers were investigated. The Team Leader's computer had problems with the SIP programme, these were solved. In the CC Mail programme it was found that the address book was well out of date. It was also noted in the Lotus Notes programme that the Vessel Data base has never been updated mainly because past and present staff were unaware that this database existed.

On the computer designated for the Monitor's use there are larger and more complicated problems. The task bar items in Windows 95 appear in red instead of blue indicating an incorrectly installed system. It is difficult to start up the programme since many 'netware' items exist in the boot directory, this also indicates poor installation and simply copying from another computer. The keyboard is not operating properly. The CC mail address book is the complete Saybolt address book of each and every client we have. When switching to operating the computer in Microsoft DOS it cannot operate the DOS programmes and the FAT directory appears to be at fault. Additionally there are some problems with the SIP programmes which cannot be easily solved by known procedures. This computer needs urgent investigation and correction before further corruption takes place.

It was also noted that no 'back up' procedure was taking place on either computer. None of our staff were aware that there was a back up program in Windows 95 or, for that matter the hard disk management programs that exist. I would suggest that a text book on the Microsoft Windows 95 program would be extremely useful.

With regards to copies of the original programs, none exist on site. Copies of Windows 95, CCmail, SIP, Lotus 123, Lotus notes are needed.

I would suggest that a full back up of the Team Leaders computer is made once a month and that full standby computer programs are supplied. For this purpose the supply a back up tape streamer and program would be very useful.

Equipment.
==========
The MMC tape is in constant use by the team every day. There are insufficient spares on site. To my mind minimum required is one complete MMC plus two spare tapes.

Recently a replacement MMC was ordered from Holland and sent by DHL Courier. On August 21 it was still with DHL in Turkey awaiting Customs clearance.

Delays such as above only highlights the need for spares to be on site.

I would also suggest that an "AVTEMP" thermoprobe is kept on site as a back up in case the MMC equipment breaks down.

A comprehensive inventory of all Saybolt Office and Laboratory equipment was not available. This must be made as soon as possible for the good order and reference of each Team Leader.

Handing Over to relieving Team Leaders.
=======================================

There is no notes or procedures in place with regards to a relieving Team Leader. Full reliance has been placed simply upon a hand over period without any backup in writing. This is not a good procedure since important items can be easily forgotten.

Helpful notes should be compiled. In addition the Laboratory and Equipment inventory should be checked and signed over in writing to the succeeding Team Leader.

The Laboratory Inventory should also be checked and signed over each time the Laboratory person is changed.

By implementing the above a better continuity can be maintained and controlled.

Conclusion
==========
I feel that my visit was well justified useful. I would now like to implement the procedure of making regular visits every three months to review the station condition and to keep myself familiar with everything that is going on.

Action items:
=============
1) Each SIP shipment report to be copied to diskette.
   Action : Team Leader
   2) 'Back ups' of each computer to be made every month (Back UP streamer is and program is required to be ordered from Holland)
   Action : Team Leader and Computer Department.
3) 'UN Monitors' computer to be sent back to Holland for investigation. (a replacement will be required before the computer is returned)
   Action : Team Leader and Computer Department.
   4) A text book in the English Language explaining Microsoft 'Windows 95' to be purchased and kept available on station.
   Action : Team Leader
5) Laundry service to be improved (Complaints to be interpreted by local Catoni Persa Manager)
   Action : Team Leader and Catoni Persa Management.
6) Restaurant waiter service to be improved (Complaints as above)
   Action : Team Leader and Catoni Persa.
7) Interpreted copies of all invoices to be kept by Team Leader. Action : Team Leader and Catoni Persa.
8) Order following equipment.
   Two MMC tapes.
   One AVTEMP thermoprobe.
   Consumable stores such as water finding paste, torches, etc., Action : Team Leader and Stores department.
9) Inventory of all Office and Inspection equipment and consumable stores to be made and kept up to date. To be checked signed over whenever the
   Team Leader is changed
   Action : Team Leader.
10) Inventory of all Laboratory Equipment and consumable to be made and kept up to date. To be checked and signed over whenever the laboratory person is changed and whenever the Team Leader is changed.
   Action : Team Leader and Laboratory Staff.

11) Prepare handing over notes. Start a proper handing over procedure to the relieving Team Leader and discharge the responsibility in the correct manner.
   Action : Team Leader

12) Operating manuals for all equipment to be checked if available in the English language on the station. Order manuals as necessary and keep them in the office for future reference.

Action : Team Leader and Rotterdam Office.

13) Start the double checking procedure by another UN Monitor of ship's calibration tables against ullages measured. Please refer to my message and request sent during 1997.

Paul Edwards. August 30. 1998.

Project – Saybolt UN. Ceyhan CONFIDENTIAL

De-briefing report

ash, even to touch the keys felt "sticky". The Team Leaders' computer keyboard was faulty and with broken keys and spacebar.
There was only one printer in service, which was actually the Fax/Scanner/Printer. This was connected by a switchbox to either computer. There was no back up to this system in the event of a breakdown.
There was no place to keep the office cash locked up safely. Apparently it appears that each successive Team Leader has been either carrying the cash with him or keeping the cash in his room.
For computer back-ups, sole reliance was maintained on keeping up a floppy disk system. This method was both time-consuming and somewhat unreliable.
Action Taken.
Everything was given a good clean. A serviceable spare replaced one keyboard. Keyboards were wrapped in "Clingfilm" to keep them clean and working order.
Another inkjet printer was brought for a cost of about $78,00. This printer is also compatible with the ink cartridges for the existing system, so duplication is unnecessary when purchasing replacement cartridges.
A metal cash box with both a key and a lock code was bought for about $20. All cash is now kept locked in the box and kept in the Team Leaders draw in the office. The office is always kept locked when unattended.
A zip file apparatus was supplied from Rotterdam Office. This system is excellent, fast and user friendly. Archive zip-disks have been made. Regular back-up zip disks are being kept updated.

4) **Office Administration** Very mediocre, The "Archives" consisted of old ships reports bundled up together with string binding and then stored in no apparent order in a large filing cabinet. The same went for all the old tank history files and report files. To find any single file was a nightmare, because nothing was clearly marked and it was all mixed up.

Daily filing was not so bad. But finding instructions, bills or even claims was very haphazard. The "Library of Dutch Paperbacks" was kept in the Team Leaders draw for some reason.

You know already about the "VEF Letter" being issued to each shipmaster. Awaiting further instructions.

5) **Computer filing** was poor. Most documents and archives in the Team Leaders' computer (nomenclature "HUIB") were in "Word" format. Very neat, but of little use to anybody, except for reading. The filing system adopted was unwieldy and inflexible.

The Monitors' computer (nomenclature "GIJS") was much better, sensible use of Excel format files had been made and there are some excellent "home made" programs in daily use to assist in the work. Filing is logical and flexible and can be used in a variety of ways.

Project – Saybolt UN. Ceyhan CONFIDENTIAL

De-briefing report

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(23)

To: Mr J Buchanan
Dy. Director (DPA)
[illegible]
Room: [illegible]
Tel: [illegible]

From: [illegible]
Team Leader, Internal Auditor
Room No. C-[illegible]
Tel: [illegible]
Fax No.: [illegible]

Date: 22nd Oct. 1997

Subject: CHECK OF OIL CONTRACTS

Ref: [illegible]

TO BE REVIEWED WITHIN 2 DAYS.
NO. OF PAGES 22.

During our test check of records related to sale of Iraqi oil, we noted that in all 21 contracts (in some contracts repeat loadings effected and separate LOIs opened for each shipment) signed between KOMO and various oil companies had been approved by SC Committee 661 in between 13 Dec. 96 and 8 May 97 during the initial 180 days of the programme.

We noted that the general scheme & procedures laid down in UNSCR 986 (1995) for approval of all contracts including advising SC Committee 661 on the pricing mechanism were in place as also reported by the Secretary General in his report of 2 June 97 to the Security Council.

Pursuant to the SCR 986 (1995) the sum of proceeds from sale of Iraqi oil including financial and other transactions directly related to it was not to exceed a total of one billion United States Dollars 90 days and this provision was to remain in force for an initial period of 180 days. Pipe line tariff charges for the transport of Iraqi petrol and petroleum products in Turkey were covered by sale of an additional amount of oil.

We note from accounts that the total proceeds from sale of Iraqi oil during initial 180 days period amounted to 1.011 Billion US$ and the proceeds from sale of additional oil to meet pipe line fee amounted to 136 Million US$.

The pricing mechanism is related to the crude and the destination and is adjusted up or down during the period of contract in the same direction and magnitude cent for cent per barrel as the changes in the published price for Arab Light Crude oil as announced by the producer applicable for the same destination and month of loading. The prices are related to the quotations as published in the PLATTS Crude oil Marketwire.

(2)

We noted in the text check that there was by and large no inconsistency in the pricing mechanism.

As per Article 4 of Section one of the sale contract the LOC is to be established, confirmed and accepted at least seven days prior to loading date. We noted that this requirement had not been observed in all cases. In response to our observation we were informed that no loading had been permitted without a confirmed LOC.

During our discussion with the officers of the SCMO at Bagdad, they were critical of the LOC procedures. Their analysis had revealed that 30 per cent delays in shipments of oil were due to delay in confirmation of LOCs.

We feel that time is the essence of this provision. We recommend that the LOCs be established, confirmed and accepted at least seven days prior to loading date in accordance with the provisions of the sale contract.

We were informed that two claims, details here below, had been made against SCMO.

Claim of Trafigura Ltd. - LC # 788431

The loading of the above vessel at Ceyhan was completed on 26 March 87 for the account of Trafigura Beheer BV, Amsterdam against Contract # M/01/13 and LC # 1708831. In the absence of metering system the Vessel figure of 866,182 barrels was taken as loaded quantity and invoiced by SCMO. Vessel quantity on arrival at port of destination was reported as 880,193 barrels. Trafigura Ltd., however, claimed to have been overcharged by 36,000 barrels approx. valuing US$ 1,010,000.

We note that the Treasurer had on 16 April 87 suggested reservation of US$ 1,000,000 till the claim was received. This had not however been done. We were informed that the inspection agents viz. SAYBOLT had reached an agreement on the export quantity of oil shipped and therefore, there was no need to reserve funds as suggested earlier.

We note from the oil overseers letters dtd. 26 April 87 that the claim was to be settled by SCMO and Trafigura and feel that till such settlement the reservation of US$ 1,000,000 should have been made. We recommend that the anticipated liability be provided in accounts.

We further note from the overseer's letter dtd. 26 April 87 that the Inspecting Agents viz. SAYBOLT work at the same time for the UN and the buyer. While giving their views, the Legal Division opined on 16 May 87 that for SAYBOLT to act as Inspection Agent for both the UN and the purchaser creates a conflict of interest which cannot be permitted. This was more important as the contract with SAYBOLT, SCMO had and the MOU described the Inspection Agents as 'independent' and representing the purchaser violates that status. They further considered that such activities contravened the provisions of the

general terms and conditions of contract which requires the contractor to refrain from any action which may adversely affect the UN and to fulfil its commitments with the fullest regard to the interest of the UN. The Legal Division had further recommended to get a written confirmation from Saybolt that they would comply with the requirement of not representing purchasers.

We may be informed of the action taken by the UN Secret. in this regard.

We are understanding also, action of Saybolt to act as an agent for both the Seller and the buyer is not consistent with the normal commercial practices.

2. Shell International Trading and Shipping Co. - Mimeless loading at Ceyhan

We were informed that the loading of contaminated cargo belonging to Turkish Petro Oil Co. (TOSAS) was noticed by the buyer during the course of loading in March 87. Nearly full cargo load had to be pumped back ashore and the vessel reloaded. This involved additional time and use of additional boatmen throughout the pumping operation. For the detention of vessel at the loading port the buyer had lodged on 9 May 87 a claim of $0,473 US$ with the UN. We note from the Oil Overseer's letter dated 26 May 87 that the claim was not entertained by the UN, not being a party to the oil sales. The company was however, advised to address the claim to the seller.

In view of the responsibilities of SAYBOLT mentioned in Article 4 of the contract between the UN and the SAYBOLT, they are required to monitor the export of Iraqi oil.

We fail to understand how a different crude was loaded with the Inspection Agents stationed to monitor on site the movement of oil. This may be clarified to us.

xxxxxxxxxxxxxxx

File No : A:\ohjl2.wpd

Saybolt International B.V. - Rotterdam

Telefax

SAYBOLT
A Core Laboratories Company

Fax number receiver : 00 1 212 963 1300
To : United Nations Headquarters, New York
Attention : Mr. Steve Avadon
From : Saybolt International B.V.

Subject : UN Audit reply
Date : October 27, 1997

Dear Steve,

In reply to your fax dated 24 October 1997, we would like to comment as follows;

Which of the two figures is closer to the actual quantity?

In view of the non-functional metering system, it is, as you know our procedure to measure:

1. The storage tanks before and after loading of a cargo (for reference and check).

2. The vessel is measured after loading, whereas the vessel's measurements are adjusted by Vessel's Experience Factor (VEF) and On Board Quantities (OBQ).

The measurements described under point 1. serve as reference and check, and the figures are recorded, and archived, against possible future requirement but owing to the relatively long time span since the storage tanks were independently calibrated the control mechanism described under point 2. is considered the more accurate determination, in the absence of accurate metering facilities, for monitoring purposes.

The difference of 26,851 barrels GSV can in our opinion be attributed to the loading of the Tv. "Histria Prestige". This vessel arrived in Ceyhan after an extended period in dry dock during which alterations were made to the dock ullage points to allow use of MMC-type measuring apparatus. The vessel's calibration charts, as presented, were not adjusted for this structural alteration.

On completion of loading there was an apparent difference between the vessels figures (by reference to calibration charts) and shore figure, as follows: -

Vessel 986,182 barrels
Shore 958,106 barrels
Which equates to 28,076 barrels or 2.85 %.

How has the difference been adjusted?

After consultations with the UN Oil overseers and local SOMO representatives it was decided not to deviate from the procedure and that on establishment of the outturn of the vessel an adjustment with the client would be made. (Either by volume on a future lifting, or financially.

SAYBOLT
A Core Laboratories Company

This adjustment is in view of the difference (26,851 barrels) over the entire period in our opinion justified.

The adjustment has however as far as we know not yet been made.

Did not the buyers claim refund?

Obviously the buyers are, as a rule not involved in the measurements that are done for reference/check by Saybolt in conjunction with their tasks as UN observers. Moreover the bill of lading is based on the vessel's measurements adjusted by Vessel's Experience Factor (VEF) and On Board Quantities (OBQ).

However in the case of Tv. "Histria Prestige" the buyer has claimed refund, as they noticed consistent with the differences observed in loadport, an outturn loss at the discharge port.

Why difference arose?

Explanation is given earlier.

Could Saybolt have prevented this difference?

Separate from the acceptable differences which will always occur, in view of the relatively long time span since the storage tanks were independently calibrated or measurement error's with temperature readings or soundings, the difference in the case of Tv."Histria Prestige" exceeded the acceptable difference and it was brought to the attention of all parties concerned. Subsequently it was decided not to deviate from the procedure.

It is therefore that Saybolt can not be blamed for this difference.

Steve, I trust this answers the queries, please contact me in case you need some clarification.

Best regards,

Peter Boks

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME

FACSIMILE

To: Mr. Peter Bako Saybolt Nederland B.V. P.O. Box 151 3000 AD Rotterdam Nederland	Fax: 31 10 4691 299 (Off)
From: Stephani L. Scheer Chief of Office/Special Assistant to the Executive Director	Fax: + 1 212 963 1984 Tel: + 1 212 963 6860
Subject: Lack of measurement devices	
Date: 23 November 1998	Number of pages (including cover page): 1

Please find attached copies of three memoranda dated 10 November, 14 November and 16 November 1998 from the auditors requesting information on the work of Saybolt in Iraq.

In the two memoranda dated 10 November and 16 November, the auditors inquire about the lack of an acceptable measurement system in the loading facilities. It would be appreciated if you could provide your comments, particularly as to your discussions with SOMO in this matter, and the reaction of the Government of Iraq. It is our understanding that it is the responsibility of the Government to ensure that such measuring devices are in place. On the question of facilities in Mina Al-Bakr, I have received Graham Boot's e-mail and will make this available to the auditors.

In the memo dated 14 November, the auditors raise the issue of the incident in which Saybolt was providing services to both the United Nations and a buyer of Iraq oil. The auditors indicate in the second paragraph of this memorandum that Saybolt was requested to refund charges. It would be appreciated if you could inform me as to what the final outcome was in this matter.

In view of the fact that I will meet the auditors on Friday, I would appreciate it if you could provide me with the information by Thursday, 26 November 1998. As Thursday is a holiday here, if you have any questions concerning this matter please contact me by mobile phone (917) 742-2246.

Your assistance in this matter is very much appreciated.

Stephani Scheer

Room S-2112B, New York, NY 10017 • Tel: +1 212 963 6860 • Fax: +1 212 963 1984 • www.un.org/Depts/oip

Office of the Iraq Programme
NOV 1 1 1998
Assign | Info

UN BOARD OF AUDITORS
AUDIT OBSERVATIONS No.9

TO: Ms. REETA TOLANI
EXECUTIVEOFFICER
OFFICE OF THE IRAQ PROGRAMME

FROM: K. MANJIT SINGH
TEAM LEADER
IRAQ ESCROW ACCOUNT AUDIT TEAM
Tele no : 2-1154,2-1363
Fax : 30893
House no : B-C 09

DATE : 10 NOVEMBER 1998

Sub : SAYBOLT REPORTS

1. During the course of Audit of Phase II it was pointed out that in the absence of spare parts , various equipment at metering Stations could not be made operational and that Oil Inspectors were asked to rely upon Ullages to verify the quantities of Oil shipped from Al-Bakar.

2. In one of the reports dated 23-5-1998 to the office of Iraq Programme, Monitoring Inspectors indicated that an internationally acceptable measurement system is operating in either of the loading facilities in the Oil for Food contract, the exported quantities are therefore, ascertained by reference to the loading vessel's calibration chart. PB

3. The monitoring role required that all crude Oil exported from Iraq under the "Oil for Food" programme is fully accounted for and that no diversion of the Oil from this intended use can be made.

4. In the said report, the Monitors have intimated that the Storage tanks have Hand level indication (automatic tank gauging system) but it is unreliable and is not acceptable for calculation of vessel's loaded quantities, or for quantities delivered by the ITP from Iraq. All these measurements are therefore effected by hand measurement.

5. In this connection Audit is of the view that though the meter provers were re-calibrated at the commencement of the "Oil for Food" programme the Metering system is still not functioning, thus, hampering the smooth running of the programme.

Remarks of the management may kindly be communicated within two days

Office of the Iraq Programme
NOV 17 1998
AUDIT | INV
1/7
File:

UN BOARD OF AUDITORS

AUDIT OBSERVATIONS NO: 15

TO: **Ms. NEETA TOLANI**
EXECUTIVE OFFICER
OFFICE OF IRAQ PROGRAMME

FROM: **K. MANJIT SINGH**
TEAM LEADER
IRAQ ESCROW ACCOUNT AUDIT TEAM
TEL. NO. 3-6881
ROOM:C-400

DATE: **16.11.1998**

SUBJECT : Infrastructure in Oil Export.

1. Necessary steps have been taken/are being considered to improve facilities in the loading ports in the interests of generation of revenue by sale of oil to the extent mandated by SCR 986 and related Resolutions. Since the Oil for Food Programme is poised for entering into the 7th 6-monthly Phase, adequate attention requires to be devoted to the issue of vulnerability of the infrastructure. Mr Saybolt is the agency for monitoring of oil exports and spare parts for the Programme.

2. It is seen vide their letter dated 23 May 1998 addressed to Executive Director, UNIF that there is a lack of automatic measuring devices in Ceyhan as a result of which all tanks need to be measured manually. Mr Saybolt have stressed that manual measuring of all tanks occasioned by the lack of automatic measuring devices in Ceyhan is a time – consuming activity. As at the end of Phase III, the Oil Overseers in their weekly report to the Security Council for the week ended 29 May 1998, have stated that about 85 per cent of all liftings have been made at Ceyhan at Tuzkhy. This implies that there has been delay caused to 55 per cent of Phase III liftings simply on account of lack of automatic measuring devices. Going by this analogy, this would

also mean that 30 per cent of all Phase III liftings have been made manually causing doubt over the accuracy of the measurement of oil lifted.

In Appendix I to the afore – mentioned letter, Ms Saybolt have highlighted that there are currently no internationally acceptable measurement systems operating in either of the loading facilities involved in the "Oil for Food" contract and that, therefore, the reported quantities are consequently being ascertained by reference to the loading vessel's calibration charts. Thus, as per the Agents themselves, the measurement of crude petroleum is not being carried out internationally to recognised public standards. Even with regard to calibration, Ms Saybolt have stated that there are no accurate and "in calibration" metering systems operating at Ceyhan or Mina Al – Bakr, or accurate tank calibration charts at Ceyhan. This is not allowing for accurate comparison between loaded and discharged volumes for classification and loss control activities. As Iraqi oil is sold to different countries, it is necessary in the interests of transparency and equity that the measurement of crude petroleum is carried out to recognised public standards. Further, as SCR 986 and related Resolutions have limited 90 – days sales of oil to a specific user, it would be incumbent on the seller to ensure that there is an internationally accepted mechanism for accurate comparison between loaded and discharged volumes for classification and loss control activities. Even though the Iraq Oil for Food Programme is currently in the final month of the fourth Phase, these aspects have not as yet been resolved.

Specifically with regard to facilities, Ms Saybolt have mentioned that :

(i) Ceyhan

A. Measurement

Here the storage tanks have automatic tank gauging system but it is unreliable and is not acceptable:

- for calculation of vessel's loaded quantities or
- for calculation of quantities delivered by the ITP from Iraq.

Ms Saybolt have reiterated that the metering system is not functioning, although the meter provers have been re – calibrated at the commencement of the "Oil for Food" Programme.

B. Loading Facilities

The in – line sampling apparatus is not efficient and needs replacement. For this reason, manual line samples have to be drawn by the Independent oil Inspector every 10 per cent of the loading. 55 per cent of the liftings are made from Ceyhan, the task therefore would be unnecessarily voluminous and time consuming.

(ii) Mina Al Bakr

A. General

- The Terminal consisting of two loading platforms, viz., "A" and "B" is rehabilitated and suffers from inadequacies.

B. Loading Arrangements

- The "Weller" automatic sampling device on Platform is old and relies only upon gravity – set grab settings and therefore is not accurate when loading rates are fluctuating as much as they do on this terminal. Also this device is not time/rate/flow/proportional.
- There are no automatic sampling devices at any other berth.
- Sampling each shipment is carried out by drawing from a sampling pipe on the crude crude line at each berth at predetermined intervals which has been considered by Saybolt themselves as far from ideal or accurate.

(iii) Zakho

A. General

It is the metering station situated close to the border between Northern Iraq and Turkey and is therefore most suitable as the point at which the exported volumes from Iraq are ascertained.

- The bigger of its two pipelines running from Iraq into Turkey is not used and has no current metering facilities in operation.

B. 40" Kirkuk Crude Oil Metering Station

- The fourth flow meter/computer combination and manometer (Daniens – which is faulty) cannot be used owing to lack of spare parts and this system according to Saybolt is currently

mechanically isolated from the pipeline flow.

- The original telecommunications and data acquisition system (SCADA) have been destroyed and the operators are working blind with no pumping/pressure data with respect to up/downstream pumping operations.

C. 46" Kirkuk/Basrah Crude Oil Metering Station

- The metering station is mechanically isolated (spaded off) from the main pipeline and is non – operational.

As the Iraq Oil for Food Programme is currently in the final month of the fourth Phase, Board recommends that these problems be resolved expeditiously.

Board have observed from the Weekly reports sent by M/s Saybolt to Overseers that various operational difficulties persist despite the experience gained by the authorities implementing the Oil for Food Programme which commenced way back in December 1996. Some of these are discussed below:

- As per report of 5-12-1997 no Pilot boats were available at Min Al – Bakr for berthing of "ANDROS GEORGIOS". There was no improvement in Service launches and transportation. Transportation to Shore required at least 15 hours with one change of boats each time.Gangway No 1 was reported to be under repairs.

- As per report of 12-12-97 only one Mooring boat was available at Mina Al Bakr which too was stated to be unreliable. Also, transport to/from Basra was reported to be worse. Tugboat was reported to be at sea awaiting repairs and delivery of parts from Umm Qasr.

- In its report of 13-3-98 the inspectors intimated that no Mooring Boats were on Station at Min Al – Bakr and were reported to be under repairs. It was pointed out that for the last 3 Weeks mooring was done without use of

Mooring boats. This situation, however continued till 20-3-98 when one boat was made available.

- In its report of 27-3-98 no Motor launch service was reported functional from Umm Qasr. Journey time was considerably extended and was far from satisfactory.

- As per report of 22 May 1998 the oil inspectors pointed out that power cuts were occurring several times a day and night. No generators were operating for an hour or more. Power was reported to have been sustained only by Emergency generator. This was reported to be not a safe situation as in the event of any incident of fire or breakdown there would have had no power to run machinery or supply illumination.

- In Mina-Al-Bakr , the power situation was reported to be badly deteriorated in its report of 5-6-98.Numerous power cuts were reported every day and night for periods upto three hours. The main generators are reported to be operating only occasionally with the result that only Emergency generator was being used continuously which could be hardly a safe procedure.

3.1 Board recommends that necessary steps be taken to improve facilities in the loading ports in the interest of generation of revenue by sale of Oil to the extent handled.

5. Board noted in connection with the vulnerability of infrastructure that a group of experts accompanied by two United Nations Oil Overseers visited Iraq from 12 to 22 March 1998 to observe the condition of the production and transportation facilities necessary for the export of petroleum and petroleum products. After physical inspection of the various facilities, on – site discussions and on the basis of information supplied by various Iraq Government Agencies and analysis of historical data, the group of experts had concluded in their report that without rapid and

adequate investment in spare parts and repair of production wells, as well as the development of a number of smaller fields, the gap between the existing declines and the projected increases in crude oil production would grow wider for each month that financing was delay. The recommendations made by in the Report of this Expert Group, and the action taken item – wise on each recommendation made in this report, may kindly be sent to Audit.

It is requested that remarks of the Management may please be communicated within two days.

Office of the Iraq Programme
NOV 15 1996
Action | Info

UN BOARD OF AUDITORS

AUDIT QUERY NO: 7

TO: Ms. NEETA TOLANI
EXECUTIVE OFFICER
OIP

FROM: K. MANJIT SINGH
TEAM LEADER
IRAQ ESCROW ACCOUNT AUDIT TEAM.
Tele no : 5-0134,5-1265
Fax : 26926
House no : S-C 460

DATE : 14.11.1996

SUBJECT: CONTRACT FOR OIL INSPECTORS

In terms of Clause 4.1 under "Scope of work" in Contract entered with M/S Saybolt the Contractor was to provide independent inspection agents to achieve the objective of the subject contract. During first phase , Board had observed that M/S Saybolt had been working at the same time for the UN and the buyer. In view of the remarks of the legal adviser that by working for oil inspectors to work as Inspection agents both for UN and the buyer, it has created a conflict of interest, the Administration confirmed that M/S Saybolt would not accept any future nominations in Ceylan and Mina-Al-Bakr for commercial inspection on crude oil as long as he was under contract with UN.

As M/S Saybolt had agreed not to take the work in Iraq on buyer's behalf and also to work at the same price as originally agreed, the contractor was required to refund charges claimed by them from the buyer for joint inspection on buyer's behalf. It needs to be confirmed if the refund has been asked for or adjusted against his payments.

Board had also recommended that a list of tasks to be performed by the Oil inspectors be also taken into account while drawing up the new contract with M/S Saybolt. In its reply to the Board's recommendations the Administration had assured that under the expanded programme, as provided by the SCR1153 (1998) the functions of the independent Oil

inspectors for monitoring will also expand and clear terms of reference, including a list of tasks to be performed will be included in the new contract. However, the contract has been extended through 28 November,1998 so such recommendations as agreed with appears to have been taken note of. Any specific reason for this needs to be intimated to Audit.

UN BOARD OF AUDITORS

AUDIT OBSERVATION NO.12

Office of the Iraq Programme
APR 12 1999

	Action	Info
[redacted]		
MC	✓	
File		

TO:
Ms. NIEETA TOK-ARI,
EXECUTIVE OFFICER,
OIP

FROM:
V. SHEIK KUMAR
TEAM LEADER
IRAQ ESCROW ACCOUNT AUDIT
TELE NO. 15-0877, 5-1783
FAX NOS 5-0963
ROOM NO.S-C-09
DATE:12.04.1999

SUBJECT :Vulnerability of Infrastructure

To improve facilities in the landing ports in the interest of promotion of revenue by sale of Oil to the extent mandated by SCR 986 and other related resolutions, it was had recommended that adequate attention be paid to the issue of vulnerability of the infrastructure by way of development of statistics concerning declines in Capital stock of resulting to wanted improvement.

Mr Saphek had intimated (May,1998) out only of the non-availability of internationally acceptable measurement system in general, but also of the in accurate and unreliable [illegible] system operating at Cyclone and Value Added or in-accurate and inefficient charts at Cyclone. Board had also recommended that a note be made of Mr Saphek's recommendations about the need for regular re , and upgrading of main ship operator and their subsequent calibration be carried out simultaneously at the two loading ports in consultation with Turkish authorities and the Government of Iraq.

Mr Saphek had further stated that metering station situated in Zakho at one of the border between Northern Iraq and Turkey is the most valuable point at which the imported volumes from Iraq could be reconciled, and that the largest of the two 2 pipelines crossing from Iraq into Turkey was not used because of non operational metering facilities. In addition to both of spare parts for metering tracks etc, Metal Computer / totalisators and flow meters, Mr Saphek had indicated about data downloading or adapted telecommunication and Data acquisition system in Zakho.

Action taken by OIP in consolidating the infrastructure deficiency at the Iraq ports on the recommendations of the Board. Pending these Mr Saphek's report I do not have found in records produced to audit.

Remarks of the Administration may kindly be furnished within one day of the receipt of this communication.

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME - BUREAU CHARGE DU PROGRAMME IRAQ

COMMENTS ON THE AUDIT OF THE MANAGEMENT OF THE OIL INSPECTION SERVICES CONTRACT

An audit of the management of the oil inspection contract was conducted by OIOS from March through August 2001. A draft report (AF2001/30/6), dated 7 December 2001, with findings and recommendations, as well as, a request for time schedule for the implementation of accepted recommendation, was forwarded to Mr. Sevan, under cover of memorandum reference number AUD-7-1:31 (1753/01), of same date.

Following the Security Council resolution 986 (1995) and the MOU, Saybolt Eastern Hemisphere BV, (Saybolt) was awarded Contract PTD/127/0065-96, in August 1996, to provide the services of 14 individuals with "particular experience and qualifications to assist in monitoring the export of petroleum and petroleum products from Iraq". The contract was for an initial term of six (six) months, with an option of renewal for up to three (3) successive periods of six (6) months, on the same terms and conditions. Contract PTD/127/0065-96 was subsequently amended several times to provided for additional inspectors for oil spare parts, and groups of oil experts that undertook special assignment at the behest of the Security Council. Contract number PD/CO114/00 executed in June 2000 succeeded contract PTD/127/0065-96. Under the new contract, which is for one year, with an option of renewal for three (3) successive terms on the same terms and conditions, Saybolt would provide 20 inspection agents; 14 to monitor the oil exports and 6 for spare parts and equipment. The contract has been amended to provide for an increase in the number of oil spare parts inspectors from 6 to 8, bringing the total number of agents to 22.

The audit objectives as stated in the draft report are, *inter alia*, to assess OIP's management of the contract, determine if the contractor provides the required services in an economical, efficient and effective manner, and review the management of other services being provided by the contractor. A review of the draft audit report, against the stated objectives of the audit, would have to take into consideration the context in which the contracts were executed and administered.

Contracts are not executed in a vacuum. As indicated above, this particular contract is being carried out within a sanctions regime and managed in a politically sensitive environment. Any realistic assessment of the management of the contract would have to factor in these considerations. Yet, it would appear from the draft report that the audit was conducted without taking cognizance, either of the legal or political context of the contract which in turn influence its management. For example, the introductory paragraph of the Executive Summary state that "OIP should have considered utilizing UN staff to perform the oil inspection service as an alternative to hiring a contractor, which would have resulted in substantial savings." An action by OIP in this regard would not have been consistent with the Security Council resolution

986(1995) and the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of the Security Council resolution 986(1995) (MOU). Annex II, paragraph 4, of the MOU expressly provides for *independent inspection agents* to monitor Iraqi oil exports.

Various amendments of the contract were undertaken in response to the requests of the Security Council and its Committee established by resolution 661 (1990) that required urgent action. Fortuitously, the experience of the Government of Iraq with Saybolt presented the United Nations with a considerable advantage, one that cannot be cost evaluated, and which rendered the missions much more expeditious and effective.

The decision to manage the contract from OIP rather than UNOHCI was in order not to unduly compromise the latter's mandate. To the extent possible, efforts have been made by OIP to institute appropriate procedures that would ensure that the contractor fully discharges its contractual responsibilities. It is realistic, however, to acknowledge that political actions may affect the manner in which the contractor discharges its responsibilities. For example, it is common knowledge that oil exports are interrupted periodically. The contractor, who has complained that the Government has refused to allow any additional contractor staff on a permanent basis, therefore occasionally deploys more staff to cope with peak periods of work.

The auditors failed to avail themselves of vital consultations that would have been useful to them in their work. Thus the audit objectives were carried out without a proper understanding of the background to the contract, the contract itself and its management.

Although the auditors undertook site visits to some of the locations where the independent inspection agents are located, they did not visit Mina Al Bakr to witness first hand the very difficult conditions under which the independent inspection agents operate. In addition, there was no consultation between the auditors and OIP officials, nor with Saybolt (the contractor) headquarters that would have helped clarify for the auditors some of the contentious issues. An exit conference might also have helped had one been held.

Comments on specific audit findings and recommendations are proffered hereunder:

A: Monitoring of invoice payments and financial matters

Procedures have not been implemented to monitor invoice payments:

Paragraph 8 of the draft report stated, *inter alia*, that the "number of inspectors, whether for oil or spare parts, is the only measurable parameter by which the UN authorized payment to the contractor. Hence an accurate attendance record is essential to support the monthly invoices submitted by the contractor."

The real parameter to measure the performance of the inspectors, whether for the export of oil or the monitoring of spare parts, are the detailed reports of all activities under Saybolt's area of contractual responsibility which come to OIP daily, weekly, and in special cases, as required. It should also be noted that through Amendment number 1 to Contract number PD/CO114/00, the

number of oil inspectors was increased from six to eight. Paragraph has the total number of inspectors as twenty. This error is significant as it influenced the subsequent findings and recommendations.

Paragraph 9(i) stated that "a review of 19 monthly invoices and supporting documents found "deficiencies". Among the deficiencies stated is ambiguity of the attendance record which reflected "from arrival to departure Amman". In the view of the auditors, payments should only be made for manning the locations in Iraq and Turkey.

Contract number FTD/127/0065-96 (the initial contract) determined the number of inspectors required at particular locations in Iraq and Turkey, and Article 7.1 provides for full payment for complete and satisfactory performance by the contractor of his obligations under the contract. As has been noted above, the contractor has on site more oil inspection agents than required under the contract, and is not being paid for the excess number. In that regard, it could be argued that once the requirement of satisfactory performance is met, the "deficiency" in the *attendance record* becomes a non-issue. Nonetheless, since December 2000 the *attendance record* has shown "Personnel Attendance on Location, from arrival to departure".

The draft report also illustrates that the auditors do not have a good understanding of the contract and the method used in the preparation of invoices by Saybolt. This misunderstanding led to a significant error in 'finding' that Saybolt overcharged some $370,000 for services provided during the period 29 May 1999 to 28 June 2001. The auditors confused the billing mechanism, seemingly thinking that Saybolt's billing was based on contracted staff levels and not on staff on site. And, on that matter, the auditors confused the contracted number of inspectors for oil spare parts and equipment. This is eight and not six as stated in paragraph 8 of the draft report.

There is a historical precedent in the preparation of invoices in line with the commencement date of the current contract. The invoice always covers the period between the 28th day of the previous month until the 29th day of the month the invoice is prepared. Thus, the invoice prepared at the end of June covers the last few days of May until the 28th of June inclusive. Reference is made in this regard to Amendment No. 8 to contract PTD/CON/127/0065/0, which covered the period 29th of May 1999 through 28th of November 1999, after which this invoicing scheme was implemented. A review of all invoices found one incorrect invoice issued for the month June 1999. This irregularity does not appear in any of the other invoices. No over billing occurred as a result of this split-month billing, except for the July 1999 bill that included "31 June 1999". This overcharge (17 Man days) will be deducted from a future payment. That the irregularity was not queried by OIP was because OIP understood the billing mechanism, which the auditors did not.

The lump sum payment method provided for in Contract PTD/127/0065-96 (the initial contract) was discontinued with effect from 28 May 1999 in the successor contract. Since June 1999, invoices have been accompanied by an attendance sheet.

Overpayment of monthly invoices needs to be recovered

Paragraph 10 of the draft report stated that the contractor had overcharged by approximately $370,000, on short and excess stationing of staff. Except for the 1999 invoice where Saybolt billed for 31 June 1999, there did not appear to be any evidence of over billing. The invoices were in line with the attendance records. It would seem that the auditors only indicated the first 28 days of the month shown on the attendance record, and ignored the 29th, 30th and 31st day of the previous month, in determining the days of attendance. The other billing errors found were for December 2001, where Saybolt billed for 421 days for Oil Inspectors against 422 shown on the attendance sheet, so undercharging by one day, and June 1999, where a wrong code was used on the attendance sheet, although this did not have a financial consequence.

Regarding the short stationing of staff, as the invoices (since 29 May 1999) were based on staff as per the attendance sheet, no adjustment was required to the invoice for contracted staff that were not on duty, as the invoice did not include any charge for an absent Saybolt staff. As noted above, irrespective of the maximum allowed spare parts inspectors, during the initial stages of this work the contractor only deployed sufficient staff to effectively carry out the requirements of the 661 Committee, as there is an obvious time delay in ordering and physical arrival of spare parts and equipment. It would, thus, appear that the auditors did not differentiate between Saybolt's responsibilities.

Communication charges by the Contractor have been excessive

Paragraphs 11 and 12 stated that the tariff structure of the contract include communication expenses which is about 21 per cent of the total contract amount and that the Contract did not provide for any requirement to justify the expenses incurred through the use of a satellite communication system (Satcoms). The draft report also stated that the "UN did not consider alternative options such as using the UN telecommunication system, which would have reduced the communication expenses significantly, apart from being transparent in terms of identification of all calls including personal ones....."

The auditors did not seem to take into consideration the geography of Iraq, the location of the sites where the independent inspection agents are stationed, the logistics that would have been involved in extending the UN telecommunication system to the various locations and also the political environment.

It must be noted that time is essential and the independent inspection agents have to transmit their reports from the location where they are based, using communication not limited to the various Satcom units alone. There is also daily on-line time from Saybolt's headquarters to the various locations in the field, to transmit data such as the authorization documentation for crude oil loadings. It should also be noted that "on-line-" costs was renegotiated in the current contract, PD/COI 14/00, resulting in substantial savings on communication costs.

OIP needs to recover personal phone calls made by the Contractor's staff

Paragraph 14 stated that Saybolt's "internal policy is to allow each of its staff members free private telephone calls totaling up to 45 minutes per month. In Turkey, it was ascertained that staff members were not charged at all for personal calls, as these were not substantial in the Contractor's view. Since the total communications cost is included in the man-day cost structure, private telephone calls of the Contractor staff members are being charged to OIP."

The auditors seem to have confused the cost structure with the agreed billing procedure. As the contract is all-inclusive daily fee, the only mechanism for charging would be attendance on site of the contracted personnel and satisfactory performance of their duties.

The contract was awarded to Saybolt based on competitive tender and there is no evidence that alleged communication costs for private calls are charged to OIP. It must also be mentioned that the State Oil Marketing Organization (SOMO) has relied for quite some time upon Saybolt's communication systems after the military action in 1998. All costs involved amounting to USD 6,000., per month were absorbed by the contractor (Saybolt).

However, the points raised in the draft report regarding the cost structure could be utilized in the negotiations for the next contract.

Accommodation and local transportation charges included in man-day billing rate have been excessive

Paragraphs 16 and 17 stated, *inter alia* that at Zakho and Mina-al-bakr, the Government of Iraq had provided accommodation for the Contractor's staff, and at Zakho, SOMO had also provided two cars for local transportation.

With regard to questions related to costs for accommodation, transportation, communications, etc., in Iraq, it is a well-known fact that these types of expenses to be incurred in Iraq would have to be compensated, but under the restrictions of sanctions, no payments could be made within Iraq in any other currency but Iraqi dinars. This has led to special arrangements being made by the contractors, not just Saybolt, to ensure that these services, etc., would be provided.

Transport costs provided for in the Contract have been charged

Paragraph 18 stated that "notwithstanding specific provisions in the Contract to the contrary, amendment number three provided for computer equipment for two spare parts inspectors at a cost of $17,800. Furthermore, as per the proposal of the Contractor, dated 19 September 2000, the cost of vehicles for spare parts inspectors was also authorized at $39,000. In this regard, we note that the man-day rate provides for transportation costs of 2.85 per cent. In our opinion, adequate provision was made in the Contract for transportation and no justification was given for amending the Contract to provide additional transport. This arrangement was not transparent and appeared to double charge the UN for these costs".

To facilitate the execution of the contract, it was decided that Saybolt could purchase three vehicles and operate them independently and the vehicles would remain the property of the

United Nations. Because of the urgency of the need, it was further decided to purchase vehicles that were immediately available, that happened to have different colors and prices.

Non-expendable equipment purchased by the Contractor had not been adequately accounted for

Paragraph 20 stated that "the UN had authorized the Contractor to purchase equipment including vehicles, and communication equipment like satcoms, computers and software. We found that the equipment paid for by the UN did not have any UN asset number affixed and had never been inspected by the UN. Furthermore, the equipment was not entered into OIP's inventory system, and there had been no periodic checks on these assets as required by UN financial rules".

Due to the political environment in which the contract is executed, it is not feasible to conduct physical inventory of the vehicles and equipment at site locations. However, OIP maintains a record of what has been purchased by Saybolt under the 2.2% account, and does not necessarily wish to cause unnecessary friction with the Government of Iraq.

Charges for additional services provided by the Contractor have been excessive and inadequately monitored

Paragraphs 21 to 25 stated, *inter alia*, that OIP accepted cost proposals from the contractor for additional services "without any evidence of price negotiations or tests of reasonableness. Moreover, payment for these services had been made without documentation to support the invoicing such as original bills for purchases, tickets, vouchers, etc"

The auditors seem not to have a clear understanding of the nature of the work of OIP and the very sensitive and often urgent requests by the Security Council and its Committee established by resolution 661 (1990). The proposals referred to by the auditors relate to specific survey missions that were undertaken at the request of the Security Council within a tight timeframe. The proposals by the contractors are "all-in", i.e., including all relevant personnel for technical activities and analysis, as well as for ancillary services, such as report writing, presentations to the Security Council Committee, etc. In addition to the demands by the Security Council, the Government of Iraq would also have had to agree to the presence of any contractor, and the Government's experience with Saybolt presented the United Nations with a considerable advantage - one that cannot be cost evaluated - and rendered the missions much more expeditious and effective.

It is also an erroneous assumption that OIP does not maintain comparative information to determine the "reasonableness" of proposals. OIP has always kept such information and has maintained on-going contact with professional societies and industrial organizations, and has thus been able to discuss quickly with experts whether technical and financial proposals were reasonable.

Regarding the comments on the round-trip from Amman-Baghdad-Amman, it is conceded that the charges were overstated. Consequently OIP is arranging a deduction of the

overcharge. But again it should be noted that the auditors seem not to have taken into consideration the question of the time factor, in that Saybolt was able to provide experts immediately from their rosters who were specialized in the areas necessary to undertake these missions, as well as having great technical familiarity with both Iraq and other countries in the region. And regarding the comments specifically on Paragraphs 24 and 25 on the reasonableness of the charges, it is essential to keep in mind that the contract was based on an "all-in" cost proposal.

The Contractor had not conducted "audit visits" as provided for in the Contract

Paragraph 26 stated that although the Contractor's proposal dated June 1996, provided for a coordinator from Rotterdam to "audit" their operation in Iraq every six weeks, no audit had been conducted. On the assumption that the costs of the visits would have been included in the overall price proposed by the Contractor, the auditors consequently calculated 36 such missed visits.

The assumption is incorrect, as the technical head of the Iraq team for Saybolt, Mr. Graham Brett, regularly undertakes missions to Iraq and the cost of these visits is included in the overall price of the contract. In addition, regular "audit" visits are undertaken by OIP experts, particularly those involved in spare parts and equipment for the oil sector, as well customs experts and the Oil Overseers. It should also be pointed out that it is more effective and efficient to have an overall team leader positioned within Iraq that have total responsibility for auditing functions on an on-going basis of review and action, than only periodic "audit" visits, which are after all *post facto*.

Services provided by UNOHCI have not been adequately charged to the Contractor

Paragraphs 27 and 28 have been duly noted.

B: Monitoring Contractor's performance

OIP officials charged with monitoring the Contract had not made inspection visits to Iraq

Regarding the comments on paragraphs 29 and 30, it should be noted that the contract is being executed in a politically sensitive environment. As has been already stated, in order not to compromise UNOHCI's mandate, it was decided to administer the contract from headquarters. OIP maintains oversight of the activities of Saybolt on a daily basis through reporting as well as daily consultations with Saybolt, the Oil Overseers, as well as the group of experts on oil spare parts.

Need for reduction in contract payment during "no work" periods

In paragraphs 31 and 32, the auditors opine that during times when oil is not being exported from Iraq, the contractors should not be paid. In this connection, it would be truly difficult to imagine any professional company of this type that would agree to such conditions in its contract with the United Nations. There is no way to know in advance when there will be a disruption in the oil exports, and it is illogical to expect that ships will wait until the

inspectors are back in place before they can load. To move inspectors in and out of Iraq on that kind of resumption would render the United Nations incapable of fulfilling its mandate in regard to monitoring of oil exports. The requirements of the Security Council and the Security Council Committee demand that a full time presence of inspectors be maintained in the designated sites.

Need to separate the cost of Contractor's equipment from the man-day fee structure

In paragraphs 33 to 35, and the auditors' corresponding recommendations, the report discusses the cost of equipment purchased under the contract with Saybolt. While the comments are too vague to constitute a valid finding, it is clear that the auditors did not take into consideration the ongoing maintenance, repair and replacement costs that are factored into the contract as well, when they speak of onetime costs for equipment and recommend reimbursement by Saybolt.

Scrutiny of CV's of Contract personnel have been ineffective

It would seem that the auditors did not understand the background of the issue of early pensioners. It was originally foreseen that the contractor would identify overseers. That idea was subsequently cast aside. In the selection of staff assigned to monitor the crude oil exports from Iraq, one clearly needs experienced and motivated individuals capable of working efficiently in the sometimes, arduous conditions in Iraq.

It is also not correct that that CVs of contractor personnel are not reviewed. Whenever Saybolt sent a recommendation, it was reviewed by the appropriate staff at OIP and then forwarded to the Oil Overseers for their comments. OIP has at times questioned the selection of candidates for various reasons, including experience, language skills, and geographical distribution. This was all discussed during the daily contacts between Saybolt and OIP. Candidates were withdrawn by Saybolt from time to time following these discussions, and so there was no need for "rejection" by OIP.

In-house versus outsourcing of services

As was stated in the introductory comments, the Memorandum of Understanding between the Secretariat of the United Nations and the and Government of Iraq on the implementation of the Security Council resolution 986 (1995), Annex II, paragraph 4, provides that the "sale of petroleum and petroleum products originating in Iraq will be monitored by United Nations independent oil experts appointed by the Secretary- General of the United Nations to assist the 661 Committee. The monitoring of oil exports will be carried out by independent inspection agents at the loading facilities at Ceyhan and Mina al-Bakr and, if the 661 Committee so decides, at the pipeline metering station at the Iraq-Turkey border, and would include quality and quantity verification. They would authorize the loading, after they receive the information from the United Nations oil experts that the relevant contract has been approved, and report to the United Nations".

It would therefore not be consistent with the above quoted provisions were the OIP to replace the independent inspection agents with United Nations personnel. It should also be pointed

out that nowhere in the United Nations is there an occupational group for petroleum engineers, experts or technicians. To create such an occupational group and 20 posts at the P-4 level for a temporary programme, and then subject those posts to the normal United Nations recruitment and placement procedures, would not be feasible. There is also the related cost of deploying these 20 P-4 staff members, i.e., transportation, accommodation, communication, etc.

In regard to the recommendations by the auditors, the memorandum forwarding the draft audit report stated, *inter alia*, that OIOS considered recommendations 3, 4, 6, 8, 9, 16, 17, 21, and 23 contained therein as being of critical importance. In light of the introductory remarks above, as well as the comments on specific paragraphs, it will be necessary to review each of the recommendations as stated hereunder:

> **Recommendation 3:** Establish a contract management unit in Iraq whose functions should include reviewing invoices' supporting documentation, verifying Contractor's attendance records, monitoring additional requests for equipment and services by the Contractor and providing input for evaluation of the services provided (AF01/30/6/003).

This recommendation fails to take into consideration the fact that this would require additional resources and staffing, which are extraneous to UNOHCI's mandate and would not necessarily be agreed to by the Government of Iraq.

> (i) **Recommendation 4:** OIP management should recover the overpayment of $370,000 as indicated in Annex I, from the Contractor in subsequent billings (AF01/30/6/004)

This recommendation should be reviewed by OIOS. The $370,000 seems to be significantly overstated. Ironically, Saybolt's review of its invoices revealed undercharging that may cancel any overcharging.

> **Recommendation 6:** OIP management should in future contracts with the Contractor (or any other contractor) separate the communication expenses from the man-day tariff structure and reimburse these on presentation of detailed documentation (e.g. invoices from service providers) (AF01/30/6/006)

The recommendation is noted for the negotiation of future contract proposals.

> **Recommendation 8:** OIP management should take steps to stop payment of personal telephone calls of the Contractor staff and recover the amounts overpaid which is estimated at $109,000 for the first nine phases of the programme (AF01/30/6/008).

The contract is an all-inclusive, and there is no evidence that the contractor has separately charged OIP for private calls. Further, it would be contrary to the terms of the contract to demand such reimbursement.

> **Recommendation 9:** OIP management should recover overpayments for accommodation and transportation of approximately $471,000 from the Contractor (AF01/30/6/009)

The contract is all-inclusive, therefore under the terms of the contract, there is no reimbursement due.

> (i) **Recommendation 16:** Implement procedures for procuring urgently required services, which should include: obtaining quotations from other suppliers; checking the reasonableness of quotations based on actual costs; and negotiating costs with the selected supplier (AF01/30/6/016).

As stated above, OIP maintains constant contact with professional societies and industrial organizations and is, therefore, current on the costs of services. However, the recommendation is noted.

> **Recommendation 17:** OIP management should obtain details of "audit visits" undertaken by the Contractor and if no such visits have taken place, recover an estimated amount of $270,000 for 36 such required visits up to phase nine (AF01/30/6/017).

It is more effective and efficient to have an overall team leader positioned within Iraq that have total responsibility for auditing functions on an on-going basis of review and action, rather than only periodic "audit" visits, which are after all *post facto*. In this regard, OIP does not consider that any recovery is due.

> **Recommendation 21:** OIP management should negotiate with the Contractor to recover approximately $1 million paid for equipment in excess of its actual cost and to stop further payments for the equipment cost component in the current Contract (AF01/30/6/021).

This recommendation is rejected. OIP is bound by the terms of contract between Saybolt and the United Nations. However, the recommendation will be considered for future negotiations of contract proposals.

> **Recommendation 23:** OIP management should consider the option of engaging UN staff members at the appropriate level, which is clearly a much more economical alternative to contracting

for oil inspection services keeping in mind the relevant SCRs and MOU with the GOI (AF01/30/6/023).

This recommendation is inconsistent with the relevant Security Council resolutions and the MOU.

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NOTE TO MR. SEVAN

RE: OIOS AUDIT NO. AF2001/30/6: AUDIT OF THE MANAGEMENT OF THE OIL INSPECTION SERVICES CONTRACT

I refer to the memorandum of 29 November 2001 from Ms. Esther Stern, addressed to you, entitled OIOS AUDIT NO. AF2001/30/6: AUDIT OF THE MANAGEMENT OF THE OIL INSPECTION SERVICES CONTRACT. In this connection, as discussed, I have had extensive consultations with Mr. Peter Boks, Managing Director of Saybolt Nederland, B.V. Mr. Boks has provided extensive and comprehensive comments on relevant portions of the audit report. A copy of Mr. Boks's memorandum is attached. Mr. Boks has provided responses in copious detail, in particular in the annex under the analysis of Saybolt invoices. With regard to all questions raised to specific charges covered by invoices submitted by Saybolt, you may wish to cross check these responses with the OIP Executive Office.

Further to this, I would like to offer some additional comments. I would first stress that it is very clear from the audit report that there was a lack of general understanding regarding the responsibilities of Saybolt. This would have been avoided had the auditors followed a lot of our advice and consulted with Saybolt at their headquarters and with OIP at Headquarters, in particular with myself. For our part, we certainly should have held a comprehensive exit conference, which would also have avoided allowing OIOS to prepare this report in a vacuum.

With regard to specific comments, I would like to address the following.

In the OIOS report under "Audit Findings and Recommendations," the auditors state, "The number of inspectors, whether for oil or spare parts, is the only measurable parameter by which the UN authorized payment to the Contractor. Hence, an accurate attendance record is essential to support the monthly invoices submitted by the Contractor. Our review of procedures found however, that they were lacking basic financial checks and balances, resulting in a number of incorrect payments." What the auditors failed to recognize is that the real parameter to measure the performance of the inspectors, whether for the export of oil or the monitoring of spare parts, in fact comes to OIP daily, weekly, and in special cases as required in the form of detailed reports of all activities under Saybolt's area of contractual responsibility.

Under paragraph 9, while Mr. Boks has addressed subparagraph (iv), you may wish to discuss the first three items with the Executive Office. With regard to recommendations 1 and 2, you may wish to discuss this also with the Executive Office, as this would be a forward-looking action. As to number 3, this is very unclear since later in the report the auditors indicate that under paragraph 27 there is a focal point assigned by UNOHCI for Saybolt activities. The recommendation to establish a contract management unit in UNOHCI fails to take into consideration the fact that this would require additional resources and staffing, which

are extraneous to UNOHCI's mandate and would not necessarily be agreed to by the Government of Iraq.

As of paragraph 10, it appears that OIOS switches to the question of monitoring spare parts, although, as previously indicated, it was unclear as to whether OIOS was able to differentiate between Saybolt's responsibilities.

With regard to paragraph 16 and to questions related to costs for accommodation, transportation, communications, etc., in Iraq, it is a well known fact that these types of expenses to be incurred in Iraq would have to be compensated, but under the restrictions of sanctions, no payments could be made within Iraq in any other currency but Iraqi dinars. This has lead to special arrangements being made by the contractors – all of them – to ensure that these services, etc., would be provided. As long as the arrangements did not violate sanctions, they were not a matter of concern for us. This has been the subject of correspondence with the Legal Counsel, and you may wish to obtain additional information on this matter from OLA.

With regard to paragraph 20 and the auditors' comments related to the contractors' purchasing of equipment such as vehicles, computers and communications equipment by the contractors, unfortunately the auditors were not made aware of the long-standing issue of the ownership of equipment purchased under the 2.2% account. In this connection, I am attaching relevant communication between OLA and OIP on this issue. The auditors should have been made aware of the overall political sensitivity of bringing vehicles in under the 2.2% account. OIP maintains a record of what has been purchased by Saybolt under the 2.2% account, and does not necessarily wish to cause unnecessary friction with the Government of Iraq. You may wish to obtain additional information from OLA on this matter as well.

In addition, as the Saybolt contract is administered in New York by OIP, the recommendation by the auditors that UNOHCI be responsible for Saybolt inventory again would create work for UNOHCI that is extraneous to its mandate.

With regard to paragraph 21, the auditors refer to proposals by the contractor for additional services. The contract indicates that these proposals were accepted without any negotiations or test of "reasonableness," etc. The auditors yet again failed to understand the nature of the work of OIP and the very sensitive and often urgent requests by the Security Council and its Committee established by resolution 661 (1990). The proposals referred to by the auditors relate to specific survey missions that were undertaken by the request of the Security Council within a tight timeframe. The proposals by the contractors are "all-in", i.e., including all relevant personnel for technical activities and analysis, as well as for ancillary services, such as report writing, presentations to the Security Council Committee, etc. In addition to the demands by the Security Council, the Government of Iraq would also have had to agree to the presence of any contractor, and the Government's experience with Saybolt presented the United Nations with a considerable advantage – one that cannot be cost evaluated – and rendered the missions much more expeditious and effective. Finally, it is a fallacious

assumption that OIP does not maintain comparative information to determine the "reasonableness" of proposals. OIP has always kept such information and has maintained ongoing contact with professional societies and industrial organizations, and has thus been able to discuss quickly with experts whether technical and financial proposals were reasonable.

Under paragraph 22, it is impossible to comment without a definition from OIOS as to the phrase "authorized standards."

Paragraph 23 relates also to paragraph 21 and again fails to take into consideration the questions of the time factor in that Saybolt was able to provide experts immediately from their rosters who were specialized in the areas necessary to undertake these missions, as well as having great technical familiarity with both Iraq and other countries in the region.

Paragraphs 24 and 25 again relate to the comments in the above paragraphs and failed to realize that it was essential to contract Saybolt based on an "all-in" cost proposal.

In paragraph 26, the auditors are incorrect in their statement as the technical head of the Iraq team for Saybolt, Mr. Graham Brett, regularly undertakes missions to Iraq and the cost of these visits is included in the overall price of the contract. In addition, regular "audit" visits are undertaken by OIP experts, particularly those involved in spare parts and equipment for the oil sector, as well customs experts and the Oil Overseers.

With regard to paragraphs 27 and 28, the auditors failed to understand again the difficult and sensitive situation in Iraq. OIP is very grateful to UNOHCI for its assistance, but it is unclear why all such assistance would be subject to reimbursement. Therefore, in order to address this issue more thoroughly, the auditors would have to make much more clear what they would consider reimbursable vis-a-vis the Saybolt contract. The auditors should also provide clear evidence of the charges to which they refer.

Regarding paragraphs 29 and 30, the auditors again tried to force contract administration to UNOHCI on the misunderstanding that there was no oversight by OIP. This is completely inaccurate, as all of the activities of Saybolt were overseen on a daily basis through reporting as well as daily consultations between OIP and Saybolt, namely with myself as the focal point, with the Oil Overseers, as well as the group of experts on oil spare parts.

In paragraphs 31 and 32, the auditors opine that during times when oil is not being exported from Iraq, the contractors should not be paid. In this connection, it would be truly difficult to imagine any professional company of this type that would agree to such conditions in its contract with the United Nations. There is no way to know in advance when the Government of Iraq will or will not export oil, and we cannot expect that ships will wait until the inspectors are back in place before they can load. To move inspectors in and out of Iraq on that kind of assumption would render the United Nations incapable of fulfilling its mandate in regard to monitoring of oil exports. The requirements of the Security Council and the Security

Council Committee demand that a full time presence of inspectors be maintained in the designated sites.

In paragraphs 33 to 35, and the auditors' corresponding recommendations, the report discusses the cost of equipment purchased under the contract with Saybolt. While the comments are too vague to constitute a valid finding, it is clear that while they speak of one-time costs for equipment and recommend reimbursement by Saybolt, they have failed to take into consideration the on-going maintenance, repair and replacement costs that are factored into the contract as well.

Paragraphs 36 and 37 indicate a confusion on the part of the auditors related to the original considerations in 1995-1996 regarding Oil Overseers. It was originally foreseen that the contractor would identify overseers. That idea was subsequently cast aside.

The auditors then proceed to criticize the manner in which OIP reviewed Saybolt recommended candidates for Iraq. They state that none of the candidates had ever been rejected. This is not accurate. Whenever Saybolt sent a recommendation, I reviewed it first, before sending the documents to the Oil Overseers for their comments. At times, I questioned candidates for various reasons including experience, language skills, and when we seemed to be moving away from geographical distribution. This was all discussed during the daily contacts between Saybolt and myself. Candidates were withdrawn by Saybolt from time to time following these discussions – and so there was no need for "rejection" by OIP.

Finally, paragraphs 38 and 39, with corresponding recommendation, truly surprise me. The reason why a contractor was engaged in the first place was that nowhere in the United Nations is there an occupational group for petroleum engineers, experts or technicians. To create such an occupational group and 20 posts at the P-4 level for a temporary programme, and then subject those posts to the normal United Nations recruitment and placement procedures, is an idea that is thoroughly unreasonable and clearly detrimental to the work of the programme. In addition, the auditors in making this recommendation forgot completely about the related costs of deploying these 20 P-4 staff members, i.e., transportation, accommodation, communication, etc. Perhaps if they had cost-estimated these, their recommendation would have been shelved.

Stephani L. Scheer
12 February 2002

Saybolt Eastern Hemisphere B.V. - Rotterdam

Memorandum

To	: Office of the Iraq Programme
Attention	: Mr. B. Sevan
Cc	: Ms. Stephani Scheer
From	: Peter W.G. Boks
Subject	: OIOS Audit No. AP2001/30/6: Audit of the management of the oil inspection services Contract.
Date	: July 12, 2002

We refer to the draft audit reports as mentioned above, which we received on December 13, 2001. Although you mention in the covering note that the auditors spoke to us in Rotterdam, this is not the case. We only provided some information to our team-leader in Baghdad, in respond to questions addressed to him. At that time, we encouraged through our team-leader the auditors to contact us in Rotterdam. Unfortunately this never occurred.

Given the fact that the Executive Summary is overlapping the main body of the document, we will limit ourselves to the latter.

I. Introduction

In the introduction reference is made to our current contract, mentioning the present staffing levels. It should however be noted that Amendment No. 1 to Contract No. PD/CO114/01/00 allows us to deploy two additional spare parts inspectors. Given the fact that the GOI has refused to allow any additional staff on a permanent basis, we occasionally deploy more staff when considered absolutely essential to cope with peak periods of work. It must be underlined that under present circumstances the current requirements significantly exceed the allowed number of spare parts inspectors.

III. Audit Scope

Although we noticed that the auditors undertook site visits to some of the locations where our staff are located, they unfortunately did not visit Mina Al Bakr to witness first hand the very difficult conditions under which our staff are forced to operate, which we will refer to later. In addition, we underline that our Headquarters have not been directly contacted to discuss any of the contentious matters referred to in their report.

IV. Audit Findings and Recommendations

9 (i) Saybolt maintains throughout the year the following staff on site:

Ceyhan – Turkey	:	5 Staff members
Mina Al Bakr – Iraq	:	6 Staff members
Zakho – Iraq	:	3 Staff members
Baghdad – Iraq:		6 – 8 Staff members

(ii) Given the fact that there is a historical precedent in charging, the invoice covers always the period between the 28th day of the previous month until the 29th day of the month the invoice is prepared. Thus the invoice prepared at the end of June covers the last few days of May until the 28th of June inclusive. After review of all invoices, we found one incorrect invoice, issued for the month June 1999. This irregularity does not appear in any of the other invoices reviewed.

10 (i) A review per invoice is attached for your reference.

(ii) Irrespective of the maximum allowed spare parts inspectors, during the initial stages of this work we only deployed sufficient staff to effectively carry out the requirements of the 661 Committee, as there is an obvious time delay in ordering and physical arrival of spare parts and equipment.

(iii) We refer to our review per invoice.

12 It must be noted that given the fact that time is essential, that our inspectors have to transmit there reports from the location where they are based. We are unaware that there are options to link in to the UN telecommunication system from locations such as Mina Al Bakr. In addition to that communication is not limited to the use of the various satcom units alone. There is also daily on-line time from our HQ in Rotterdam to the various locations in the field, to transmit data such as the authorisation documentation for crude oil loadings.

14. Essentially we feel that our contract has been awarded on the basis of a competitive tender.

16. OIP is well aware that Saybolt has subcontracted the services for transportation and accommodation within Iraq. Initially this was done directly with the Ministry of Oil, which was proven to be in contravention with UN regulations. It was then decided to subcontract this service through a company in Jordan, which to date still is the case.

17. For good order's sake there is no free transportation and/or accommodation within this contract.

18. The auditors refer to the provision of transportation to the spare parts monitors, which was originally arranged through UNOCHI and taken into consideration in our fee structure. When the United Nations concluded that this was proven an ineffective solution, it was decided that Saybolt could purchase three vehicles and operate them independently. The vehicles will remain the property of the United Nations. Saybolt has never quoted for the provision of transportation of the spare parts monitors.

20. A side-remark is that equipment purchased under this arrangement have in numerous cases been replaced by Saybolt. Are there any guidelines as to how we should cope with this?

26. Given the importance of this contract, it was decided that it would be more effective and efficient to appoint an overall team leader positioned within Iraq to have total responsibility for auditing functions on an on-going basis of review and action. In addition to that, visits were made by Executives from Rotterdam as and when required.

33. Essentially we feel that our contract has been awarded on the basis of a competitive tender. Side-remark is that equipment is an ongoing expenditure, such as laboratory consumables, replacing laboratory equipment, medical equipment, upgrading communication equipment and/or computers, gear for new staff etc. etc.

36. It would seem that the auditors did not understand the background of the issue of early-payments. This approach was chosen, when the proposal had to contain the provision of oil overseers as well. This requirement was however deleted, and therefore is irrelevant. In the selection of staff assigned to monitor the crude oil exports from Iraq, one clearly needs experienced and motivated individuals capable of working efficiently in the sometimes-arduous conditions in Iraq.

38. Again a side-remark: The United Nations is promulgating the UNSCR 986 decided to subcontract the monitoring of Crude Oil exports from Iraq, to a Worldwide independent specialised company. The appointment of the successful bidder was by competitive tender. In addition to the 20 inspectors on-site, a much larger pool of staff is needed to maintain the 7 days per week 24 hours a day operation, which is common practice in the oil business. It goes without saying that conditions at Mina Al Bakr are far from ideal. This is illustrated in virtually every weekly report, which is published to the United Nations. Accordingly, it is not realistic to assume that staff is prepared to work at this platform on the conditions mentioned by the auditors.
Additionally, a specialised team of 4 full time employees is involved in the ongoing management of the project, and in giving advice and guidance to the OIP on all matters pertaining to the Oil Industry in Iraq.

Author: SAYBOLT HB_07 at SAYHLRSK
Date: 06/22/98 17:09
Priority: Normal
Receipt Requested
TO: Peter Boks at LNDF
Subject: UN RESOLUTION 986. WATER at MINA AL BAKR

---------- Message Contents ----------

Date : Monday June 22, 1998
Time : 17.00

Subject : WATER SUPPLY at MINA AL BAKR TERMINAL.

Dear Peter,

Reference is made to my last weekly report concerning a cut in supply last week.

This week the water was cut as of Saturday morning June 20. To date there is no sign of replenishments.

Upon investigating the situation this morning with the Terminal Manager and the Harbour Master it was explained to me that there is now a shortage of water at the Port of Umm Qasr, therefore the barge was not fully loaded by Saturday when she was originally scheduled to come to the Terminal.

Instead, the barge had to go to Basra over the weekend to top up to full. She is now apparently broken down and when she will arrive is purely guesswork.

In order to replenish supplies temporarily the Harbour Master has asked a tug to supply 30 tons as soon as possible. From previous experiences this water will be contaminated with diesel oil upon delivery. This is not really good enough.

Peter, may I ask if anything can be done to correct this situation ? The same situation was being reported at this time last year and so far nothing whatever has changed except that there are more ships now in Umm Qasr which also need water. This will mean that WATER SHORTAGES WILL BE WORSE THIS YEAR unless something is done very quickly.

As you know both the South Oil Company and the Ministry of Oil has been asking for R.O.W water supply units for a considerable time (over 18 months).

Is there anything that can be done very quickly to ensure that there will be an adequate supply on the Terminal. With the power cuts and this added hardship, the life for everybody here is becoming quite intolerable. Ambient temperatures are now in excess of 48 deg C and without water even for sanitation things are already in a very poor condition.

I ask you please if you can assist in any way it would be most appreciated by everybody concerned.

Kind regards,
Paul.

To my mind there should be no connection whatever with Resolution 1153 - Spare parts supply. I think this ought to be approached as a separate entity with nothing connected with our Oil Inspectors. The recent assistance offered by the Inspectors in Zakho are sending the wrong signals to everybody involved..

Kind regards.
Paul.

---------- Reply Separator ----------

Subject: Oil inspectors
Author: Peter_Boks@Cai.com at SAYBOLT
Date: 05/22/98 20:38

Dear Paul & Ruib.

At present I am working on the new contract with the UN for the coming 6 months.

I am wondering what your feelings are on the occupation of our staff at present. And also bearing in mind the attempts to increase the exports.

Do you feel that we have reasons to increase our staff?
Or can we manage under the present conditions?

Look forward to hearing from you.

Kindest regards.

Peter Boks

Author: SAYBOLT NB_07 at SAYNLRDM
Date: 05/21/98 11:58
Priority: Normal
Receipt Requested
TO: Freek Koyman at SAYNLRDM
Subject: UN Resolution 986 VEF on Part Cargoes

Message Contents

Date : Thursday May 21, 1998
Time : 12.00

Subject : VEF determination on Part Cargoes.

Dear Freek,

I trust you are well, it is quite a long time since I have contacted you, maybe one day I will come to the office soon.

Freek, reference is made to a recent message you sent to Mina al Bakr where you had cause for concern when VEF were not applied to certain ships that were loaded.

Lars Rasmussen replied to you the reason was that captioned ships were loading part cargoes and had insufficient information on board that related to the tanks in which the part cargo was being loaded, therefore no VEF could be applied.

You did not offer any reply to this and it has therefore been assumed by all that the correct action had been taken. However as you are the expert in this field I would like to seek out your opinion.

Often I have noticed that VEF calculations have been made by accepting ships supposedly fully loaded often with cargoes from three different ports in the Gulf area. One is assuming in this case that each cargo has had a separate ship/shore difference and what the ship is recording is a total of the same.

In our agreement with the UN we say that Bill of Lading figures will be based upon ships figures with VEF applied. When the is no VEF information we do not apply it, this becomes somewhat a contradiction to any laysan involved.

Reading through API and IP manuals on measurement offer no help at all, this appears to be an ambiguous and 'grey area' to all concerned. As Saybolt UN we have adopted the position as described but is this correct ?

This may appear to be a simple technicality, however more and more Masters and Charterers rope are making official Letters of Protest to SOMO Iraq regards the practice they have adopted to issue Bill of lading quantities. As the monitors on the spot these letters may eventually bounce back to Saybolt for a clear explanation as to why we reached agreement with SOMO. It would be nice to be well prepared with a qualified statement before this happens.

I look forward to your reply..

Kindest regards,
Paul Edwards.

Author: SAYBOLT NB_07 at SAYNLRDM
Date: 05/19/98 12:27
Priority: Normal
Receipt Requested
TO: tlrnlk 212198 at CONTEXT
CC: smtp: internet (nb06@saybolt.nl) at MCIMAIL
CC: Peter Hoke at LKEP
Subject: UN Resolution 986. Transport to Mina al Bakr.

Message Contents

Date : May 19, 1998
Time : 12.00 LT
To : S.O.M.O Baghdad Attn: Mr Saddam Z. Hassan
cc : Attn: Mr Nawar A. Al-Mafarji
cc : S.O.C Basra Attn: Mr. H. Dibouni
Subject : Marine Transport to and from Mina al Bakr Terminal

Dear Sir,
After my meeting with S.O.M.O. staff on Thursday May. 7. I was asked by them to write to you to highlight the details and effects of the poor transport facilities that exist at the present time to the S.O.C terminals in the Arabian Gulf

The original concept when the UN Team began working at Mina al Bakr was for tender boats to be on a regular service three times a week to provide transport to and from the Terminal to Al Fao Port. This would have meant that only four UN Staff would remain at the Terminal at any time whilst two staff members would take a rest period at the S.O.C guest House in Basra.

Since the month of August last year the tender boat service was severely restricted due to boats M101 and M102 constantly breaking down. Since then transport to the terminal has been carried out mainly by tug boats from the Port of Um Qasr. Consequently the journey time increased dramatically from about 4 hours to anything between 10 and 24 hours. Only occasionally has the tender boat service been restored and then only for very short periods.

Because of this increase in journey time, as well as the poor and unsafe conditions on the tug boats, our staff have been reluctant to take this journey and have therefore gone without any rest periods for most of the time. This can be interpreted as an unavoidable reversal in the original conditions outlined.

As observers the UN Staff has also noted that due to this long journey in poor conditions the regular terminal staff have found this equally as stressful, particularly since they have to face the round trip journey every week. This has most certainly taken it's toll in the good morale of the men who have to work here.

For the UN Staff the changes have meant that for most of the time the 6 staff members have stayed on the Terminal. Recently I have made a request for extra accommodation above the four rooms originally allocated since some of our people are living permanently as two in a room which is below Western standards.

I would like to stress that this bears no reflection upon the South Oil Company Management since they have always done their best at all times to ensure UN Staff comfort.

It has been the change circumstances that have dictated the way in which our staff have had to live. The solution to the problem would be to find and provide a better, more reliable means of transport to the terminal and I ask you to help with regards to this item.

It is noted that in the spare parts list for the Southern region that marine transport is also listed. I would suggest that leasing reliable craft as soon as possible may be a speedier solution.

Your reply and opinions to this item would be highly appreciated.

Yours sincerely,
Captain Paul Edwards.
Saybolt International BV
for and on behalf of

Author: SAYBOLT MR_07 at SAYMLRDM
Date: 03/07/98 16:17
Priority: Normal
Receipt Requested
TO: Peter Boks/Saybolt/ML at SAYBOLT
Subject: Re: UN Resolution 986 - Oil for Food Program

---------- Message Contents ----------

Dear Peter,

As far as I know there is very little that can be done to expedite the repairs of this boat.

As I mention in every weekly report, they are sent/towed either to Basra or Um Qasr to repair facilities and then, depending upon whether spares have to be found or made, it is up to the repair yard as to how long it will take.

I am also under the impression that the SOC has very little influence over these matters, it is more a Port Authority question, communication with them is not at all good.

Meantime it seems that both the Terminal and SOC simply have to wait until something is done. Please note that boats M101 and M102, which you travelled on last year, have been under repairs and out of service for months now with very little done about them or news received.

Certainly any representation we have made on a local level either in Baghdad or Basra has had very little effect, falling on deaf ears for most of the time.

The solution is of course to replace the boats with reliable new boats or, better still, permit helicopters to fly backwards and forwards to the terminal then even bad weather and sea conditions are avoided.

Kind regards,
Paul Edwards

---------- Reply Separator ----------
Subject: UN Resolution 986 - Oil for Food Program
Author: Peter Boks/Saybolt/ML at SAYBOLT
Date: 03/07/98 10:30

Dear Paul,

Following comment was made on our previous weekly report:

Quote

Peter, I have another concern. In reviewing the status report of 27 Feb/98, under 3.
Observations, I note that it is indicated.

"3.3 Transport to/from Basra. The motor launch service now discontinued as engineshas failed
and repair expected to take at least one month. Service now reverts to previous tugboat from
Um Qasr which extends transit time considerably."

In discussing it with the Security Coordinator's Office, I was told that the repair of the
motorboat engine is critical from a security standpoint - i.e., using a tugboat could
constitute a significant security risk in case of emergency. Is there anything that can be done
to expedite these repairs?

Unquote

Author: SAYBOLT MR_07 at SAYMLRDM
Date: 02/19/98 20:00
Priority: Normal
Receipt Requested
TO: Peter Boks at LMEP
Subject: UN resolution 986 Expats exiting Iraq.

---------- Message Contents ----------

CONFIDENTIAL

Dear Peter,

Further to your enquiries to UN Baghdad on the Team's behalf yesterday which was most appreciated.

Please be advised that today two Lloyds Surveyors left from Um Qasr to go home via Baghdad to Amman, they had been relieved.

These people are in addition to the 29 expats that left Baghdad today from the UNOHCI office.

It appears the Lloyds surveyors are travelling with the full approval of the UN in Baghdad where Lloyds have one respresentative resident.

By the sound of this news it appears that confusing and conflicting opinions and instructions are being issued to subcontracting firms by the U.N.

This message is purely sent in confidence for information purposes only, BUT please be aware that our staff already know what has occurred today. those who are overdue relief are not very impressed.

Kind regards,
Paul Edwards.

SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT

S/AC.25/2001/OIL/COMM.13
15 March 2001
ORIGINAL: ENGLISH

Letter dated 15 March 2001 from the Overseers addressed to the Chairman of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

S/AC.25/2001/OIL/1330/OC.23 15 March 2001

Sir,

In accordance with the Procedures to be employed by the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait in the discharge of its responsibilities as required by paragraph 12 of the Security Council resolution 986 (1995) the Oil Overseers would like to bring to your attention the following irregularity.

The company Montega Trading (PTY) Ltd. (contract M/09/06, approved 2 January 2001) on 2 February 2001 lifted a cargo (on the vessel the "Ocean Jewel") of approximately 2 million barrels of Basrah Light crude oil. According to the letter of credit, endorsed by the Oil Overseers, this cargo had a US destination. Rather than sailing for the US, the ship eventually set sail to the Far East for discharge in Singapore. The Oil Overseers were not aware of this until 1 March when they were informed of it by SOMO. On the following day the proceeds were received based on an invoice drafted for the US destination. The amount of this invoice was about 8.5 million Euro less than the invoice that should have been issued based on a Far East destination. Following SOMO's urgent request on 2 March, UN Treasury approached BNP Paribas, New York Branch, for an appropriate amendment to the initial letter of credit in order to collect the difference. This amendment was received on the 6 March and has been endorsed by the Oil Overseers.

In order to provide proper monitoring of Iraqi crude oil sales, especially to avoid any potential damage to the revenue generated, and according to established practice, the Oil Overseers do not endorse any amendment to a letter of credit calling for a destination change after the ship has loaded and sailed. The irregularity in this case is that the Buyer did not ask permission to change the destination, possibly out of concern that this would not be granted.

The Oil Overseers are concerned that this case may be seen as an inappropriate precedent which may be followed by other companies and could potentially be damaging to the income to the UN Iraq account. In order to mitigate this, the Oil Overseers in consultation with the Office of Legal Affairs, prepared a "Notification" to be issued to ships Masters, which is explained in the attached document. Additionally, the Oil Overseers will discuss with SOMO amendments to

the attached document. Additionally, the Oil Overseers will discuss with SOMO amendments to the oil sales contract and to the bill of lading in order to clearly state that no change of destination is permitted without 661 Committee approval.

Accept, Sir, the assurances of our highest consideration.

The Overseers

Morten Buur-Jensen Alexandre Kramar Michel tellings

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME - BUREAU CHARGE DU PROGRAMME IRAQ

FACSIMILE

To:	Mr. Peter Boks Saybolt Nederland B.V.	Fax:	3110 4601 299
From:	Stephani L. Scheer Chief of Office	Fax: Tel:	+1 212 963 1984 +1 212 963 6550
Subject:	Additional Saybolt oil monitors in Iraq		
Date:	20 February 2001	Number of pages (including cover page): 3	

I refer to previous correspondence regarding the necessity to increase the number of Saybolt oil monitors in Iraq.

In this connection, please find attached a self-explanatory letter from the Executive Director to the Permanent Representative of Iraq, informing the Government of Iraq of this matter. We will keep you apprised of any developments.

Best regards.

Stephani Scheer

Copies to: Mr. Sevan
Mr. Zarif
Mr. Nasr

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME - BUREAU CHARGE DU PROGRAMME IRAQ

REF: ED/2000/GOI/11

20 February 2001

Excellency,

I have the honour to refer to Security Council resolution 986 (1995), and subsequent resolutions, pertaining to the humanitarian programme in Iraq and its full implementation, through cooperation between the Government of Iraq and the United Nations Secretariat, i.e. the Office of the Iraq Programme, as prescribed in the Memorandum of Understanding.

In this connection, I should like to refer to the tremendous increase in the scope of the programme, and thus, the exponential increase in the workload being handled by my office, as well as the work being handled in the field.

One of the areas in which the workload has increased overwhelmingly is that of the monitoring of oil and oil spare parts and equipment, which is handled by independent inspection agents (Saybolt) under contract with the United Nations. According to our figures, in January 2000 there were approximately 139 weekly communications from the Security Council Committee established by resolution 661 (1990) on which to follow up and report. By comparison, in January of this year, the number of communications was approximately 529, a 280 per cent increase. This percentage, however, does not reflect the fact that the number of locations that need to be visited in order to perform their task has also increased by 70 per cent, from 14-18 locations in January 2000 to 28-30 locations at present. Furthermore, a large number of the communications need special handling, i.e., end-use monitoring.

As a direct result of this increase in the workload of the oil spare parts monitors in Iraq, it has become necessary to increase their number from the present six to eight, with a total of 12 eventually. These additional monitors would be deployed, should it become necessary, based on workload requirements, and in order to maintain the standards of excellence previously set in the area of monitoring of oil and oil spare parts and equipment. Your assistance in obtaining entry visas for the new inspectors, once identified, as well as internal travel permits, especially to new end-use sites, would be greatly appreciated.

His Excellency
Mr. Mohammed Al-Douri
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Iraq
to the United Nations
New York

"P. Boks" <p_boks@compuserve.com> on 02/01/2000 10:18:03 PM

To: Peter Boks <Peter_Boks@compuserve.com>, Peter Boks@Saybolt
cc:
Subject: iraq

DATE=6/19/98TYPE=CORRESPONDENT REPORTNUMBER=2-2342227TITLE=U-S / IRAQ OIL
(L)
BYLINE=DAVID GOLLUSTDATELINE=WHITE HOUSECONTENT=VOICED AT:
INTRO: THE CLINTON ADMINISTRATION SAYS IT IS AWARE THAT IRAQI
OIL IS BEING SMUGGLED INTO TURKEY IN VIOLATION OF U-N SANCTIONS,
BUT SAYS THE QUANTITIES ARE NOT LARGE. V-O-A'S DAVID GOLLUST
REPORTS FROM THE WHITE HOUSE.
TEXT: OFFICIALS HERE SAY ABOUT 45-THOUSAND BARRELS OF IRAQI OIL
IS BEING SMUGGLED EACH DAY OVERLAND TO TURKEY BY TRUCK, BUT THAT
IT IS A RARE FRACTION OF WHAT IRAQI PRODUCTION COULD BE IN THE
ABSENCE OF THE U-N SANCTIONS.
THE COMMENTS FOLLOW A NEW YORK TIMES REPORT THAT THE
ADMINISTRATION HAS CHOSEN TO 'LOOK THE OTHER WAY' WHILE THE
SMUGGLING GOES ON PLAIN SIGHT OF PATROLLING U-S AIRCRAFT -- IN
PART BECAUSE IT BENEFITS FINANCIALLY HARD-PRESSED TURKEY AND THE IRAQI
KURDS.
WHITE HOUSE SPOKESMAN MIKE MCCURRY, HOWEVER, SAYS THE UNITED
STATES HAS LODGED COMPLAINTS OVER THE ILLICIT TRAFFIC WITH TURKISH
AUTHORITIES:
///MCCURRY ACTUALITY///
EVEN THOUGH IT COSTS THEM DEARLY, THEY INDICATE TO US
THAT THEY UNDERSTAND OUR CONCERNS ABOUT THAT SMUGGLING
-- THAT THEY WILL WORK TO ADDRESS IT. WE DO KNOW IT GOES
ON AND WE HAVE RAISED THOSE CONCERNS, AND WE WILL
CONTINUE TO EXPRESS OUR CONCERNS TO THE GOVERNMENT OF
TURKEY -- RECOGNIZING THAT THEY ARE IN A POSITION WHERE
THEY SUFFER SOME ECONOMIC DAMAGE AS WELL BECAUSE OF THE
IMPOSITION OF THESE SANCTIONS. ///END
ACT///
MR. MCCURRY SAID SOME OF THE OVERLAND SMUGGLING IS INEVITABLE
GIVEN THAT IRAQ HAS BEEN AUTHORIZED BY THE U-N TO LEGALLY MARKET
SOME OIL FOR HUMANITARIAN PURPOSES AND THAT -- TOO -- IS SHIPPED THROUGH
TURKEY.
THE OVERLAND SMUGGLING IS BELIEVED TO NET IRAQ ABOUT 100-MILLION
DOLLARS A YEAR AND THAT A SIMILAR AMOUNT GETS THROUGH THE ALLIED
BLOCKADE IN THE GULF -- WHERE ENFORCEMENT EFFORTS ARE CENTERED.
THAT COMPARES WITH AN ESTIMATED 15-BILLION DOLLARS A YEAR IN OIL
INCOME THAT IRAQ COULD HAVE IN THE ABSENCE OF THE POST GULF-WAR
SANCTIONS REGIME -- WHICH MR. MCCURRY SAID IS ARGUABLY THE
TOUGHEST EVER PUT INTO EFFECT. (SIGNED)WEB/DAG/LTD/JO
19-Jun-98 3:17 PM EDT (1917 UTC)NNNSource: Voice of America

U.S. Department of State
Office of the Spokesman
Press Statement

Press Statement by James B. Foley, Deputy Spokesman
December 10, 1999

Iraqi Oil Smuggling

Recently declassified satellite photography reveals that Iraq continues to smuggle oil in violation of UN sanctions. This comes at a time when the Government of Iraq has refused to participate in an extension of the oil-for-food program. While Iraq's refusal to sell oil during this period has not caused an immediate disruption to the humanitarian program, its refusal to fund UN-approved purchases while filling the regime's coffers with illicit revenue in defiance of the United Nations shows the regime's arrogance and indifference. It demonstrates yet again that Saddam Hussein puts the interests of his regime ahead of those of the people of Iraq.

Satellite photography taken on November 26 of this year shows oil tankers loading gasoil at a facility associated with the Beaiji refinery in southern Iraq. Under UN Security Council Resolutions and the oil-for-food program, Iraq is permitted to export oil only through the approved facilities in Mina al Baqr in the northern Persian Gulf and via the oil pipeline through Turkey through the port of Ceyhan. The gasoil being loaded onto tankers in this photograph is being smuggled illicitly, outside the oil-for-food program, to supply revenue that is totally under the regime's control.

These illicit oil exports via the Persian Gulf averaged about 70,000 barrels per day in November, the highest levels since sanctions have been in place. During the last month, Baghdad earned an estimated $21 million from this trade. At the same time, the regime of Saddam Hussein has rejected a two-week and a one-week extension of the oil-for-food program.

Once again, the evidence shows that Saddam Hussein has no compunction about preventing the international community from helping the people of Iraq, while at the same time ensuring that he has enough money to line his family's pockets, to build palaces and vacation villages for regime supporters, and to buy prohibited goods, including inputs into WMD.

[end of document]

AMENDMENT NO. 1

TO

CONTRACT NO. PTD/127/0065/96

BETWEEN

THE UNITED NATIONS

AND

SAYBOLT EASTERN HEMISPHERE BV

FOR THE

PROVISION OF INDEPENDENT
INSPECTION AGENTS

Under provisions of Article 2 of the original contract, this amendment is issued to extend the original contract term for an additional six (6) months period through 30 November 1997.

All other terms and conditions (including price) shall remain unchanged.

IN WITNESS WHEREOF, the Parties have executed this amendment.

	For: Saybolt Eastern Hemisphere B.V.	For: United Nations
Signature:		
Name:	Peter W.G. Boks	Allan B. Robertson
Title:	Manager Business Development	Officer-in-Charge, PTD/OCSS
Date:	June 2, 1997	6 June 1997

Telefax

Aan: HELM UNAL Fax no: 0031-70-3767[illegible]

Van: PETER Boks Fax no: 31-10-4127203

Datum: 2/6/97 Pagina's: 1 van 1

Post-it Formulieren

ATTN RECOS

8047833

CONTRACT PTD/127/0065-96

between

THE UNITED NATIONS

and

SAYBOLT EASTERN HEMISPHERE BV

FOR THE PROVISION OF INDEPENDENT INSPECTION AGENTS

This Contract is entered into by and between the **UNITED NATIONS**, an international inter-governmental organization, with its headquarters in New York, N.Y. 10017, U.S.A. (hereinafter referred to as the "United Nations" or "UN"), and **SAYBOLT EASTERN HEMISPHERE BV**, a corporation incorporated under the laws of The Netherlands, having its headquarters at P.O. Box 151, 3000 AD Rotterdam, The Netherlands (hereinafter referred to as the "Contractor"). The United Nations and the Contractor are collectively hereinafter referred to as the "Parties".

WITNESSETH

WHEREAS the UN, in furtherance of the mandate of United Nations Security Council Resolution 986 (1995), wishes to engage the Contractor to provide services of individuals employed by the Contractor with particular experience and qualifications to assist in monitoring the export of petroleum and petroleum products from Iraq on the terms and conditions set forth in this Contract;

WHEREAS, the Contractor represents that it is qualified, ready, able and willing to provide these services on the terms and conditions set forth in this Contract;

NOW, THEREFORE, the Parties hereto mutually agree as follows:

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A. GENERAL

ARTICLE 1: Contract Documents

1.1 This document and all annexes hereto, together with the following named documents, which are incorporated herein by reference, constitute the entire Contract (herein referred to as the "Contract") between the UN and the Contractor:

(a) The Request for Proposal issued by the UN and dated 11 June 1996, under reference "Request for Proposal for the Provision of 'Independent Experts in International Oil Trade'", as modified by the communications transmitted to the Contractor by facsimiles dated 25 June 1996, 15 July 1996 and 31 July 1996, (hereinafter referred to as the "RFP"); and

(b) The Contractor's Proposal dated 17 June 1996, as modified by the communications transmitted to the UN by facsimiles dated 28 June 1996 and 18 July 1996 and by an undated facsimile sent in response to the UN's facsimile dated 31 July 1996, (hereinafter referred to as the "Proposal").

1.2 The following Annexes shall form an integral part of this Contract:

Annex I:	UN General Conditions for General Contracts;
Annex II:	Security Council Resolution 986 (1995) (hereinafter referred to as the "Resolution");
Annex III:	Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995) (hereinafter referred to as the "MOU");
Annex IV:	Procedures of the 661 Committee (hereinafter referred to as the "Procedures");
Annex V:	Transportation Release Form;
Annex VI:	Medical Release Form.

1.3 In the case of any inconsistency among the documents constituting this Contract, the following order of priority shall apply:

(a) this document and Annexes I - VI hereto;
(b) the RFP; and
(c) the Proposal.

1.4 It is expressly agreed that this Contract embodies the entire agreement of the Parties with regard to the subject matter hereof, and that no promises, understandings, obligations or agreements, verbal or otherwise, exist between the Parties except as herein expressly set forth.

ARTICLE 2: Term of Contract

From the Effective Date of this Contract, specified in Article 15 below, this Contract shall be in force for an initial term of six (6) months, unless terminated in accordance with the terms of this Contract. The UN shall have the right, at its sole option, to extend this Contract on the same terms and conditions (including price) for up to three (3) successive periods of six (6) months each by giving the Contractor written notice of its intention to do so not less than fifteen (15) days prior to

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the expiration of the then current term. After the expiration of all such extensions, the UN shall have the right to extend this Contract on the same terms and conditions for successive periods of six (6) months each by giving the Contractor written notice of its intention to do so not less than fifteen (15) days prior to the expiration of the then current term, subject, however, to mutual agreement by the UN and the Contractor to a revised price for the Contractor's services.

ARTICLE 3: Objective of Contract

UN Security Council Resolution 986 (1995) directs the Security Council Committee established by UN Security Council Resolution 661 (1990) (hereinafter referred to as the 'Committee"), inter alia, to monitor the sale by Iraq of petroleum and petroleum products. Under this Contract, the Contractor will provide personnel and all related supplies and services, to monitor on-site the movement of such petroleum and petroleum products in order to facilitate verification of sales contracts approved by the Committee "overseers" referred to in Section I of the Procedures (hereinafter referred to as the "Overseers").

B. RESPONSIBILITIES OF THE CONTRACTOR

ARTICLE 4: Scope of Work

4.1 The Contractor undertakes to provide independent inspection agents (hereinafter referred to as the "Agents") as required to achieve the objective of this Contract. In particular, the Contractor shall provide all services and material set forth in the RFP and the Proposal.

4.2 The Contractor shall provide fourteen (14) Agents selected by the UN from among the individuals identified in the Proposal as experienced and qualified to conduct the inspection work. There shall be no substitution of the Contractor's personnel without the UN's prior written consent in each instance. The UN reserves the right, in its sole discretion, to increase or reduce the number of Agents at any time, in which event the Parties shall mutually agree on a proportionate adjustment in the contract price set forth in Article 7.1, based on a labour cost of US$575.00 per man/day.

4.3 The Agents shall monitor the exports of petroleum and petroleum products from Iraq in accordance with the requirements and specifications set forth in the Resolution, the MOU, the Procedures, the RFP and the Proposal, including without limitation the testing procedures set forth in the Proposal. Such monitoring will be based on the documentation provided by the Overseers, on direct observation, as well as on quantity and quality verification. Upon notification by the Overseers that a sales contract has been approved, the Agents will authorize loading. The Agents located at the metering station at the Iraq/Turkey border will monitor the flow of petroleum through the Kirkuk-Yumurtalik pipeline and, by cross-checking the quantity of oil measured by the meters with that measured at the Ceyhan tank farm, will verify that no petroleum is unaccounted for. If the Agents detect any irregularity, they shall immediately halt the loading of the petroleum or petroleum products and report such irregularity to the Committee and the UN Secretary-General.

4.4 The Contractor shall be responsible for making the necessary arrangements to ensure the fulfillment of its obligations under this Contract. The Contractor shall perform its obligations under this Contract in accordance with the highest professional standards.

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4.5 In performing their obligations under this Contract, the Contractor and its personnel shall comply with the Resolution, the MOU, the Procedures and all procedures and instructions stipulated by the Committee and the Overseers.

4.6 Within four (4) weeks of the Effective Date, the Contractor shall submit to the UN for its approval a detailed plan describing the control and supervisory mechanisms it intends to implement. The Contractor shall implement the plan promptly after its approval by the UN, subject to any reasonable modifications the UN may require.

ARTICLE 5: Contractor's Personnel

5.1 No person shall be assigned by the Contractor to provide services under this Contract unless the United Nations has approved in advance the selection of such person in writing. Without limiting the United Nations' rights of approval under Articles 4.2 and 5.2, in addition to the fourteen (14) Agents selected by the United Nations under Article 4.2, the United Nations shall designate six (6) additional persons from among the individuals identified in the Proposal who are acceptable to serve as replacement Agents under this Contract.

5.2 The United Nations may request, at any time, the withdrawal or replacement of any personnel of the Contractor assigned to perform services under this Contract. The Contractor shall, at its own cost and expense, withdraw or replace such personnel forthwith. The assignment by the Contractor of any replacement personnel shall be subject to the UN's prior written approval. A request by the United Nations for withdrawal or replacement of the Contractor's personnel shall not be deemed a termination of this Contract.

5.3 The Contractor shall be fully responsible for all work and services performed by its employees, agents, servants and sub-contractors. The Contractor shall take all reasonable measures to ensure that they respect the local customs and conform to the highest standards of moral and ethical conduct.

5.4 The Contractor shall ensure that all personnel used to perform services under this Contract are adequately covered by insurance for any service-related illness, injury, death or disability. The Contractor shall submit proof of such insurance satisfactory to the UN before commencing any work under this Contract.

5.5 The UN shall not be liable for any action, omission, negligence or misconduct of the Contractor's employees, agents, servants or sub-contractors nor for any insurance coverage which may be necessary or desirable for the purpose of this Contract, nor for any costs, expenses or claims associated with any illness, injury, death or disability of the Contractor's employees, agents, servants, or sub-contractors performing services in connection with this Contract.

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5.6 The Contractor shall ensure that the Agents are at their stations and ready to commence work under this Contract within five (5) days of the Effective Date. The Agents shall be stationed as follows:

Location	No. Inspectors	No. Supervisors
Ceyhan	3	1
Mina Al Bakr	5	1
Metering Station at the Iraq/Turkey border	3	1

The UN reserves the right, at any time, to alter the assignment of the Agents set forth above, at no additional cost to the UN.

ARTICLE 6: Reporting Requirements

6.1 The Contractor shall submit to the Committee, through the Overseers, weekly reports in writing describing in detail the services performed under this Contract during the preceding week, including such information as the Overseers, the Committee or the Procedures may require. Such reports shall be transmitted to the Overseers via satellite facsimile or, if available, electronic mail.

6.2 Immediately after the loading of oil under each sales contract approved by the Overseers is complete, the Contractor shall inform the Overseers on the details of such loading for comparison with the original approved sales contract. Such details shall include such information relating to the loading as the Overseers, the Committee or the Procedures may require. Such details shall be transmitted to the Overseers via satellite telephone, satellite facsimile or, if available, electronic mail.

C. CONTRACT PRICE AND PAYMENT

ARTICLE 7: Contract Price

7.1 In full payment for the complete and satisfactory performance by the Contractor of all its obligations under this Contract, the UN will pay the Contractor a price not to exceed a total of U.S. dollars One Million Eight Hundred Sixty-Nine Thousand (US$1,869,000.00), subject to any adjustment in such price pursuant to Articles 4.2 or 12 hereof. This price includes all costs relating to the services to be provided under this Contract, including without limitation, salaries, benefits, insurance, board, lodging, communications, security, transportation and equipment. Such amount shall be payable to the Contractor in accordance with the following schedule:

30% - after 3 months from the Effective Date of this Contract.

30% - after 6 months from the Effective Date of this Contract.

40% - upon satisfactory completion of this Contract.

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7.2 Payments under this Contract shall be made only against receipt of Contractor's written invoices and certification by the UN that the services represented by the invoice have been satisfactorily completed. The Contractor shall submit its invoices to the UN, Accounts Payable Unit, 866 United Nations Plaza, Room A-6050, New York, N.Y. 10017, together with supporting documentation to enable payment. All invoices shall make reference to the number of this Contract (PTD/127/0065-96) and shall be payable on a net thirty (30) days basis.

D. RESPONSIBILITIES OF THE UN

ARTICLE 8: Identification Cards

The UN shall provide the Contractor's personnel with appropriate identification cards.

ARTICLE 9: Access to Transport and Medical Facilities

9.1 The United Nations agrees to allow the Contractor's personnel to travel on UN-provided transport to, in and from Iraq strictly for the following purposes:

(a) evacuation due to security developments, on the understanding that such evacuation shall be to the nearest safe area; and

(b) medical evacuation due to serious medical conditions, provided that emergency medical evacuation of the Contractor's personnel will be from in-country sites to an in-country medical facility or transportation out of Iraq to an out-of-country medical facility in an appropriate neighbouring country.

9.2 In consideration of the Contractor's personnel being permitted to travel on UN-provided transport, each of such personnel shall sign a release from liability in the form attached hereto as Annex V, prior to their transport on any UN-provided transportation. The Contractor undertakes to obtain the signed release from each employee and to deliver the signed original to the UN prior to the employee's initial use of any UN-provided transportation.

9.3 In the event that the Contractor's personnel require emergency medical treatment, the UN agrees to allow such personnel access to available UN medical facilities. In consideration of the Contractor's personnel being permitted to utilize such UN medical facilities, and prior to their using any such UN medical facilities, each of such personnel shall complete and sign the release from liability in the form attached hereto as Annex VI. The Contractor undertakes to obtain the signed release from each employee and to deliver the signed original to the UN prior to the employee's initial use of any UN medical facility.

9.4 The Contractor hereby releases the UN and its officials, employees and agents from any and all liability of any nature arising in connection with the provision of any services to the Contractor's personnel under this Article 9 and waives any claims the Contractor may have against the UN, its officials, employees or agents arising in connection with the provision of such services.

E. MISCELLANEOUS MATTERS

Article 10: Contractor's Obligations Upon Expiration or Termination

Upon expiration or termination of this Contract, the Contractor shall take immediate steps to terminate its operations in a prompt and orderly manner and shall provide such information and take such actions as may be reasonably requested by the UN for the preservation and protection of (i) the work and services already performed by the Contractor and the results thereof and (ii) all property of the UN provided to the Contractor.

Article 11: Liaison and Inspection

11.1 The UN reserves the right to inspect and test all services performed by the Contractor under this Contract, to the extent practicable, at all reasonable places and times during the term of this Contract. The UN shall perform inspections and tests in a manner that will not unduly hinder the performance of the services by the Contractor.

11.2 If any work or services performed by the Contractor do not conform with the requirements of this Contract, the UN shall have the following options:

(a) If the UN determines that the improper performance can be remedied by way of re-performance or other corrective measures by the Contractor, the UN may request the Contractor in writing to take and the Contractor shall take, at no expense to the UN, the measures necessary to re-perform or take other appropriate actions to remedy the improperly performed work or services within fourteen (14) days of receipt of the written request from the UN or within such shorter period as the UN may have specified in the written request if emergency conditions so require, as determined by the UN.

(b) If the Contractor does not promptly take corrective measures or if the UN reasonably determines that the Contractor is unable to timely remedy the improper performance, the UN may obtain the assistance of other entities or persons and have corrective measures taken at the expense of the Contractor.

(c) If the UN reasonably determines that the improper performance cannot be remedied by re-performance or other corrective measures by the Contractor, the UN may terminate the Contract in accordance with Article 15 of the UN General Conditions for General Contracts without prejudice to any of its other rights and remedies under this Contract.

11.3 Notwithstanding the RFP and Proposal, site visits by the UN to inspect the services performed by the Contractor shall not be funded under this Contract.

Article 12: Termination at Will

In addition to the termination rights provided in Article 15 of the UN General Conditions for General Contracts, the UN may terminate this Contract without cause, in whole or in part, upon thirty (30) days written notice to the Contractor. In the event of termination pursuant to this clause, the UN shall only be responsible for payment to the Contractor for services satisfactorily performed

in accordance with this Contract prior to the effective date of termination. In the event of partial termination, the contract price shall be proportionately reduced, based on a labour cost of US$575.00 per man/day.

Article 13: Customs Clearance, Licenses, Etc.

The Contractor shall be responsible for customs clearance and obtaining all licenses, permits and authorizations from governmental or other authorities necessary for the performance of this Contract. The UN shall provide reasonable assistance to the Contractor, by liaising as appropriate with relevant authorities, in obtaining visas for the Contractor's personnel and permits for clearing through customs any equipment, material and supplies in connection with this Contract. Notwithstanding the foregoing, the UN's sole obligation with respect to customs clearance shall be to provide the Contractor with a documentary certificate identifying the items concerned and stating that such items are for the sole consumption or use of the Agents. If any further documentation is required in the future by Government authorities in Iraq or elsewhere, the Contractor will advise the UN and the UN will provide reasonable assistance to the Contractor in obtaining such documents.

ARTICLE 14: NOTICES

Except as otherwise specified in this Contract, all notices and other communications required or contemplated under this Contract shall be in writing and shall be delivered either by: (i) personal delivery; (ii) recognized overnight delivery service; (iii) postage prepaid, return receipt requested, certified mail; (i) confirmed facsimile transmission; or (v) telegram, addressed to the Party or Parties for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice previously given pursuant to this Contract.

IF TO THE CONTRACTOR:

Saybolt Eastern Hemisphere BV
P.O. Box 151
3000 AD Rotterdam
The Netherlands
Attn: Mr. Graham Brett / Mr. Peter Boks
Fax No.: 31-10-4353600

IF TO THE UN (communications/notices of a contractual nature):

Procurement and Transportation Division
866 United Nations Plaza, Room No. A-6104
New York, NY 10017
Attn: Mr. Allan Robertson, Officer-in-Charge
Procurement and Transportation Division/OCSS
Fax No.: (212) 963-9858

IF TO THE UN (communications/notices of an operational nature):

United Nations
42nd Street and First Avenue, Room No. S-3055A
New York, NY 10017
Attn: Mr. Joseph Stephanides, Chief
Security Council Subsidiary Organs Secretariat Services Branch
Fax No. (212) 963-1300

Notice by overnight mail or recognized overnight delivery service shall be effective on the date it is officially recorded as delivered to (or refused by) the intended recipient by return receipt or equivalent. All notices and other communications required or contemplated by this Contract delivered in person, by facsimile, or by telegram shall be deemed to have been delivered to and received by the addressee and shall be effective on the date of the actual receipt.

ARTICLE 15: Effective Date of Contract

This Contract shall take effect upon the UN's written notification to the Contractor that the Agents should commence mobilization (hereinafter referred to as the "Effective Date"). If the UN shall fail to so notify the Contractor within six (6) months of the signing of this Contract, this Contract shall be null and void.

IN WITNESS WHEREOF, the Parties have executed this Contract.

FOR SAYBOLT EASTERN HEMISPHERE BV

P. Boks
Name

Manager Business Dev.
Title

16-3-1996
Date

FOR THE UNITED NATIONS

Sanjay Bahl
Name

OSC / PTD
Title

16-3-1996
Date

ATTACHMENTS

Annex I	-	UN General Conditions for General Contracts
Annex II	-	Security Council Resolution 986 (1995)
Annex III	-	Memorandum of Understanding
Annex IV	-	Procedures of the 661 Committee
Annex V	-	Transportation Release Form
Annex VI	-	Medical Release Form

FAX

REPORT OF UN INDEPENDENT INSPECTION AGENTS
PROVIDED BY
SAYBOLT INTERNATIONAL

OIL MONITORING

STATUS at May 19th, 2000

1. MONITORS ON STATION

1.1. Mina Al-Bakr: 6 staff members in total. (one en-route)

V. Alkhazov	Russian
R. de Souza	Portuguese
V. Berkhatov	Russian
V. Polyakov	Russian
D. Sungston	Philippines
A. Popov	Russian

1.2. Zakho: 3 staff members in total

A. Shagoyoko	Russian
S. Berkhatov	Russian
S. Akulov	Russian

1.3. Ceyhan: 5 staff members in total

S Buzdyk	Russian
R. Malberg	Finland
P. Kasmbre	Estonian
Gija Snoetj	Dutch
A. Kamoev	Russian

2. ACTIVITIES

MINA AL-BAKR

2.1 Vessels loaded in period:-

NAME	LOAD DATE	NSV BBLS
Hellespont Paradise	13/05/00	2,033,335
Emma Maersk	14/05/00	1,997,755
Stena Concordia	15/05/00	1,833,223
Riza	16/05/00	949,767
Chevron Atlantic	18/05/00	994,300
Tina	18/05/00	2,289,071
Seamaster	19/05/00	1,626,493

ZAKHO

2.2. Volume metered in the period was 6,027,991 barrels

CEYHAN

2.3. Volume received in storage tanks was 6,184,475 barrels

2.4. Vessels loaded in the period:-

NAME	LOAD DATE	NSV BBLS
Kronviken	13/05/00	995,367
Crude Ena	14/05/00	1,025,629
Nord Jahre Target	15/05/00	1,031,885
Gelibolu	16/05/00	596,531
Lillo	18/05/00	995,152
Borja Tapias	18/05/00	995,428
Challenge	19/05/00	396,931
Stena Convoy	19/05/00	1,817,900

3. OBSERVATIONS

3.1 MINA AL-BAKR

Terminal Manning. Terminal fully manned, approximately 80 persons.
Mooring Boats/Tugs. No mooring boats on station at the terminal. Four tugs on station off the platform.
Power. Power was cut several times this week. Generators are working on alternating basis.
Transport to / from terminal. The tender No. 402 is still out of service. Tug boats used for transportation of personnel to Fao. Relief schedule is on Saturday (pilots), Sunday and Wednesday, but schedule is unreliable. The tugs used for Fao are restricted to pass the river bar at high tide, and sometimes only at daylight high tide. No safe gangway or means of access available at either shore or terminal location for staff to embark or disembark.
Services. **The new Water Purification unit installation now operates as the new filter has arrived from Amman. Now it is discovered (after all these months!!) that there is no pump to transfer the purified water from the unit to the storage tank so there is still no fresh water supply** . The original RO unit is only intermittently as the vibrations resulting from it's operation damage the piping (whenever renewed) within a few days. Fresh water from shore shows slightly improved quality, but still hazy with a strong odour. Potable bottled water supply is sufficient, & hot water system in operation.
Food. Terminal food continues to be a problem, and inedible; limited vegetables and fruit. All meals covered by the Saybolt self-catering service. No improvement in cold storage facilities which remain !
Housekeeping. Standard of cleanliness remains poor. Excessive outside oil and grime walks into the accommodation.
Infestation. Insect population is still evident. No de-infestation carried out..
Safety. No improvements; no accidents. No fire drill or safety exercises observed this week. **Life boats remain stored on Platform "B" from where they cannot be launched; the davits required for this remain stranded at SOC, Basrah, awaiting transport to return them to Umm Qasr (where they**

United Nations Nations Unies

INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

To: Mr. Alexander V. Kremar
A: Oil Overseer

Date: 13 June 2000

Through:
S/C DA:

From: Ralph Zacklin
De: Assistant Secretary-General
For the Office of Legal Affairs

Reference:

2000-01P-01025
JAN 13 2000
AK | 55

Subject: Legality of port charges in Iraq
Object:

1. This is in respect of your memorandum of 30 May 2000 with reference to the communication from the International Association of Independent Tanker Owners (INTERTANKO), concerning the recent increase by the Government of Iraq of port charges at Al Bakr Oil Terminal. You inquire about the legality of Iraq's charging such port costs.

2. We took note in this regard of the fact that INTERTANKO in its communication refers to these charges as "traditional port costs" and that in accordance with the information provided to the Office of the Iraq Programme by Saybolt, it is a common practice for port charges to be imposed on oil tankers and that the increased charges imposed by the Iraqi authorities are modest in comparison to those charged at other ports.

3. In their communication regarding the increase in port charges, a copy of which is attached to the clarifications received by the OIP from Saybolt, the Iraqi authorities state that these charges are levied "in order to cover cost of maintenance of Al Bakr Oil Terminal and cost of extending marine services such as tugs pilotage, harbour master, mooring/unmooring, etc".

4. In the light of the foregoing, please be advised as follows with reference to your inquiry.

5. In accordance with paragraph 4 of Security Council resolution 661 (1990) of 6 August 1990, which contains some of the basic provisions of the sanctions regime imposed by the Security Council against Iraq, all States are prohibited from making available to the Government of Iraq, or to any commercial, industrial or public utility undertaking in Iraq, any funds or any other financial or economic resources, and are required

to prevent their nationals from making available to that Government or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Iraq. Paragraph 1 of Article 8 of Part II of the standard oil contract of the Iraqi State Oil Marketing Organization which was agreed upon between the United Nations and the Iraqi authorities provides that "buyer shall bear alone port dues and fees charged on vessels at the port of loading".

6. With reference to the question of whether payment to Iraqi entities of fees and other expenses deriving from port services would contravene the requirements of paragraph 4 of Security Council resolution 661 (1990), this Office, in a letter to the Chairman of the 661 Committee, dated 6 November 1997, took the position that such payments would not fall *per se* under paragraph 4 of resolution 661 (1990), if the shipping activity which generates them is lawful in every other respect in terms of the relevant Security Council resolutions, and provided that such fees and charges do not exceed what is customary in such circumstances.

7. This position was subsequently reiterated in another letter of this Office to the Chairman of the 661 Committee, dated 12 June 1998. It was further clarified in that letter that in determining what charges are reasonable, it should be borne in mind that any duty or charges which might be levied in respect to the services rendered, in the light of paragraph 4 of Security Council resolution 661, should not be of such a level as to represent a source of income for the Iraqi State, or any commercial, industrial or public utility undertaking in Iraq. Any such entities and charges, as noted in the letter, should, in principle, be limited to charges for the services rendered, be levied on a non-discriminatory basis, and be commensurate with whatever administrative expenses might reasonably be entailed in this respect.

8. It was also emphasized in the second letter, as well as in other legal opinions of this Office concerning payments for services in Iraq, that, in the light of the restrictions imposed by Security Council resolution 661 (1990), such fees and charges must be paid in Iraqi dinars only.

9. Therefore, with reference to your question we are of the view that payment of port costs to the Iraqi authorities will not *per se* be inconsistent with the sanctions regime imposed by the Security Council against Iraq so long as the charges in question do not exceed whatever might in the circumstances be customary and reasonable and so long as they are paid in Iraqi dinars.

10. We noted from the correspondence that the Iraqi Government requests that port charges be paid not to the Iraqi authorities, but to "ells for

transportation and general trade company, Amman - Jordan" which has been "entrusted with this operation" and that payments should be deposited in the account of that company in the Jordanian National Bank

11. If and in so far as "alia for transportation and general trade company, Amman - Jordan" are a Jordanian company and are not an instrumentality or agency of the Government of Iraq, the measures which have been imposed by the Security Council in respect of Iraq would not in any event apply so as to make the lawfulness of the payment to them conditional on observance of the limitations enumerated in paragraph 5 above. That having been said, it would appear from the attachments to your memorandum that "alia for transportation and general trade company, Amman - Jordan" has entered into a contract with the Government of Iraq to provide port services in Iraq. The supply of services of this character would appear to be calculated to promote the import from or export to Iraq of products and commodities. That being so, it would appear that the rendering of such services in Iraq would be prohibited by Security Council resolution 661 (1990) (see the letter dated 27.08.90 from Director and Deputy to the Under-Secretary-General in charge of OLA addressed to the Chairman of the 661 Committee - S/AC.25/1990/Note/3). Such services might only be lawfully provided in the event that their provision has been approved by the 661 Committee. As far as we are aware, no application has been made to the 661 Committee in respect of the provision of port services by "alia for transportation and general trade company, Amman - Jordan" to the Government of Iraq, nor has the 661 Committee granted approval to any such arrangement.

12. That being so, no payment should be made to the company concerned unless and until its contract with the Iraqi authorities has been approved by the 661 Committee. In the absence of such approval, any payment deposited in the Jordan National Bank will be in violation of the sanctions regime established by the Security Council.

cc Ms. Stephani L. Scheer

Peter Boks
08/08/2000 04:07 PM

To: scheer@un.org
cc:
Subject: Port charges in Iraq

Dear Stephani,

It seems that untill recently a fee of USD 1,500.- was asked for each vessel.
This was not limited to Mina Al Bakr but also applied for e.g. Umm Qasr.

The practice was that some Captain's paid this fee from their petty cash, whereas
others refused to pay (based on the embargo).

Only recently we learned that the port charges were increased and informed Alexander
Kremar accordingly.

It must however be said that it is common practice that port charges are increased.
Reviewing the table attached to your telefax, the charges proposed are modest in
comparison to other ports.

Kindest regards,

Peter Boks

Peter Boks
06/06/2000 04:17 PM

To: scheer@un.org
cc:
Subject: Port charges

Dear Stephani,

In addition to my previous email, port charges applied at e.g. Kharg Island in Iran
are $0.22 per metric ton.

for loading a vessel with 190,000 metric tonnes, this would give:

Country	Iran	Iraq
Port charges	41,800.-	17,580.-

Fax to follow.

Best regards,

Peter Boks

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME

URGENT

FACSIMILE

To:	Mr. Peter Boks Saybolt Nederland B.V.	Fax:	3110 4601 299
From:	Stephani L. Scheer Chief of Office	Fax: Tel:	+1 212 963 1984 +1 212 963 6550
Subject:	Port charges in Iraq		
Date:	7 June 2000	Number of pages (including cover page): 3	

Please find attached a copy of a letter received by Mr. Kramar from Intertanko, which he forwarded for comment to the Office of Legal Affairs.

I note from the letter from Intertanko that "until recently vessels loading at this terminal was normally charge USD 1,500.00".

I would be grateful if you could provide us with some information as to standard practices, particularly how this money was being paid and at what point port costs were increased. I would also like to know how this compares in relation to other oil-producing countries.

I would particularly note that, in view of the sanctions imposed on Iraq by the Security Council, it would appear that the payment of these charges would be in violation of those sanctions.

Thank you for your prompt attention to this matter and urgent reply.

Best regards.

Stephani Scheer

Copies to: Mr. Sevan
Mr. Golitsyn
Mr. Kramar

Room DC1-1234, New York, NY 10017 • Tel: 1 212 963 6500 • Fax: 1 212 963 1984 • http://www.un.org/Depts/oip

AIF 339 - 00

INTERTANKO

The International Association of Independent Tanker Owners
FOR SAFE TRANSPORT, CLEANER SEAS AND FREE COMPETITION

TELEFAX
NUMBER OF PAGES: 2

UNITED NATIONS
Communication Centre
U.S.A.

Fax No: 001 212 963 4126

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Web Site: www.intertanko.com

Managing Director: Dagfinn Lunde
Asia Representative: Minerva Alfonso
London Representative: Robert M. Bishop
US Representative: Erwin A. Rieghekken

30 May 2000
SKDOT1 UNITS001.DOC

Dear Sirs,

Port cost in connection with oil export in Iraq

First of all we will introduce INTERTANKO (The International Association of Independent Tanker Owners); on what we do, what we stand for.

INTERTANKO today comprises 265 Member companies in 45 maritime countries, now operating over 2,000 vessels, totalling about 175 million DWT of tanker and combined tonnage, or some 75% of the eligible independently owned tonnage. We also have 302 Associate Members, which include oil companies, shipping agents, port authorities, shipyards, law firms, ship brokers, insurance companies, consultants, marine suppliers and a host of other companies related to the tanker industry.

INTERTANKO prime goals are ***to promote a free and competitive tanker market, to work for safety at sea and the protection of the environment.***

INTERTANKO serves as the spokesman for independent tanker owners and represents its members through international governmental organisations. The Association provides comprehensive information services in the form of our monthly circular letters, and acts as a forum for discussion on tanker related issues.

INTERTANKO is represented on all major IMO committees and sub-committees, and Member companies often participate actively in INTERTANKO work within the IMO.

RECEIVED
2000 - 01F-01677
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AK

We want to present an issue recently disclosed to the Association.

Drastic port cost increase at Al Bakr Oil Terminal, Iraq

Based on advice from the Iraq State Co. for Water Transport, Basrah several of our members report that as from 1 June 2000 the port costs at Al Bakr Oil Terminal, Iraq has increased drastically. Until recently vessels loading at this terminal was normally charge USD 1,500.00

Extract of the "lump sum" port cost in USD based on GT:
Less than 50,000 11,250.00
150,001 - 190,000 17,580.00
270,001 - 280,000 21,600.00
390,001 and above 27,000.00
The complete tariff is available by contacting INTERTANKO.
Email: steinar.digre@intertanko.com

The state agency informs that the reason behind the new tariff is to cover maintenance cost for the terminal including the cost for extending the marine services (pilotage, harbour master, mooring/unmooring, etc.) to a foreign company.

INTERTANKO endeavours to have the implementation postponed in order for the industry to adapt to the new situation in the freight market. Proforma disbursement account calculated on the new tariffs have already been received by tanker operators.

The Worldscale Association has been informed. INTERTANKO is also seeking advise from various sources including investigating the validity of such increase vs. the UN Sanction.

INTERTANKO would like to know the recent status of the sanctions against Iraq, and specifically the legality for Iraq to charge (traditional) port costs.
We are in some urgency to clarify this issue in order for the Worldscale Association and INTERTANKO to advise the worlds oil transport operators.

We kindly request your assistance in directing this fax to the correct section/person within the United Nations.

Kind regards

Steinar K. Digre
Ports & Terminals Section
☎ (direct): +47 22122655
E-mail: steinar.digre@intertanko.com

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                    ***   TX RAPPORT   ***
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E:\SHIPPING\IN\EA3882.IN (23. May. 2000 18:50)

<INCOMING TELEX>22897 23.05.00 18:53

telex no 4
basrah 23/5/2000

To: United Nation (OIP)
Attn: Ms. Stephanie Scheer
M. presented.

to: ursa e.a. geneva
fm: iscwt basrah

gt''

in order to cover cost of maintenance of al-bakrsil terminal and cost of attending marine services such as tugs pilotage harbour
master, mooring/unmooring etc. we have entrusted this operation to messrs .

MR. SAUD

alia for transportation and general trade company,
amman - jordan
p.o box : 91359 amman - jordan
telefax : (0096426)5603102
tel : (0096426)5620588
telex no : 12382 or tllex no 21921

to attend these services against cost to be applied on grt of tankers as per listattached.
please take note and do needful to transfer these costs to aforesaid company's account no...

the jordan national bank
account no. 15/8583/03
tlx no : 21343
p.o.box 3103 amman - jordan
correspondent bank:
american express bank n.y.
swift code : aebkus 33
account no. 00722062
prior arrival of tanker to al-baker terminal enabling mast tanker and permit her berthing and loading with effect from 1/6/2000.

iraqi state co. for water transport - basrah
((as agents))

5049748

Gunnar Knudsen <Gunnar.Knudsen@intertanko.com> on 05/10/2000 03:34:38 AM

To:
cc: "'takashi.oyagi@mail.mol.co.jp'" <takashi.oyagi@mail.mol.co.jp>, "'ahl@chevron.com'" <ahl@chevron.com>, "'mahonsk@bp.com'" <mahonsk@bp.com>, "'jan.sonesson@stena.com'" <jan.sonesson@stena.com>, "'TimNap@acomerit.com'" <TimNap@acomarit.com>, "'kls1@hellespont.com'" <kls1@hellespont.com>, "'skpart@atshipping.com'" <skpart@atshipping.com>, "'eurotank@hol.gr'" <eurotank@hol.gr>, Graham Brett@Seybolt, "'jpuplin@Westernpetroleum.ch'" <jpuplin@Westernpetroleum.ch>, "'Michael.Sturesson@geodab.com'" <Michael.Sturesson@geodab.com>, "'EMAIL@SUNENTERPRISES.GR'" <EMAIL@SUNENTERPRISES.GR>

Subject: FW: Mina al Bakr port clearance denied

Dear all,
A member vessel has just lost fixture due to Iraqi refusal of loadport clearance. The vessel had loaded Mina al Bakr in June 2000 without paying requested dues.
INTERTANKO finds what appears to be a random escalation of black listing/refusal of ships totally unacceptable and the attached message has therefore just been sent to the Office for the Iraq Programme at the UN. The undersigned has also called Ms. Scheer's office to put further emphasis on the importance of implementing immediate measures towards normal port conditions. You will all be kept posted of any further development.

Kind regards
Gunnar A. Knudsen
INTERTANKO

Rogstadvn. 21B, P.O.Box 5804, Majorstua
N-0308 OSLO NORWAY
Tel: + 47 22 12 26 56 / Fax: + 47 22 12 26 41
Visit INTERTANKO at http://www.intertanko.com
Mailto:gunnar.knudsen@intertanko.com
{GAK\2000.2\UNBDN002}

UNITED02.DOC

S052551

286

S0625S2

TELEFAX
NUMBER OF PAGES: 2

Ms Stephani L. Scheer
United Nations, Office of the Iraqi Programme
New York
U.S.A.

Fax No: 00 1 212 963 1984

HEAD OFFICE
Bogstadveien 27 B
P. O. Box 5804 Majorstua
0308 Oslo Norway

Phone: +47 22 12 26 40
Fax: +47 22 12 26 41
Web Site: www.intertanko.com

Managing Director: Svein A. Ringbakken
Asia Representative: Minerva Alfonso
London Representative: Robert M. Bishop
US Representative: Svein A. Ringbakken

Thursday, October 05, 2000
GAK/FI UNITE002.DOC

Dear Ms Scheer,

Further deterioration in Mina al Bakr

Reference is made to my fax dated 2 October 2000.

INTERTANKO has today received further alarming reports related to port operations in Mina al Bakr. A member vessel was about to be chartered for a crude oil cargo from Mina al Bakr but was finally turned down by the charterers as the Iraqis refused the ship load port clearance. The reason was the vessel's refusal to pay requested port disbursement during its previous call in June 2000. The owner understands that the black listing is pegged to the vessel and not to the owner, at least in the mentioned case.

We are extremely concerned to find that the announced black listing has developed into far more than an empty threat. In combination with the recent seven day "punishment" of another tanker, we see every reason to expect that the black listing is about to be escalated. It is most disturbing that main victims are owners refusing to breach UN Sanctions.

INTERTANKO therefore reiterates the urgent need for UN action against this Iraq aimed to remove black listing and bring port conditions back to normal.

We shall thank you to give this matter your urgent attention, and are awaiting your response.

S0625S3

Best regards

Gunnar A. Knudsen
☎ (direct): +47 22122658
E-mail: gunnar.knudsen@intertanko.com
Manager, Ports and Terminals Section
INTERTANKO

INTERTANKO

The International Association of Independent Tanker Owners
FOR SAFE TRANSPORT, CLEANER SEAS AND FREE COMPETITION

TELEFAX
NUMBER OF PAGES: 2

Ms Stephani L. Scheer
United Nations, Office of the Iranian Programme
New York
U.S.A.

Fax No: 00 1 212 963 1984

HEAD OFFICE
Bogstadveien 27 B
P. O. Box 5804 Majorstua
0308 Oslo Norway

Phone: +47 22 12 26 40
Fax: +47 22 12 26 41
Web Site: www.intertanko.com

Managing Director: Svein A. Ringbakken
Asia Representative: Minerva Alfonso
London Representative: Robert M. Bishop
US Representative: Svein A. Ringbakken

Monday, October 02, 2000
GAK/F1 UNITE001.DOC

Dear Ms Scheer,

Detention of tanker at Mina al Bakr due to non-payment of port disbursements

We are INTERTANKO, the International Association of Independent Tanker Owners. INTERTANKO today comprises 260 Member companies in 45 maritime countries, now operating some 2,050 vessels, totalling about 162 million DWT of tanker and combined tonnage, or approximately 70% of the eligible tonnage. We also have 303 Associate Members, including oil companies, shipping agents, shipyards, law firms, ship brokers, insurance companies, consultants, marine suppliers and a host of other companies related to the tanker industry.

The issue of threatened black listing of ships has recently taken a turn for the worse as INTERTANKO has received a fresh report of a tanker being kept waiting for seven days due to non-payment of the dues. The owner's daily requests for berthing prospects were met with total silence and no explanation for the waiting time was offered.

The fact that the Iraqi suppliers now have decided to punish an operator who refuses to breach the Security Council sanctions regime creates an extremely difficult situation for owners and charterers. As per the Legal Department of the UN, payment of port cost as per the new tariff of 1 July 2000 has been termed illegal and in violation of the UN Sanctions, unless settled in Iraqi Dinars. As far as the writer and others consulted are informed, this currency is inaccessible for international banking purposes and can therefore not be considered a viable solution.

As an organisation representing the tanker industry, INTERTANKO finds it unacceptable that owners and charterers are faced with two impossible choices. Ships apparently risk either being detained for an unspecified period at the daily loss of some USD 60/70,000, or be forced to violate the UN Sanctions in order to ensure loading as per charter party. Alternatively owners may refuse to pay the requested port cost and take the chance of not being detained, which will introduce further uncertainty.

It will in light of the current situation we hereby invite the UN to inform us which efficient measures can be instigated in response to the Iraqi violation of the Security Council Resolution. These should be aimed to put an immediate stop to the unacceptable harassment of owners lifting crude from Mina al Bakr under the Oil-for-Food-Programme, or to introduce a method of payment, which owners can legally follow.

We hereby urgently invite your guidance and appropriate action on this vital issue, which will be brought to the prompt attention of the INTERTANKO membership.

In case you should wish to discuss the issue on the phone, I shall be pleased to hear from you.

Best regards

Gunnar A. Knudsen
Manager, Ports and Terminals Section
☎ (direct): +47 22122658
E-mail: gunnar.knudsen@intertanko.com
INTERTANKO

Gunnar Knudsen <Gunna <knudsen@intertanko.com> on 02/10/2000 12:56:06 PM

To:
cc: Steinar Kristian Digre <Steinar.Digre@intertanko.com>, Milly Tseng <Milly.Tseng@intertanko.com>, Management <Management@intertanko.com> (bcc: Graham Bretti)

Subject: INTERTANKO request to UN ref. detention at Mina al Bakr

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Dear all,

As a member vessel recently was detained at Mina al Bakr due to non-payment of illegal port disbursements, INTERTANKO has sent the attached request to UN who undoubtedly hold the key to finding a legal structure for the handling of port disbursements.

You will as usual be kept informed of all developments.

Kindly direct any questions and relevant new information to the undersigned.

Kind regards
Gunnar A. Knudsen

INTERTANKO
Bogstadvn. 27B, P.O.Box 5804, Majorstua
N-0308 OSLO NORWAY
Tel: + 47 22 12 26 58 / Fax: + 47 22 12 26 41
Visit INTERTANKO at http://www.intertanko.com
Mailto:gunnar.knudsen@intertanko.com
(GAK\2000.2\EUROM091)

UNITE001.DOC

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME

FACSIMILE

To:	(SOURCE: PROTECTED)	
From:	Stephané L. Scheer Chief of Office	Fax: +1 212 963 1966 Tel: +1 212 963 6300
Subject:	Iraqi port charges	
Date:	6 September 2000	Number of pages (including cover page): 2

I refer to your facsimile of today and the attached letter from ..... regarding the concerns of fifters of Basrah light crude from Mina Al Bakr and port charges levied by the Government of Iraq.

In this connection, the question of the increase of port charges at Mina Al Bakr and Umm Qasr by the Government of Iraq was brought to our attention by Seybolt in June 2000. We turned to our Office of Legal Affairs for advice.

In their view, and in accordance with paragraph 4 of Security Council resolution 661 (1990) of 6 August 1990, which contains some of the basic provisions of the sanction regime imposed by the Security Council against Iraq, all States are prohibited from making available to the Government of Iraq, or to any commercial, industrial or public utility undertaking in Iraq, any funds or any other financial or economic resources, and are required to prevent their nationals from making available to that Government or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Iraq. Paragraph 1 of Article 8 of Part II of the standard oil contract of the Iraq Sums Oil Marketing Organization which was agreed upon between the United Nations and the Iraqi authorities provides that the buyer shall bear alone port dues and fees charged on vessels at the port of loading.

The Office of Legal Affairs, in a letter to the Chairman of the Security Council Committee established by resolution 661 (1990), dated 6 November 1997, took the position that payment to Iraqi entities of fees and other expenses deriving from port services, would not fall per se under paragraph 4 of resolution 661 (1990), if the shipping activity which generates them is lawful in every other respect in terms of the relevant Security Council resolutions, and provided that such fees and charges do not exceed what is customary in such circumstances.

Any such entities and charges, should, in principle, be limited to charges for the services rendered, be levied on a non-discriminatory basis, and be commensurate with whatever administrative expenses might reasonably be entailed in this respect. In light of the restrictions imposed by Security Council resolution 661 (1990), such fees and charges must be paid in Iraqi dinars only.

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME

Therefore, the payment of port costs to the Iraqi authorities *per se* is not inconsistent with the sanctions regime imposed by the Security Council against Iraq so long as the charges in question do not exceed whatever might in the circumstances be customary and reasonable and so long as they are paid in Iraqi dinars.

We have learned, however, that the Government of Iraq is requesting that port charges be paid not to the Iraqi authorities, but to "alia for transportation and general trade company, Amman – Jordan" which has been entrusted with the operation of the ports in question, and that payments should be deposited in the account of that company in the Jordan National Bank.

If and in so far as "alia for transportation and general trade company, Amman – Jordan" is a Jordanian company and not an instrument or agency of the Government of Iraq, the measures which have been imposed by the Security Council in respect of Iraq would not in any event apply. That having been said, it would appear that the Government of Iraq has entered into a contract with "alia for transportation and general trade company, Amman – Jordan" to provide port services in Iraq. The supply of services of this character would appear to be calculated to promote the import from or export to Iraq of produces and commodities. That being so, it would appear that the rendering of such services in Iraq would be prohibited by Security Council resolution 661 (1990). Such services might only be lawfully provided in the event that their provision has been approved by the Security Council Committee. As far as we are aware, no application has been made to the Security Council Committee in respect of the provision of port services by "alia for transportation and general trade company, Amman – Jordan" to the Government of Iraq, nor has the Security Council Committee granted approval of any such arrangement.

Therefore, no payment should be made to the company concerned unless and until its contract with the Iraqi authorities has been approved by the Security Council Committee. In the absence of such approval, any payments deposited in the Jordan National Bank would be in violation of the sanctions regime established by the Security Council.

In a letter dated 27 June 2000, addressed to the Permanent Representative of Iraq to the United Nations, the Executive Director asked that this matter of concern be brought to the attention of the relevant authorities in Iraq.

Best regards.

Stephanie Schwartz

Copies to:

S052567

S052576

Graham Bratt
15/08/2000 06:27 PM

To: steinar.digre@intertanko.com
cc:

Subject: PORT COSTS AT MINA AL-BAKR, IRAQ.

TO: INTERTANKO, OSLO
FAO: CAPT STEINER KR. DIGRE

CC: PETER BOKS, BAYBOLT, ROTTERDAM
CC: ALEXANDER KRAMAR, UN OIL OVERSEER, UNITED NATIONS, NY
CC: STEPHANI SCHERR, OIP, UNITED NATIONS, NY
CC: CDR DON BUNN, MIF, BAHRAIN

RE: LEGALITY OF CHARGING PORT COSTS AT AL-BAKR, IRAQ

Dear Sir,

In response to your Fax dated 11th August, 2000, regarding the so-called "Port Costs" at Mina al-Bakr, and the copy of a message from Cd r Don Bunn. MIF, Bahrain dated 10th August (but with the address blanked out) forwarded with the same Fax, we feel that it would be inappropriate for us to comment on any remarks made by Cdr Don Bunn.

Regarding the issue of the "Port Fees" we can only reiterate that we have been verbally advised by the United Nations that, in the opinion of their legal department, any payment of such fees to any entity in Amman would be considered as being in contravention of United Nations Security Council Resolutions concerning the situation in Iraq.

Kindest regards,

Graham Bratt

All our activities are carried out under our general terms and conditions and in accordance with our code of practice. The general conditions can be consulted at http://www.Bayholt.com/ and will be sent upon request free of charge.

The information in this message is confidential and may be legally privileged. It is intended solely for the addressee(s). Access to this message by anyone else is unauthorised. If you

290

S052584

Peter Boks
10/08/2000 10:02 AM

To: Graham Brett@Saybolt
cc:

Subject: 90 Day's report

Dec — 31
Jan — 31
Feb — 29
Mar — 31
Apr — 30
May — 31

183

The Oil Sector

1. MINA AL-BAKR

Conditions on Mina al-Bakr Terminal continue to be of considerable concern. A Team of Experts have visited Mina Al Bakr early this year and only limited improvement has been seen observed since the attendence at Mina al-Bakr of the United Nations Team in April 1996, and unsafe and unhygienic working conditions and practices continue.

Notwithstanding, during the period, a total nett volume of 189,419,108 barrels of Basrah Light Oil has been loaded from Mina al-Bakr, averaging 1,735,000 barrels per day.

Wear and tear of the loading terminal is apparent and certainly influenced by the increase in the export of Crude Oil through the terminal in comparison to the start of the program.

2. BOTAS TERMINAL, CEYHAN, TURKEY

2.1. Transfer of Kirkuk Crude Oil from Iraq to Turkey via the Iraq/Turkey Pipeline have continued uninterrupted throughout the period, and have averaged 732,900 barrels per day.

2.2. The flow of oil from Iraq to Turkey is continuously monitored at both the border crossing point at Zakho, and into the storage tanks at Ceyhan. A daily reconciliation of these volumes is made to ensure that no crude oil can be diverted.

2.3. The volume of oil loaded to vessels at Ceyhan to 11 August 2000 under the supervision of the UN Monitors is 134,118,985 barrels.

3. MONITORING OF OIL SPARE PARTS AND EQUIPMENT

3.1. The arrival of oil spare parts and equipment under Phase 4 (___ shipments), Phase 5 (__ shipments) and Phase 6 (__enipments) continues at an increasing pace; as of 11 August 2000 a total of ___

"Benon Seven" <seven@un.org> on 15/11/2000 06:22:59 PM

To: Graham Brett@Saybolt
cc:

Subject: New Headaches

Dear Graham,

Can you please kindly enlighten me regarding the latest moves by Iraq regarding 50 cents per barrel charge they want from the importers of oil? To what account is the money being deposited? This is yet another addition to the demands they have made about deducting 1.5 Euros per barrel. You must have seen the news reports on the subject. I do hope these matters are being discussed by Peter while in Baghdad with BOMO. Ask him please to give me a call on his return to Holland.

With warm personal regards,

Benon

291

S052673

Peter, is section [ ] o/c?

Graham Brett
20/11/2000 10:47 AM

To: scheer@un.org
cc:

Subject: 180 Day Report

Dear Stephanie,

Please see below input for 180 day report. I have incorporated the figures from our Baghdad office (which you received under copy) and made some alterations to the SOP's (as discussed over the weekend).

Please note we have only been able to calculate the arrival details for period June 1st to Oct 31st 2000; if you specifically require from June 9th this will require a lot of re-programming in Baghdad but can be done - please advise. The actual effect, especially as the cut-off date is somewhat before the 180 days, is minimal.

OIL PRODUCTION & SALE OF PETROLEUM AND PETROLEUM PRODUCTS

1) Mina al-Bakr

1.1. During the period of review crude oil loadings have continued from the Mina al-Bakr oil platform, situated in the Persian Gulf, under the supervision of the Saybolt monitoring team which consists of six monitors.

1.2. During the review period the total net volume of Crude Oil delivered to vessels was 185,055,977 barrels, as ascertained by reference to the vessels calibration charts. This equates to an average of 1,285,111 barrels per day.

1.3. There has been little, if any, improvement in the living conditions encountered on Mina al-Bakr. The replacement Reverse Osmosis Unit continues to function, and the original unit remains under repair. The water quality output from the R/O unit is acceptable for general use, albeit somewhat discoloured on occasion, and there is an adequate supply of bottled drinking water. No improvements have been noted in the general safety arrangements on the platform, nor in the transportation arrangements to and from shore. The two Life Boats delivered under the MOU remain stored on Platform "B" as the davits required for launching, although now "in-country", have yet to be delivered to Mina al-Bakr. The quality of food remains poor.

2. MS-1 Metering Station, Zakho

2.1. During the period under review the transfer of Crude Oil from Iraq via the Iraq/Turkey Pipeline to the Botas Terminal, Ceyhan, Turkey has continued under the supervision of the Saybolt monitoring team which consists of three members.

2.2. During the period the volume of Crude Oil monitored through the metering banks at the MS-1 Metering Station, Zakho, was 120,537,358 barrels.

3. Botas Terminal, Ceyhan, Turkey

3.1. During the period under review the receipt of Crude Oil from Iraq via the Iraq/Turkey Pipeline at the Botas Terminal has continued under the supervision of the Saybolt monitoring team, which consists of five members.

3.2. During the period the volume of Crude Oil monitored into the receiving storage tanks at the Botas Terminal, ascertained by reference to storage tank calibration charts, was 121,213,534 barrels, equating to an average of 841,760 barrels per day.

3.3. The total net volume of Crude Oil delivered to vessels was 120,568,240 barrels, as ascertained by reference to the vessels calibration charts. This equates to an average of 837,286 barrels per day.

4. Overall Crude Oil Exports

4.1. The total net volume of Crude Oil exported from Mina al-Bakr and Ceyhan during the period, as monitored by Saybolt, was 305,625,217 barrels or an average of 2,122,397 barrels per day.

4.2. Of the total volume exported, 39.45% of the volume was via Ceyhan and 60.55% of the volume was via Mina al-Bakr.

MONITORING OF OIL SPARE PARTS & EQUIPMENT

5. Data regarding arrival of oil spare parts & equipment.

5.1. Analysis:

	No's	US$ Value(M)*
a) Complete contracts delivered and accepted	228	86.7
b) Contracts delivered but under LOD's	83	5.2
c) Contracts arrived, but not checked or awaiting technical report from receivers	21	(2.1)**
d) Partial deliveries received	140	33.3
e) Total shipments	452	123.1

* These values calculated as per formula applied in previous 90 and 180 day reports.

** This is a negative value thrown up by the system as the value in this period - for this sector - is less than value for previous period.

Please Note: From 1 to 16th November 2000, an amount of US $ 30.2 M of contracts were opened, the bulk accounted for by US $ 14.25 M for Comm No 610672, US $ 6.725 M for Comm No 00396 and US $ 6.0 M for Comm No 630157.

6. Frequency of monitoring visits.

6.1. During the period the Saybolt monitoring team carried out 586 site visits throughout Iraq.

7. Number of monitors and planned increase.

7.1. The Saybolt oil spare parts & equipment monitoring team is based in Baghdad.

and consists of six team members.

7.2 Team members routinely visit the South and the North once a week, covering all the various wharehouses in each area. Owing to the increasing volume of oil spare parts & equipment deliveries, each trip now takes at least three days to complete. Wharehouses in the vicinity of Baghdad, which can be visited in one working day, are covered by the monitors from the Baghdad office.

Baghdad Area:

Abu Ghraib premises
Daura Refinery premises
Gas Filling Company premises
Oil Exploration Company premises
Pipeline Company premises
SADOP premises
Iraq Drilling Company premises
State Company for Oil Projects premises
SCMO
Ministry of Oil

Southern Area:

General Company for Ports in Iraq premises
South Gas Company premises
South Oil Company premises
South Oil Gas Plant premises

Northern Area:

North Gas Industries premises
North Oil Company premises
North Refinery, Baiji premises

7.3 An increase in the numbers of spare parts & equipment monitors deployed in Iraq is considered necessary, as a result of:-

a) The increasing number of oil spare parts & equipment contracts requiring special monitoring, and/or end use/user monitoring, and

b) The overall increase in the volume of oil spare parts & equipment resulting from the doubling of the allocation from US$ 300 Million to US$ 600 Million per phase.

7.4. The intention is to only increase the number of monitors in line with increased rate of arrival of oil spare parts & equipment, and the required monitoring activities. The monitors work in teams of two people. The increased throughput of spare parts & equipment deliveries now necessitates a permanent office manager in Baghdad. Based on current best estimates it is envisaged that an immediate increase of two monitors, plus the office manager, is necessary. A further four to six monitors are estimated to be required as the arrival rate of oil spare parts and equipment increases.

8. Special monitoring procedures/improvements in the monitoring of oil spare parts & equipment inside Iraq.

8.1. A number of Special Operating Procedures (SOP's) have been designated by the Office of the Iraq Program regarding specialized monitoring of certain contracts. Examples of these during the period cover:

a) the monitoring and confirmation of studies carried out at the Daura Refinery to enable the contracting of specialised repairs and maintenance;

b) the on-going monitoring of construction of storage tanks at K3, Hadicha;

c) the monitoring of on-going construction of two crude oil de-gassing and de-watering plants at South Rumailah.

9. New guidelines for end use/user monitoring drafted by the group of experts established pursuant to paragraph 18 of resolution 1284 (1999).

9.1. The group of experts has now published a comprehensive listing of 245 Comm Me's that require end use/user monitoring, and the Saybolt monitoring team have recently commenced special visits to carry out these requirements, which are reported separately from their normal monitoring activities.

9.2. The listing of special end use/user monitoring requirements is updated on a monthly basis by the group of experts.

Hope the move went well, and you are now all safely installed. Please call if anything else required; the weekly report has been amended and resent regarding Ceyhan.

Kindest regards,

Graham Brett

Peter Boks
17/11/2000 08:56 PM

To: Graham Brett
cc:

Subject: 90 DAY REPORT

Graham,

This is an old version of our input for the 90 day's report

PB

---------- Forwarded by Peter Boks/Bayholt/NL on 11/17/2000 08:56 PM ----------

From: Peter Boks on 08/10/99 03:30 PM
To: Scheer@un.org
cc:

Subject: 90 DAY REPORT

Dear Stephani,

Please find herewith our reply to your telefax concerning the 90 day report.
I hope it's sufficient, if not please call me.

1. OIL SECTOR

1.1. Mina al-Bakr:-

Since the publication of the UNIKOM report on Mina al-Bakr there has been absolutely no action taken.

In fact, conditions have significantly deteriorated in that :-

a) The reverse osmosis unit was, as of w/e June 11th, operated on a severely restricted basis (2 hrs a day) and as of w/e July 30th completely ceased to operate. We are now dependent (again) on water supplies supplies for personal hygiene and washing from shore, of decidedly dubious origin and quality and intermittent supply. Ambient daytime temperatures of 45/50 degrees C are routine.

b) The quality of food, food preparation and availability of fresh produce has further deteriorated.

c) There is done hardly any maintenance on the terminal which has resulted in an unhygienic environment with unsafe working conditions.

Author: Graham Brett at SAYWLRDM
Date: 1-5-97 14:49
Priority: Normal
Receipt Requested
TO: CONTEXT FAX=UT 12129631300 at CONTEXT
CC: Peter Boks at LKSF
TO: CONTEXT FAX=UT 2129631628 at CONTEXT
BCC: SAYBOLT NB_02
Subject: "OIL FOR FOOD" PROGRAM - 'HISTRIA PRESTIGE" A/C TRAFIGURA

UN Rpts

---------- Message Contents ----------

TO: UNITED NATIONS, NEW YORK
FAO: MR JING KHANG WAN

CC: UNITED NATIONS, NEW YORK
FAO: MR JOSEPH STEPHANIDES

CC: UNITED NATIONS, NEW YORK
FAO: THE OVERSEERS

CC: MR PETER BOKS

FROM: SAYBOLT EASTERN HEMISPHERE BV

DATE: MAY 1ST 1997

TIMED AT: 1445 HRS LOCAL TIME

RE: TV "HISTRIA PRESTIGE" A/C TRAFIGURA B/L DD 26/03/97
KIRKUK CRUDE EX CEYHAN

Dear Mr Jing,

Your Fax to Mr Peter Boks dd 22 April 1997 refers. As Mr Boks is currently in Ceyhan with the United Nations I am replying to same.

Regarding the loading of the above vessel at Ceyhan which completed loading at 0945 Hrs 26/03/97 for the account of Trafigura Beheer BV, Amsterdam, against Contract S/M/01/03 and L/C BNP Reference No L703531 we would like to clarify the following points:-

1) The agreed format between SOMO and the UN for the calculation of loaded quantities at Ceyhan, in the absence of a certified metering system and accurate shore tank calibration charts, is to measure vessels tanks on completion of loading and adjust for OBQ quantity and VEF.

2) The vessel "Histria Prestige" presented at Ceyhan after an extended period in dry dock during which alterations were made to the deck ullage points to allow use of MMC-type measuring apparatus. The vessels calibration charts, as presented, were not adjusted for this structural alteration.

3) VEF factor calculations require reference to the last ten (10) full cargo movements; these were not available.

4) In view of 2) and 3) above, Shore Tank measurements were taken for reference and as a check.

5) On completion of loading there was an apparent difference between the vessels figures (by reference to calibration charts) and shore figure, as follows:-

Vessel 986,182 barrels
Shore 958,106 barrels
which equates to 28,076 barrels or 2.85%.

6) The UN/Saybolt team contacted both the UN Overseers and SOMO representatives at Ceyhan to advise this large discrepancy. The UN advised that the loaded figure should be based on the vessels figures (following normal procedures) and SOMO verbally advised that on establishment of the outturn of the vessel they would make an "adjustment" with Trafigura either by volume on a future lifting, or financially.

7) The Bill of Lading was prepared and issued by SOMO at Ceyhan.

8) Catoni Persa, acting on behalf of Trafigura, issued a Letter of Reserve to SOMO, Ceyhan, regarding the unreasonable discrepency between ship and shore.

There is no doubt that the vessels figures are overstated as a result of a lack of VEF factor, and erroneous calibration charts. This is supported by the eventual outturn in Constanza which Trafigura advise (as per their independent inspector, Tomis Oil Maritime S.R.L.) was 948,538 barrels.

Vessel's figues on arrival at Constanza were reported as 990,153 barrels against 986,182 barrels after loading at Ceyhan.

This gives an outturn shortage against vessels figures at loadport of 37,644 barrels (3.82%) and outturn shortage against vessels arrival figures of 41,615 barrels (4.21%).

Ships sailing figures at Ceyhan (986,182 barrels) only differ from ships arrival figures at Constanza (990,153 barrels) by 3,971 barrels (0.40%).

Comparison between the shore figure at Ceyhan (958,106 barrels) and discharged quantity at Constanza (948,538 barrels) gives a difference of 9,568 barrels (1.0%)

Given that there is an established difference between:-

- shore Ceyhan and shore Constanza of 1.0%
- ships loading figures and shore Constanza of 3.82%
- ships loading figures and shore Ceyhan of 2.86%

the apparent overstatement of the vessels figures, used to establish the Bill of Lading at loadport, equates to the 28,076 barrels difference noted between ship and shore on completion of loading. The shore figure Ceyhan (958,106 barrels) would therefore be the most equitable estimate, given above circumstances, of shipped volume.

On the matter of the most recent pipeline sabotage we are advised that the repairs will be completed today; on resumption of deliveries via the 40" line we will advise. There has been no apparent spillage or oil loss as a result of the incident.

Should you require any further information on the "Histria Prestige" please do not hesitate to contact me.

Regards,

Graham Brett
Coordinator
Saybolt UN

BC, AK, M
AM, JW, E

United Nations Nations Unies

To: Mr. Joseph Stephanid. , Deputy Chief
A: Security Council Affairs Division and
Chief, Security Council Subsidiary Organs Branch

Date: 18 April 19

Reference:

From: Suzanne Bishopric
Dept: Treasurer

Subject: Anticipated claim from Trafigura, Ltd.

1. On Tuesday 15 April 1997, Mr. Maurice Lorenz, Oil Overseer, advised me that the bill of lading for oil purchased by Trafigura, Ltd. may have overstated the quantity actually loaded on the vessel, Histria Prestige. The shipment was loaded on 26 March 1997 at Ceyhan, Turkey. The attached report, number 29058/97 dated 26 March 1997 from Saybolt refers.

2. The bill of lading, commercial invoice from S.O.M.O., 30 days' draft and the other documents required under the letter of credit had already been presented to Banque Nationale de Paris for payment. The bank had advised Treasury that the documents conformed with the terms of letter of credit number L.705331 and that payment in the amount of $16,027,303.14 would be made into the United Nations Iraq Account on 25 April 1997.

3. The UN Oil Overseers were advised by Trafigura, Ltd. that the Histria Prestige had recently been in dry dock and adjustments were made to the reference heights of the ship's tanks, thereby causing the ship's ullages to be inaccurate. My understanding from the Overseers is that Trafigura, Ltd. claims to have been overcharged by approximately 28,000 barrels or about $1,000,000. Trafigura, Ltd. has provided the Overseers with the attached report which appears to bear the number 51070/97 dated 26 March 1997 from Saybolt.

4. Under the circumstances, it would be advisable to reserve $1,000,000 of the amount anticipated to be deposited into the United Nations Iraq Account until the potential claim is resolved.

5. I should appreciate it if the Overseers would notify Treasury at the earliest possible moment if there should ever be a dispute regarding the value of cargoes shipped, in light of the expedited procedures. Such notification would reduce the risk that funds might be allotted or distributed which should be reserved for the settlement of claims.

cc: Mr. Hallwachs
The Overseers
Mr. Rashkow
Mr. Hosang
Mr. Gilpin

Author: Graham Brett at SAYNLNDM
Date: 24-4-97 12:57
Priority: Normal
TO: COMTEXT FAX=UT 12:29631300 at COMTEXT
CC: Peter Boks at LMEF
TO: COMTEXT FAX=UT 2129631628 at COMTEXT
TO: COMTEXT FAX=GG 1712624101 at COMTEXT
TO: COMTEXT FAX=IK 12853925 at COMTEXT
Subject: "OIL FOR FOOD" PROGRAM - "HISTRIA PRESTIGE" A/C TRAFIGURA

---------- Message Contents ----------

TO: UNITED NATIONS, NEW YORK
FAO: MR JOSEPH STEPHANIDES

TO: UNITED NATIONS, NEW YORK
FAO: THE OVERSEERS

TO: SOMO, BAGHDAD
FAO: MR FARJO

CC: TRAFIGURA, LONDON
FAO: STUART WHITELOCK

CC: MR PETER BOKS

FROM: SAYBOLT EASTERN HEMISPHERE BV

DATE: APRIL 24TH 1997

TIMED AT:

RE: TV "HISTRIA PRESTIGE" A/C TRAFIGURA B/L DD 26/03/97
KIRKUK CRUDE EX CEYHAN

Gentlemen,

Regarding the loading of the above vessel at Ceyhan which completed loading at 0945 Hrs 26/03/97 for the account of Trafigura Beheer BV, Amsterdam, against Contract 8/K/01/03 and L/C BND Reference No L765211 we would like to clarify the following points:-

1) The agreed format between SOMO and the UN for the calculation of loaded quantities at Ceyhan, in the absence of a certified metering system and accurate shore tank calibration charts, is to measure vessels tanks on completion of loading and adjust for OBQ quantity and VEF.
2) The vessel "Histria Prestige" presented at Ceyhan after an extended period in dry dock during which alterations were made to the deck ullage points to allow use of MMC-type measuring apperatus. The vessels calibration charts, as presented, were not adjusted for this structural alteration.
3) VEF factor calculations require reference to the last ten (10) full cargo movements; these were not available.
4) In view of 2) and 3) above, Shore Tank measurements were taken as a check.
5) On completion of loading there was an apparent difference between the vessels figures (by reference to calibration charts) and shore figure, as follows:-

Vessel	986,182 barrels
Shore	958,106 barrels

which equates to 28,076 barrels or 2.85%.
6) The UN/Saybolt team contacted both the UN Overseers and SOMO representatives at Ceyhan to advise this large discrepancy. The

UN advised that the loaded figure should be based on the vessels figures and SOMO verbally advised that on establishment of the outturn of the vessel they would make an "adjustment" with Trafigura either by volume on a future lifting, or financially.
7) The Bill of Lading was prepared and issued by SOMO at Ceyhan.
8) Catoni Persa, acting on behalf of Trafigura, issued a Letter of Reserve to SOMO, Ceyhan, regarding the unreasonable discrepancy between ship and shore.

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Given that there is an established difference between:-
- shore Ceyhan and shore Constanza of 1.0%
- ships loading figures and shore Constanza of 3.82%
- ships loading figures and shore Ceyhan of 2.86%

the apparent overstatement of the vessels figures at loadport equates to the 28,076 barrels difference noted between ship and shore on completion of loading. The shore figure Ceyhan (958,106 barrels) would therefore be the most equitable estimate, given above circumstances, of shipped volume.

Regards,

Graham Brett

MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARIAT OF THE UNITED NATIONS AND THE GOVERNMENT OF IRAQ ON THE IMPLEMENTATION OF SECURITY COUNCIL RESOLUTION 986 (1995)

Section I

General provisions

1. The purpose of this Memorandum of Understanding is to ensure the effective implementation of Security Council resolution 986 (1995) (hereinafter the Resolution).

2. The Distribution Plan referred to in paragraph 8 (a) (ii) of the Resolution, which has to be approved by the Secretary-General of the United Nations, constitutes an important element in the implementation of the Resolution.

3. Nothing in the present Memorandum should be construed as infringing upon the sovereignty or territorial integrity of Iraq.

4. The provisions of the present Memorandum pertain strictly and exclusively to the implementation of the Resolution and, as such, in no way create a precedent. It is also understood that the arrangement provided for in the Memorandum is an exceptional and temporary measure.

Section II

Distribution Plan

5. The Government of Iraq undertakes to effectively guarantee equitable distribution to the Iraqi population throughout the country of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs (hereinafter humanitarian supplies) purchased with the proceeds of the sale of Iraqi petroleum and petroleum products.

6. To this end, the Government of Iraq shall prepare a Distribution Plan describing in detail the procedures to be followed by the competent Iraqi authorities with a view to ensuring such distribution. The present distribution system of such supplies, the prevailing needs and humanitarian conditions in the various Governorates of Iraq shall be taken into consideration with due regard to the sovereignty of Iraq and the national unity of its population. The plan shall include a categorized list of the supplies and goods that Iraq intends to purchase and import for this purpose on a six-month basis.

7. The part of the Distribution Plan related to the three northern Governorates of Arbil, Dihouk and Sulaimaniyah shall be prepared in accordance with Annex I, which constitutes an integral part of this Memorandum.

8. The Distribution Plan shall be submitted to the Secretary-General of the United Nations for approval. If the Secretary-General is satisfied that the plan adequately ensures equitable distribution of humanitarian supplies to the Iraqi population throughout the country, he will so inform the Government of Iraq.

9. It is understood by the Parties to this Memorandum that the Secretary-General will not be in a position to report as required in paragraph 13 of the Resolution unless the plan prepared by the Government of Iraq meets with his approval.

10. Once the Secretary-General approves the plan, he will forward a copy of the categorized list of the supplies and goods, which constitutes a part of the plan, to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait (hereinafter the 661 Committee) for information.

11. After the plan becomes operational, each Party to the present Memorandum may suggest to the other for its consideration a modification to the plan if it believes that such adjustment would improve the equitable distribution of humanitarian supplies and their adequacy.

Section III

Establishment of the escrow account and audit of that account

12. The Secretary-General, after consultations with the Government of Iraq, will select a major international bank and establish there the escrow account described in paragraph 7 of the Resolution, to be known as "the United Nations Iraq Account" (hereinafter the "Iraq Account"). The Secretary-General will negotiate the terms of this account with the bank and will keep the Government of Iraq fully informed of his actions in choosing the bank and opening the account. All transactions and

deductions mandated by the Security Council under paragraph 8 of the Resolution shall be made from the "Iraq Account", which will be administered in accordance with the relevant Financial Regulations and Rules of the United Nations.

13. The Iraqi authorities might designate a senior banking official to liaise with the Secretariat of the United Nations on all banking matters relating to the "Iraq Account".

14. In accordance with the United Nations Financial Regulations, the "Iraq Account" will be audited by the Board of Auditors who are external independent public auditors. As provided for in the Regulations, the Board of Auditors will issue periodic reports on the audit of the financial statements relating to the account. Such reports will be submitted by the Board to the Secretary-General who will forward them to the 661 Committee and to the Government of Iraq.

15. Nothing in this Memorandum shall be interpreted to create a liability on the part of the United Nations for any purchase made by the Government of Iraq or any agents acting on its behalf pursuant to the provisions of the Resolution.

Section IV

Sale of petroleum and petroleum products originating in Iraq

16. Petroleum and petroleum products originating in Iraq will be exported via the Kirkuk-Yumurtalik pipeline through Turkey and from the Mina al-Bakr oil terminal. The 661 Committee will monitor the exports through those outlets to ensure that they are consistent with the Resolution. Transportation costs in Turkey will be covered by an additional amount of oil, as foreseen in the Resolution and in accordance with procedures to be established by the 661 Committee. The arrangement between Iraq and Turkey concerning the tariffs and payment modalities for the use of Turkish oil installations has been provided to the 661 Committee.

17. Each export of petroleum and petroleum products originating in Iraq shall be approved by the 661 Committee.

18. Detailed provisions concerning the sale of Iraqi petroleum and petroleum products are contained in Annex II, which constitutes an integral part of this Memorandum.

Section V

Procurement and contirmation procedures

19. The purchase of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs of the Iraqi population throughout the country, as referred to in paragraph 20 of resolution 687 (1991), will, subject to paragraph 20 below, be carried out by the Government of Iraq, will follow normal commercial practice and be on the basis of the relevant resolutions of the Security Council and procedures of the 661 Committee.

20. The purchase of humanitarian supplies for the three northern Governorates of Arbil, Dihouk and Suleimaniyeh, as provided for in the Distribution Plan, will be carried out in accordance with Annex I.

21. The Government of Iraq will, except as provided for in paragraph 20, contract directly with suppliers to arrange the purchase of supplies, and will conclude the appropriate contractual arrangements.

22. Each export of goods to Iraq shall be at the request of the Government of Iraq pursuant to paragraph 8 (a) of the Resolution. Accordingly, exporting States will submit all relevant documentation, including contracts, for all goods to be exported under the Resolution to the 661 Committee for appropriate action according to its procedures. It is understood that payment of the supplier from the "Iraq Account" can take place only for items purchased by Iraq that are included in the categorized list referred to in Section II of the present Memorandum. Should exceptional circumstances arise, applications for the export of additional items may be submitted to the 661 Committee for its consideration.

23. As noted above, the 661 Committee will take action on applications for the export of goods to Iraq in accordance with its existing procedures subject to future modifications under paragraph 12 of the Resolution. The 661 Committee will inform the Government of Iraq, requesting States, and the Secretary-General of the actions taken on the requests submitted.

24. After the 661 Committee has taken action on the applications for export in accordance with its procedures, the Central Bank of Iraq will request the bank holding the "Iraq Account" to open irrevocable letters of credit in favour of the beneficiaries. Such requests shall be referred by the bank holding the "Iraq Account" to the United Nations Secretariat for approval of the opening of the letter of credit by the latter bank, allowing payment from the "Iraq Account" upon presentation of credit-conform documents. The letter of credit will require as condition of payment, inter alia, the submission to the bank holding the "Iraq Account" of the documents to be determined by the procedures established by the 661 Committee, including the confirmations by the agents referred to in paragraph 25 below. The United Nations, after consultations with the Government of Iraq, shall determine the clause to be inserted in all purchase orders, contracts and letters of credit regarding payment terms from the "Iraq Account". All charges incurred in Iraq are to be borne by the applicant, whereas all charges outside Iraq are for the account of the beneficiary.

25. The arrival of goods in Iraq purchased under the plan will be confirmed by independent inspection agents to be appointed by the Secretary-General. No payments can be made until the independent inspection agents provide the Secretary-General with authenticated confirmation that the exported goods concerned have arrived in Iraq.

26. The independent inspection agents may be stationed at relevant Iraqi entry points, customs areas or other locations where the functions set out in paragraph 27 of this Section can be performed. The number and location of the stationing points for the agents will be designated by the United Nations after consultations with the Government of Iraq.

27. The independent inspection agents will confirm delivery to Iraq of shipments. They will compare the appropriate documentation, such as bills of lading, other shipping documents or cargo manifests, and the documents issued by the 661 Committee, against goods actually arriving in Iraq. They will also have the authority to perform duties necessary for such

confirmation, including: quantity inspection by weight or count, quality inspection including visual inspection, sampling, and, when necessary, laboratory testing.

28. The inspection agents will report all irregularities to the Secretary-General and to the 661 Committee. If the problem is related to normal commercial practice (e.g. some shortlanded goods), the 661 Committee and the Government of Iraq are informed, but normal commercial resolution practices (e.g. claims) go forth. If the matter is of serious concern, the independent inspection agents will hold the shipment in question pending guidance from the 661 Committee.

29. As regards the export to Iraq of parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, the requests will be submitted to the 661 Committee by the national Government of the supplier. Such requests will be considered for approval by the Committee in accordance with its procedures.

30. If the 661 Committee has approved a request in accordance with paragraph 29, the provisions of paragraph 24 shall apply. However, since the supplier can expect payment against future oil sales, as stated in paragraph 10 of the Resolution, the proceeds of which are to be deposited in the "Iraq Account", the bank holding the "Iraq Account" will issue an irrevocable letter of credit stipulating that payment can only be effected when at the time of drawing the "Iraq Account" has sufficient disposable funds and the United Nations Secretariat approves the payment.

31. The requirement of authenticated confirmation of arrival provided for in this Section shall apply also to the parts and equipment mentioned in paragraph 29.

Section VI

Distribution of humanitarian supplies purchased under the Distribution Plan

32. The distribution of humanitarian supplies shall be undertaken by the Government of Iraq in accordance with the Distribution Plan referred to in Section II of the present Memorandum. The Government of Iraq will keep the United Nations observation personnel informed about the implementation of the plan and the activities that the Government is undertaking.

33. The distribution of humanitarian supplies in the three northern Governorates of Arbil, Dihouk and Sulaimaniyeh shall be undertaken by the United Nations Inter-Agency Humanitarian Programme on behalf of the Government of Iraq under the Distribution Plan with due regard to the sovereignty and territorial integrity of Iraq in accordance with Annex I.

Section VII

Observation of the equitable distribution of humanitarian supplies and determination of their adequacy

GENERAL PROVISIONS

34. The United Nations observation process will be conducted by United Nations personnel in Iraq under the overall authority of the Department of Humanitarian Affairs at United Nations Headquarters in New York in accordance with the provisions described below. Such observation shall apply to the distribution of humanitarian supplies financed in accordance with the procedures set out in the Resolution.

35. The objectives of the United Nations observation process shall be:

(a) to confirm whether the equitable distribution of humanitarian supplies to the Iraqi population throughout the country has been ensured;

(b) to ensure the effectiveness of the operation and determine the adequacy of the available resources to meet Iraq's humanitarian needs.

OBSERVATION PROCEDURES

36. In observing the equitable distribution and its adequacy, United Nations personnel will use, inter alia, the following procedures.

Food items

37. The observation of the equitability of food distribution will be based on information obtained from local markets throughout Iraq, the Iraqi Ministry of Trade, the information available to the United Nations and its specialized agencies on food imports, and on sample surveys conducted by United Nations personnel. The observation will also include the quantity and prices of food items imported under the Resolution.

38. To provide regular updated observation of the most pressing needs, a survey undertaken by United Nations agencies in cooperation with the appropriate Iraqi ministries will serve as a baseline for the continuing observation of nutritional status of the population of Iraq. This information will take account of public health data generated by the Ministry of Health (MOH) and the relevant United Nations agencies.

Medical supplies and equipment

39. Observation regarding distribution of medical supplies and equipment will focus on the existing distribution and storage system and will involve visits to hospitals, clinics as well as medical and pharmaceutical facilities where such supplies and equipment are stored. Such observation will also be guided by health statistics data from MOH and surveys by relevant United Nations agencies.

Water/sanitation supplies and equipment

40. Observation of distribution of water/sanitation supplies and equipment will focus on the determination that they are used for their intended purposes. Confirmation will be carried out by collecting data on the incidence of water-borne diseases and by water quality control checks by visits to water and sanitation facilities by representatives of relevant United Nations agencies. In this regard the United Nations will rely on all relevant indicators.

Other materials and supplies

41. With reference to materials and supplies which do not fall within the three areas indicated above, in particular, those needed for the rehabilitation of infrastructures essential to

meet humanitarian needs, observation will focus on confirmation that such materials and supplies are delivered to the predefined destinations in accordance with the Distribution Plan and that they are used for their intended purposes, and on the determination of whether these materials and supplies are adequate to [illegible] such essential needs of the Iraqi population.

COORDINATION AND COOPERATION

42. The United Nations observation activities will be coordinated by the Department of Humanitarian Affairs at United Nations Headquarters in New York. Observation will be undertaken by United Nations personnel. The exact number of such personnel will be determined by the United Nations taking into account the practical requirements. The Government of Iraq will be consulted in this regard.

43. The Iraqi authorities will provide to United Nations personnel the assistance required to facilitate the performance of their functions. United Nations personnel will coordinate with the Iraqi competent authorities.

44. In view of the importance of the functions which United Nations personnel will perform in accordance with the provisions of this Section of the Memorandum, such personnel shall have, in connection with the performance of their functions, unrestricted freedom of movement, access to documentary material which they find relevant having discussed the matter with the Iraqi authorities concerned, and the possibility to make such contacts as they find essential.

Section VIII

Privileges and Immunities

45. In order to facilitate the successful implementation of the Resolution the following provisions concerning privileges and immunities shall apply:

(a) officials of the United Nations and of any of the Specialized Agencies performing functions in connection with the implementation of the Resolution shall enjoy the privileges and immunities applicable to them under Articles V and VII of the Convention on the Privileges and Immunities of the United Nations, or Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies to which Iraq is a party;

(b) independent inspection agents, technical experts and other specialists appointed by the Secretary-General of the United Nations or by heads of the Specialized Agencies concerned and performing functions in connection with the implementation of the Resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities accorded to experts on mission for the United Nations or for the Specialized Agency under Article VI of the Convention on the Privileges and Immunities of the United Nations or the relevant Annexes of the Convention on the Privileges and Immunities of the Specialized Agencies respectively;

(c) persons performing contractual services for the United Nations in connection with the implementation of the Resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities referred to in sub-paragraph (b) above concerning experts on mission appointed by the United Nations.

46. In addition, officials, experts and other personnel referred to in paragraph 45 above shall have the right of unimpeded entry into and exit from Iraq and shall be issued visas by the Iraqi authorities promptly and free of charge.

47. It is further understood that the United Nations and its Specialized Agencies shall enjoy freedom of entry into and exit from Iraq without delay or hindrance of supplies, equipment and means of surface transport required for the implementation of the Resolution and that the Government of Iraq agrees to allow them to, temporarily, import such equipment free of customs or other duties.

48. Any issue relating to privileges and immunities, including safety and protection of the United Nations and its personnel, not covered by the provisions of this Section shall be governed by paragraph 16 of the Resolution.

Section IX

Consultations

49. The Secretariat of the United Nations and the Government of Iraq shall, if necessary, hold consultations on how to achieve the most effective implementation of the present Memorandum.

Section X

Final clauses

50. The present Memorandum shall enter into force following signature, on the day when paragraphs 1 and 2 of the Resolution become operational and shall remain in force until the expiration of the 180 day period referred to in paragraph 3 of the Resolution.

51. Pending its entry into force, the Memorandum shall be given by the United Nations and the Government of Iraq provisional effect.

SIGNED this _____ day of _____ 1996 at _____ in two originals in English.

For the United Nations

_____

Hans Corell

Under-Secretary-General
The Legal Counsel

For the Government of Iraq

_____

Abdul Amir Al-Anbari

Ambassador Plenipotentiary
Head of the Delegation of Iraq

Annex I

1. In order to ensure the effective implementation of paragraph 8 (b) of the Resolution, the following arrangements shall apply in respect of the Iraqi Governorates of Arbil, Dihouk and Sulaimaniyah. These arrangements shall be implemented with due regard to the sovereignty and territorial integrity of Iraq, and to the principle of equitable distribution of humanitarian supplies throughout the country.

2. The United Nations Inter-Agency Humanitarian Programme shall collect and analyze pertinent information on humanitarian needs in the three northern Governorates. On the basis of that information, the Programme will determine the humanitarian requirements of the three northern Governorates for discussion with the Government of Iraq and subsequent incorporation in the Distribution Plan. In preparing estimates of food needs, the Programme will take into consideration all relevant circumstances, both within the three northern Governorates and in the rest of the country, in order to ensure equitable distribution. Specific rehabilitation needs in the three northern Governorates shall receive the necessary attention.

3. Within a week following the approval of the Distribution Plan by the Secretary-General, the Programme and the Government of Iraq will hold discussions to enable the Programme to determine how the procurement of humanitarian supplies for the three northern Governorates can be undertaken most efficiently. These discussions should be guided by the following considerations: The bulk purchase by the Government of Iraq of standard food commodities and medicine may be the most cost-effective means of procurement. Other materials and supplies for essential civilian needs, specifically required for the three northern Governorates, may be more suitably procured through the United Nations system in view of technical aspects related to their proper use.

4. To the extent that purchases and deliveries are made by the Government of Iraq in response to the written communication of the Programme, an amount corresponding to the cost of the delivered goods will be deducted from the amount allocated to the Programme from the "Iraq Account".

5. Humanitarian supplies destined for distribution in the three northern Governorates shall be delivered by the Programme to warehouses located within these Governorates. Such supplies can also be delivered by the Government of Iraq or the Programme, as

appropriate, to warehouses in Kirkuk and Mosul. The warehouses shall be managed by the Programme. The Government of Iraq shall ensure the prompt customs and administrative clearances to enable the safe and quick transit of such supplies to the three northern Governorates.

6. The Programme shall be responsible in the three northern Governorates for the storage, handling, internal transportation, distribution and confirmation of equitable distribution of humanitarian supplies. The Programme will keep the Government of Iraq informed on the implementation of distribution.

7. Whenever possible and cost-effective, the Programme shall use appropriate local distribution mechanisms which are comparable to those existing in the rest of Iraq in order to effectively reach the population. Recipients under this arrangement will pay a fee for internal transportation, handling, and distribution as in the rest of the country. The Programme shall ensure that the special needs of internally displaced persons, refugees, hospital in-patients and other vulnerable groups in need of supplementary food are appropriately met, and will keep the Government of Iraq informed.

8. The Programme will observe that humanitarian supplies are used for their intended purposes, through visits to sites and by collecting relevant data. The Programme will report to the Department of Humanitarian Affairs at United Nations Headquarters in New York and the Government of Iraq any violation observed by the Programme.

* * *

Annex II

1. The State Commission, if the 661 Committee so decides, the national petroleum purchaser authorized by the 661 Committee, shall submit to the Committee for handling and approval the application, including the relevant contractual documents covering the sales of such petroleum and petroleum products, for the proposed purchase of Iraqi petroleum and petroleum products, endorsed by the Government of Iraq or the Iraqi State Oil Marketing Organization [hereinafter SOMO] on behalf of the Government. Such endorsement could be done by sending a copy of the contract to the 661 Committee. The application shall include details of the purchase price at fair market value, the export route, opening of a letter of credit payable to the "Iraq Account", and other necessary information required by the Committee. The sales of petroleum and petroleum products shall be covered by contractual documents. A copy of these documents shall be included in the information provided to the 661 Committee together with the application for forwarding to the independent inspection agents described in paragraph 4 of this Annex. The contractual documents should contain the following information: quantity and quality of petroleum and petroleum products, duration of contract, credit and payment terms and pricing mechanism. The pricing mechanism for petroleum should include the following points: marker crude oil and type of quotations to be used, adjustments for transportation and quality, and pricing dates.

2. Irrevocable confirmed letters of credit will be opened by the oil purchaser's bank with the irrevocable undertaking that the proceeds of the letter of credit will be paid directly to the "Iraq Account". For this purpose, the following clauses will have to be inserted in each letter of credit:

"- Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be irrevocably paid into the "Iraq Account" with ..... Bank."

"- All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the purchaser."

3. All such letters of credit will have to be directed by the purchaser's bank to the bank holding the "Iraq Account" with the request that the latter adds its confirmation and forwards it to the Central Bank of Iraq for the purpose of advising SOMO.

4. The sale of petroleum and petroleum products originating in Iraq will be monitored by United Nations independent oil experts appointed by the Secretary-General of the United Nations to assist the 661 Committee. The monitoring of oil exports will be carried out by independent inspection agents at the loading facilities at Ceyhan and Mina al-Bakr and, if the 661 Committee so decides, at the pipeline metering station at the Iraq-Turkey border, and would include quality and quantity verification. They would authorize the loading after they receive the information from the United Nations oil experts that the relevant contract has been approved, and report to the United Nations.

5. The United Nations will receive monthly reports from SOMO on the actual volume and type of petroleum products exported under the relevant sales contracts.

6. The United Nations Secretariat and SOMO shall maintain continuing contact and in particular United Nations oil experts shall meet routinely with SOMO representatives to review market conditions and oil sales.

* * *

Author: Graham Brett/Saybolt/NL at SAYBOLT
Date: 10.07.01 10:51 AM
Subject: 180-Day Report
---------- Message Contents

Dear Richard,

for good order's sake, you may be interested in the text of the finalised 180 day report, as attached, in respect of our submission. It doesn't look quite the same but as long as we follow the format you finally agreed with Georges Nasr we should be in good shape.

Kindest regards,

Graham
---------- Forwarded by Graham Brett/Saybolt/NL on 10/07/2001 10:49 ----------

"Asmaa Suqi" <suqia@un.org> on 14/06/2001 23:26:22

To: Graham Brett/Saybolt/NL@Saybolt
cc:

Subject: 180-Day Report

United Nations S/2001/505

Security Council

Distr.: General
18 May 2001

Original: English

Report of the Secretary-General pursuant to paragraph 5 of resolution 1330 (2000)

I. Introduction

1. The present report is submitted pursuant to paragraph 5 of Security Council resolution 1330 (2000) of 5 December 2000, in which I was requested to provide a comprehensive report to the Council 90 days after entry into force of the resolution on its implementation and again at least one week prior to the end of the 180-day period. It also describes developments in the implementation of the humanitarian programme in Iraq pursuant to resolution 986 (1995) since the period covered by my previous report, which was submitted to the Council on 2 March 2001 (S/2001/186). Unless stated otherwise, the cut-off date for the data contained in the present report is 30 April 2001.

II. Revenue generation

A. Oil production and sale of petroleum and petroleum products

2. Since the beginning of the phase IX on 6 December 2000, and as at 30 April 2001, the oil overseers and the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, hereinafter referred to as the Committee, have reviewed and approved a total of 159 contracts (including 59 contracts from phase VIII extended into phase IX) involving purchasers from 44 countries (figures in parentheses indicate the number of contracts for that country): Algeria (1); Austria (1); Belarus (4); Brazil (1); Bulgaria (1); Canada (1); China (6); Cyprus (7); Egypt (1); France (9); Greece (2); India (1); Indonesia (2); Ireland (2); Italy (8); Jordan (4); Kenya (1); Lebanon (3); Liechtenstein (3); Malaysia (7); Namibia (2); Nigeria (1); Oman (1); Pakistan (3); Panama (1); Qatar (2); Romania (3); Russian Federation (21); Singapore (1); South Africa (2); Spain (2); Sudan (1); Switzerland (17); Syrian Arab Republic (2); Thailand (2); Tunisia (1); Turkey (6); Ukraine (4); United Arab Emirates (11); United Kingdom of Great Britain and Northern Ireland (3); United States of America (1); Venezuela (1); Viet Nam (1); and Yemen (2).

3. The total quantity of oil approved for export under those contracts amounts to approximately 490 million barrels, with an estimated value of 12.1 billion euros, or US$ 10.7 billion. However, the volume of oil contracted for exceeds the anticipated export volume of 290 million barrels under phase IX.

4. The estimated total revenue forecast for phase IX (before the deduction for pipeline fees) is 6.5 billion euros, or $5.7 billion, at current prices and rate of exchange. This is approximately 4.4 billion euros, or $4 billion, less than that of phase VIII. This is attributable in part to the decline in market prices over the period, but predominantly to the reduced rate of oil exports under the programme during the first part of phase IX, accounting for approximately 2.8 billion euros, or $2.6 billion, of the revenue that was not made available. Although the rate of export returned to a normal level of above 2 million barrels per day during the latter part of phase IX, the reduced rate of export at the beginning of the phase resulted in the loss of approximately 100 million barrels of crude oil.

5. As at 30 April 2001, 139 loadings totalling 216.7 million barrels, with an estimated value of 4,836 million euros, or $4,293 million, at the current rate of exchange, have been completed.

6. During the course of phase IX, two irregularities in crude oil export operations were identified and reported by the oil overseers to the Security Council Committee established by resolution 661 (1990) (hereafter referred to as the Committee). Both cases involved a potential loss of revenue for the United Nations Iraq account owing to non-compliance by purchasers with the authorized discharge destination. The revenues concerned were, however, recovered and deposited into the United Nations Iraq account. In order to decrease the possibilities for such deviations to occur in the future, on 1 April 2001, the oil overseers initiated the issuance of notifications to ships' masters, advising them of the authorized export destination.

7. The Security Council, in paragraph 15 of its resolution 1330 (2000), requested, inter alia, to make the necessary arrangements, subject to the approval of the Council, to allow funds up to 600 million euros deposited in the escrow account to be used for the cost of installation and maintenance, including training services, of the equipment and spare parts for the oil industry which had been funded in accordance with the provisions of resolution 986 (1995) and related resolutions. Accordingly, a team of experts was dispatched to Iraq from 18 March to 1 April 2001, and is currently finalizing its report. I expect to submit my recommendations, together with an executive summary of the report prepared by the experts, to the Council before the end of May. Copies of the full report will also be made available.

Oil exports from Iraq

8. The modus operandi for the inspection of oil exports originating from Iraq has remained unchanged. During the current phase, 14 independent inspection agents from Saybolt were on site, based in Mina al-Bakr and Zakho in Iraq and Ceyhan in Turkey.

Mina al-Bakr

9. Crude oil loadings have continued from the Mina al-Bakr oil platform under the supervision of the Saybolt monitoring team, consisting of six monitors. The total net volume of crude oil delivered to vessels was 101,329,263 barrels, as ascertained by reference to the vessels' calibration charts. This is equivalent to an average of 1,138,531 barrels per day.

No improvements in the living conditions, general safety arrangements or transportation facilities on Mina al-Bakr have been reported.

MS-1 metering station, Zakho

10. The transfer of crude oil from Iraq via the Iraq-Turkey pipeline to the Botas terminal in Ceyhan, Turkey, has continued under the supervision of the Saybolt monitoring team, which consists of three members. The volume of crude oil monitored through the metering banks at the MS-1 metering station at Zakho was 59,962,679 barrels. This is equivalent to an average of 673,738 barrels per day.

Botas terminal, Ceyhan

11. The receipt of crude oil from Iraq via the Iraq/Turkey pipeline at the Botas terminal has continued under the supervision of the Saybolt monitoring team, consisting of five members. The volume of crude oil monitored as flowing into the receiving storage tanks at the Botas terminal, ascertained by reference to storage tank calibration charts, was 59,945,486 barrels, equivalent to an average of 673,770 barrels per day. The total net volume of crude oil delivered to vessels was 66,413,249 barrels, as ascertained by reference to the vessels' calibration charts. This is equivalent to an average of 746,239 barrels per day.

Total crude oil exports

12. During the period under review, the total net volume of crude oil exported from Mina al-Bakr and Ceyhan, as monitored by Saybolt, was 167,744,514 barrels, or an average of 1,884,770 barrels per day. Of the total volume exported, 39.6 per cent was exported through Ceyhan and 60.4 per cent was exported through Mina al-Bakr.

B. United Nations accounts pertaining to the Iraq programme

13. The United Nations accounts pertaining to the Iraq programme are divided into seven separate funds pursuant to paragraph 8 (a) to (g) of Security Council resolution 986 (1995). As at 30 April 2001, 3,253.8 million euros had been deposited in the account for phase IX, as authorized under Council resolutions 1284 (1999) and 1330 (2000), bringing the total oil sale revenue since the inception of the programme to

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$37,333.9 million and 4,833.4 million euros. The allocation of total oil revenue among the various funds and corresponding expenditures, as at 30 April, are reported in annex I to the present report; the number and value of letters of credit pertaining to oil proceeds and humanitarian supplies are reported in annex II.

14. In paragraph 9 of resolution 1330 (2000), the Security Council requested that I take the necessary steps to transfer the excess funds drawn from the account created pursuant to paragraph 8 (d) of resolution 986 (1995) for the purposes set out in paragraph 8 (a) of that resolution in order to increase the funds available for humanitarian purchases. In my previous report to the Council (S/2001/186, para. 25), I reported that a review to identify unencumbered funds under phase VIII of the programme was under way. However, as a result of the substantial decrease in the rate of oil proceeds during the first 90-day period of the current phase, no excess funds were available for redistribution towards the purchase of additional humanitarian supplies during the current reporting period. A further review will be conducted at the end of the current phase and any excess funds identified at that time will be made available for redistribution accordingly.

III. Processing and approval of applications for contracts

15. The Secretariat has regularly brought to the attention of the Government of Iraq the inordinate delays in the submissions of applications. Much to my regret, as at 14 May 2001, the Office of the Iraq Programme had not received a single application in the sectors of health, education, water and sanitation and oil spare parts and equipment under phase IX. While the value of submitted applications for the food basket has exceeded 85 per cent of the revised allocation, the average rate of submissions in other sectors of the distribution plan stands at some 19 per cent of the total allocations for those sectors. Applications submitted under the housing, electricity, transport/telecommunications, food handling and agriculture sectors account, respectively, only for 59.2 per cent, 38 per cent, 30.2 per cent, 27.3 per cent and 14.2 per cent of the revised sectoral allocations.

16. Meanwhile, the Office of the Iraq Programme continued to provide the Committee with regular comprehensive and analytical reports and data regarding applications processing, particularly on programme-related reasons for the lifting of holds placed on applications and the interrelationship among supplies required for given projects and activities. Through providing examples of the detailed specifications normally requested by the Secretariat and the holding missions, the Office of the Iraq Programme has continued to assist the suppliers in preparing the requested information in connection with incomplete and non-compliant applications and those which are placed on hold. The Office of the Iraq Programme, the United Nations Office of the Humanitarian Coordinator for Iraq and United Nations agencies and programmes have assisted the Iraqi institutions in developing the technical details of the contracted items that are currently on hold, or are likely to be subjected to holds. The annual briefing organized by the Contracts Processing Section of the Office of the Iraq Programme, on 10 April, provided a useful forum for over 200 representatives of some 65 Member States and guests from their respective business communities to further acquaint themselves with various aspects of the programme and to discuss all procedural and practical issues arising from commercial activities under the programme.

Processing of applications received under the ESB (59 per cent) account

17. As at 9 May 2001, over $19.5 billion and over 3 billion euros had been made available under the ESB (59 per cent) account since the start of the programme implementation, excluding the amount of $1.04 billion reimbursed from the ESC (13 per cent) account for supplies procured under the bulk purchase arrangements and delivered by the Government of Iraq to the three northern governorates. Furthermore, some $138 million was paid from the ESC (13 per cent) account for the cost of oil spare parts delivered to Iraq. An additional amount of $681 million has been earned from the interest on the funds in the Iraq account. Therefore, the total funds available for contracting by the Government of Iraq had reached some $24.24 billion, as at 9 May 2001. After deduction of the cost of supplies paid for on arrival in Iraq and the cost of approved applications, as at 9 May, $2.82 billion was still available for new contracts. It should be borne in mind that funds are segregated by the United Nations Treasury only when applications are approved or are "notified" by the Secretariat.

18. As at 14 May 2001, a total of 15,708 contract applications, with a total value of $27.032 billion, had been submitted under the ESB (59 per cent) account, under the distribution plans for phases I to IX. Out of the above total, 1,150 contract applications were subsequently declared null and void either by the contracting parties or as a result of indefinite blocks imposed by Committee members. A total of 12,373 applications, with a value of $21.79 billion, have been approved by the Committee established by resolution 661 (1990), or pursuant to paragraphs 17 and 18 of resolution 1284 (1999) and paragraph 8 of resolution 1302 (2000), "notified" by the Secretariat. In addition, 1,699 applications, with a total value of $3.71 billion, were placed on hold in the Committee. Furthermore, 338 applications, valued at $1.11 billion, which were incomplete or did not comply with either the approved distribution plans or the procedures of the Committee, could not be processed by the Secretariat. Out of the above total, 138 applications, valued at $185 million, were transferred to "inactive" status owing to the lack of response by the suppliers on the required information, corrections or amendments. A further 128 applications, which had been received during the month of May, with a total value of $385 million, were being actively processed.

19. Since the inception of the programme, the rates of submission have varied greatly among different sectors, with the food handling and electricity sectors exceeding the sectoral allocations by 14 per cent and 7 per cent, respectively, and the oil spare parts, education, health, water/sanitation and transport/communications sectors having reached 71.9 per cent, 72.2 per cent, 79.7 per cent, 82.1 per cent and 86.7 per cent of the respective sectoral allocations.

20. Supplies at a total value of $11.1 billion, including oil spare parts and equipment worth over $700 million, had been delivered to Iraq as at 30 April 2001. Additional supplies valued at $10.36 billion, including some $700 million worth of oil spare parts and equipment, were in the production and delivery pipeline.

ESC (13 per cent) account

21. As at 9 May 2001, over $3.3 billion had been made available under the ESC (13 per cent) account since the beginning of programme implementation in the three northern governorates. This amount includes the funds subsequently reimbursed to the ESB (59 per cent) account for supplies of food, medicine and vaccines delivered by the Government of Iraq to the three northern governorates under the bulk procurement arrangements, as well as the funds charged to the ESC (13 per cent) account for the cost of oil spare parts delivered to Iraq.

22. The United Nations agencies and programmes involved in the implementation of the programme have submitted a total of 3,567 applications under the ESC (13 per cent) account, of which 174 applications were subsequently cancelled. A total of 3,334 applications, valued at $1.062 billion, have been approved by the Committee, or pursuant to paragraph 17 of resolution 1284 (1999) and paragraph 8 of resolution 1302 (2000), "notified" by the Secretariat. Two applications, with a total value of $273,495, have been placed on hold, and 45 applications, with a total value of $11.7 million, are currently under processing or evaluation, awaiting further clarifications.

23. I am concerned that there has not been much improvement in the rate of submission of applications by United Nations agencies and programmes, though the reasons for the difficulties encountered in that regard are different from those experienced under the ESB (59 per cent) account. The Executive Director of the Iraq Programme has taken up the matter with the executive heads of the agencies and programmes concerned in order to expedite the contracting of supplies and equipment for the three northern governorates.

Oil spare parts and equipment

24. Against a total of $3 billion authorized by the Security Council for the procurement of oil spare parts and equipment under phases IV to IX, the Office of the Iraq Programme has received a total of 3,506 applications valued at some $2.158 billion. Out of that total, 2,679 applications valued at over $1.52 billion have been approved, including 221 applications valued at $161 million, which were approved by the group of oil experts of the Office of the Iraq Programme pursuant to paragraph 18 of resolution 1284 (1999). A total of 545 applications valued at $442 million have been placed on hold, while 103 incomplete or non-compliant applications, valued at $81.5 million, remained idle pending further action, mostly by the suppliers. Forty-seven applications valued at $92 million, which were submitted in May, were actively being processed.

25. With all the efforts made for the provision of funding for oil spare parts and equipment, I can only reiterate my regret expressed in previous reports that there has been no major improvement in the submission of oil spare parts applications. Some five months after the end of phase VIII, the total value of applications received by the Secretariat for oil spare parts and equipment under that phase remains at about one third the authorized allocation. This situation is further compounded by the fact that, with only about three weeks remaining to the end of phase IX, not a single application had been received by the Secretariat under the current phase.

26. I should like to appeal to the Government of Iraq to ensure the submission of applications concerned as expeditiously as possible. I should also like to appeal to the Committee to approve the applications concerned and also to facilitate the implementation of paragraph 18 of resolution 1284 (1999), in order to ensure the attainment of its intended objective. Although the project-based list of oil spare parts and equipment for phase IX was submitted by the Secretariat to the Committee on 20 February, with only three weeks before the end of the phase, the list had yet to be approved.

27. The value of oil spare parts and equipment approved under earlier phases and delivered to Iraq reached a total value of over $700 million as at 30 April 2001, with additional supplies valued at about $800 million still in the production and delivery pipeline.

Incomplete and/or non-compliant applications under the ESB (59 per cent) account

28. I have been concerned over the large volume of incomplete and/or non-compliant applications submitted to the Secretariat as well as the generally slow rate of responses from the suppliers to the requests for additional information, clarifications and/or corrections. The Executive Director of the Iraq Programme brought to the attention of the Security Council Committee, the permanent representatives of 27 Member States concerned, as well as to the Permanent Representative of Iraq to the United Nations the details of applications on which the Secretariat had not received the required responses in excess of six months. The Executive Director advised all concerned that applications for which the required information had not been submitted in excess of 60 days would be declared "inactive", with no further action to be taken by the Office of the Iraq Programme. I am pleased to note that the latters expedited responses from the suppliers, leading to some $232 million worth of applications being circulated to the Committee or notified by the Secretariat. Accordingly, the value of the applications that had remained idle for an average period of over six months decreased from $417 million in mid-March to $185 million in mid-May.

Applications placed on hold

29. I am gravely concerned that since my previous report in early March, the total value of holds has increased from $3.1 billion to $3.7 billion, as at 14 May 2001, reaching the level of 17.6 per cent of the value of all applications circulated to the Committee.

30. I welcome the Committee's decision to start a fresh round of technical meetings in order to be briefed, on each sector, by the relevant United Nations agencies and programmes, as well as to review the holds placed on applications in those sectors. On 4 May 2001, the Committee was briefed on the state of the telecommunications sub-sector in Iraq and on issues pertaining to holds placed on applications submitted under the sub-sector, which is the highest relative percentage of holds in any sector. The next technical briefing, scheduled for 8 June, will be on the agriculture sector.

Implementation of paragraph 25 of resolution 1284 (1999)

31. Pursuant to paragraph 25 of resolution 1284 (1999), the Secretariat continued to notify the Committee of all applications containing items subject to the provisions of the export/import mechanism established by resolution 1051 (1996). The additional information obtained by the Secretariat for the above determination is shared with the Committee with a view to reducing the number of holds placed on applications for lack of technical specifications.

32. As at 14 May, there were 218 applications valued at $462 million, on which at least one member of the Committee disagreed with the determination of Secretariat experts that they had not identified in those applications any item included in the "1051-list". Although the above figure indicates a 56 per cent increase during the reporting period, there has been an increase of only about 3 per cent in the value of the

applications concerned. Such disagreements are being addressed by the Office of the Iraq Programme through facilitating the exchange of technical information between the experts of Secretariat and the Committee members concerned on the basis of the informal points of understanding reached at a meeting held on 23 January, with a view to improving the flow of information, prioritization of reviews and greater utilization of the United Nations observation mechanism as a condition for approving applications containing items of potential "dual use".

33. As requested in paragraph 19 of resolution 1330 (2001), the Executive Chairman of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and the Director-General of the International Atomic Energy Agency (IAEA) will complete by the end of this period the revision and updating of the lists of items and technologies to which the import/export mechanism approved by resolution 1051 (1996) applies.

Approvals and/or releases on the condition of monitoring and observation

34. The further integration and consolidation of observation and monitoring resources of the Office of the Iraq Programme and the United Nations Office of the Humanitarian Coordinator for Iraq, the United Nations agencies and programmes and the independent inspection agents, Cotecna and Saybolt, have significantly helped in the approval and/or release from hold by the Committee of 676 applications valued at $1,316 billion, on the condition that special targeted monitoring and observation is carried out. I strongly urge the Committee to place greater confidence in the United Nations observation and monitoring system in order to approve or release from hold the applications containing items that are on the list provided for under resolution 1051 (1996). The Office of the Iraq Programme has established a special database for tracking items approved or released from hold on condition of targeted end-use observation/monitoring, and is working on improving access to it by the Committee members.

Notifications and approvals by the Secretariat

35. Pursuant to the relevant provisions of resolutions 1284 (1999) and 1302 (2000), the Secretariat notified the Committee that 2,173 applications, with a total value of $4.69 billion, were eligible for payment, including 221 applications for oil spare parts and equipment worth $161 million, which were approved by the group of oil experts. The above total amount represents an increase of almost 30 per cent since 28 February 2001, which is mainly attributable to the early submission of the food applications, and partly to the approval by the Committee, in February, of the lists of additional items in the agriculture, education, food and food-handling, health, and water and sanitation sectors, pursuant to paragraph 11 of resolution 1330 (2000). The categorized lists of items for the housing and electricity sectors were submitted to the Committee in February, as requested in paragraph 10 of resolution 1330 (2000). While the housing sector list was revised and approved by the Committee on 27 February, the electricity sector list still remains on hold.

Letters of credit

36. Just as I am gravely concerned over the unacceptably high level of holds placed on applications, I am very much concerned about the delays experienced with the Central Bank of Iraq in taking the necessary measures to expedite the issuance of letters of credit. According to the records of the United Nations Treasury, as at 14 May, BNP-Paribas had issued a total of approximately $20.190 billion worth of letters of credit and had paid the suppliers a total amount of approximately $11.653 billion for the supplies delivered to Iraq. With some 145 letters of credit actively being processed at present, there was no major backlog in the issuance of letters of credit by BNP-Paribas. However, as at 14 May, there was a total of 717 already approved applications valued at $1.151 billion, for which BNP-Paribas had not received requests from the Central Bank of Iraq to issue letters of credit. The above figures represent an increase of over 31 per cent in the number, and over 34 per cent in the value of applications in that category as at 28 February 2001.

37. The Government of Iraq has been kept fully up to date on this unsatisfactory situation and has been repeatedly reminded of the need for a determined effort to address this persistent problem. On several occasions the Central Bank of Iraq has been requested to expedite its instructions regarding the opening of letters of credit soon after the approval of applications and to reduce the time it takes to respond to the requests for clarification by BNP-Paribas. In this connection, I welcome the ongoing visit to New York

of a representative of the Central Bank of Iraq to expedite activities related to banking arrangements and to resolve some pending matters. I do wish to express the hope, however, that the current visit of the representative of the Central Bank of Iraq constitutes a first step towards implementing my repeated recommendation that the Government of Iraq deploy to New York a representative of the Central Bank of Iraq, at the appropriate level, as envisaged in paragraph 13 of the Memorandum of Understanding between the United Nations Secretariat and the Government of Iraq (S/1996/356).

Commercial protection

38. There is no sign of a decrease in the estimated number of 1,500 to 2,000 disputes arising annually from commercial malpractice by the suppliers of goods to Iraq under the programme. This is borne out by the comparable number of applications submitted for the export of free-of-charge goods as compensation, warranty or replacement items in return for incomplete shipments and defective or non-compliant items, which provides an indication of the magnitude of the disputed cases, which the contracting parties appear to have resolved through bilateral negotiations. Despite efforts by the Government of Iraq, including measures to avoid intermediaries and delinquent suppliers and to engage only reliable producers and manufacturers, the number of cases where supplies are not delivered in full or do not comply with contractual specifications will increase further, as the volume, variety and complexity of supplies delivered to Iraq continue to increase.

39. As I stated in my most recent report (S/2001/186, para. 60), the useful unilateral measures taken by the Government of Iraq to reduce the number of commercial disputes alone are not a remedy for such cases where a one-time supplier defies its contractual responsibilities and takes undue advantage of the existing vacuum in the commercial safeguards under the programme. Furthermore, bilateral resolution of disputes is effective and useful only if both parties act in good faith in discharging their contractual obligations. Regrettably, this has not always been the case with regard to some suppliers, as evidenced, inter alia, by the large number of unresolved letters of discrepancy filed in connection with the shipments of oil spare parts.

40. Accordingly, it is essential to provide legitimate commercial protection to the Iraqi buyers. I regret that, after the much delayed resumption of discussions on the subject in February 2001, these informal discussions of the Committee on the options submitted by the Office of the Iraq Programme in July 1999, concerning payment clauses for the ESB (59 per cent) account, have been suspended once again. I reiterate my appeal to the Committee to accord the highest priority to this matter and to take the measures necessary to protect the ESB (59 per cent) account against commercial malpractice or occasional fraudulent practices.

IV. Observation and monitoring activities

A. Inspection and authentication of humanitarian supplies

41. The operation of the United Nations independent inspection agent, Cotecna Inspection S.A., has continued at the border entry points to Iraq at Al-Waleed, Trebil, Umm Qasr and Zakho, with the authentication of the arrival in Iraq of supplies procured under the ESB (59 per cent) and ESC (13 per cent) accounts. The sampling, inspection and testing procedures have been further streamlined and the process of authentication and reporting further expedited through the stationing of an additional five staff in the field and the more frequent electronic transmission of data to the Office of the Iraq Programme.

42. There has been some improvement in the logistics and handling conditions in the port of Umm Qasr, where there was considerable congestion as a result of inaction by some Iraqi buyers to take delivery of their respective goods and to remove them from the port area, with the consequent delays in authenticating some of the discharged goods. The Office of the Iraq Programme has informed the Government of Iraq of the complaints lodged by many suppliers regarding the ensuing delays in the authentication of and payment for the discharged goods and has urged that the buyers concerned take urgent measures to address those delays. As part of normal monitoring of the agent's compliance and with a view to resolving the recurrent problems in carrying out the inspection mandate, particularly at the port of Umm Qasr, the

authentications expert of the Office of the Iraq Programme is currently touring the four authorized entry points in Iraq.

43. The electronic certification of authentications, which was implemented in February by the Office of the Iraq Programme and the United Nations Treasury, has reduced considerably the time and resources required for finalizing the payment process.

B. Monitoring of oil spare parts and equipment

44. During the period under review, 292 shipments of oil spare parts and equipment were received, of which supplies covered by 327 contracts were confirmed as having been fully delivered and monitored. An additional 72 partial deliveries had been made. The value of supplies delivered during the reporting period is $137.5 million. The total value of deliveries made since phase IV is $701.1 million. There have been no deliveries of oil spare parts and equipment under phase IX.

45. The oil spare parts and equipment monitoring team carried out 782 site visits throughout Iraq. The team is based in Baghdad and consists of six members plus an office manager. Members routinely visit the southern and northern parts of Iraq once a week, covering various warehouses in each area.

46. Owing to the increase in the arrival of oil spare parts and equipment, each monitoring visit to the southern part of the country now takes at least four days to complete, an increase of one day since the period covered in my previous report. Warehouses in the vicinity of Baghdad are covered by the monitors from the Baghdad office and require four days per visit, representing an increase of three days since the previous reporting period.

47. The number of storage locations requiring visits by the monitors has also increased, as original warehouses have reached storage capacity and spare parts and equipment are being increasingly stored on or near end-use sites. The fact that these sites are often located at some distance from one another has placed additional demands on the monitoring team and contributed to the longer time required for monitoring visits. Furthermore, there has also been a greater number of deliveries that require special monitoring and/or end-use or end-user monitoring.

48. In view of the above, consideration is being given to the need for an incremental increase in the number of monitors corresponding to the increase in the rate of oil spare parts and equipment, and the required monitoring activities. Based on current estimates, it is envisaged that an immediate increase of two monitors is necessary. Another four monitors may be required as the rate of arrival of oil spare parts and equipment increases. Further monitors may be required depending on the frequency of follow-up visits under the end-user monitoring scheme.

49. The monitoring team continues to undertake the special operating procedures instituted by the Office of the Iraq Programme with regard to the specialized monitoring of certain contracts. Examples of this include the inspection of ultrasonic equipment imported under a service contract for the Northern Oil Company. An inspection of the equipment in question confirmed that it had arrived and was operating on site. All equipment was tagged with a unique reference number (URN) seal for re-export upon completion of the contract, as per the guidelines for special monitoring procedures. Upon the re-export of such equipment from Iraq, the independent inspection agents, Cotecna, found that all URN seals were intact.

C. United Nations observation mechanism

50. As indicated in my previous report (S/2001/186, para. 70), pursuant to paragraph 3 of resolution 1330 (2000), the recruitment of the full complement of 158 international observers has been completed. In order to meet the needs and concerns of the Security Council and its Committee established by resolution 661 (1990), generalists currently occupying observer posts are gradually being replaced by specialists, with the requisite technical qualifications and experience. The specialist observers from all tiers are pooled in sectoral working groups, which plan, deploy and report as single entities. In addition to tracking and observing the distribution of supplies, the specialized observers have conducted an increased number of assessments on the effectiveness of programme implementation and its impact on the humanitarian situation, including the impact on programme implementation by holds placed on applications, and the adequacy of available resources. A number of these reports have led to an enhanced understanding by members of the Committee of sectoral issues and prioritization by the Committee

in the approval of applications for contracts reflecting the most pressing civilian needs of the Iraqi population.

51. One of the major tasks performed by the sectoral working groups during the reporting period was the updating of existing "green lists" and submission of the proposal for new sectoral "green lists" for fast-track approval of contract applications pursuant to paragraphs 10 and 11 of resolution 1330 (2000). The sectoral working groups have also ensured the observation of items approved by the Security Council Committee on the condition of "end-use observation", which has helped in expediting the approval or release from hold of 676 applications (with a total value of $1,316 billion), which constitutes an increase of about 33 per cent since the last reporting period. In this respect, despite occasional difficulties encountered, relating particularly to the collection of statistical data, I am satisfied with the cooperation received from the Government of Iraq.

52. The distribution of observations by sector and type as conducted by the sectoral working groups during the reporting period is reflected in annex III to the present report.

V. Programme implementation

A. Sectoral foens

Food

53. As at 14 May 2001, a total of 278 applications for contracts valued at over $1.1 billion had been approved against the allocated $1,275 million for food purchases under the distribution plan for phase IX. Total programme stocks at the end of April 2001 stood at 883,040 metric tons. However, stocks of pulses and dried whole milk were very low throughout the period under review owing to delayed and irregular arrivals. Also, as a result of the irregular arrival of wheat under the programme, the Government of Iraq decided to supplement 25 per cent of the requirements from its national stock. However, notwithstanding sufficient stocks of vegetable oil, toilet soap, tea, infant formula and detergent, the Government continued the practice of substituting rations with its national stock as part of its combined management of programme and non-programme stocks. The imported programme and non-programme stocks are generally of the same quality and come from parallel procurement of commodities.

54. The food ration distributed during the reporting period provided an average of 2,209 kilocalories and 46.33 grams of protein per person/day, which corresponds to 89 per cent and 77 per cent, respectively, of the 2,472 kcal and 60.2g of protein per person/day contained in the approved distribution plan for phase IX (S/2000/7231). Observation spot-checks revealed that 100 per cent of the food agents in the centre/south of Iraq had received their allocations on time, but only 92.5 per cent had received them in full. This was attributed to low stocks and disruptions in the commodity pipeline for salt, white beans and weaning cereals.

55. The majority of households observed reported that their monthly ration lasted less than 30 days and a number of households admitted that they bartered part of the commodities. However, during the period under review, the full approved ration of 2,472 kcal was distributed only in December 2000, which also coincided with the Muslim holy month of Ramadan.

56. Results of observations indicated that beneficiaries would like to have an increase in ration sizes and the addition of other commodities such as tomato paste, chicken, meat and eggs into the food basket. This underscores a suggestion made by the United Nations during the discussions held on the distribution plan for phase IX for the qualitative enhancement of the food basket, with the possible introduction of a coupon system to enable sections of the population to purchase these commodities from among available farm products marketed through mobile government stores. However, in the absence of a cash component and a local purchase system in the programme, this could not be implemented in the context of the distribution plan.

57. In the three northern governorates of Dahuk, Erbil and Sulaymaniyah, the rate of commodity arrivals is higher than the rate at which they are distributed, creating pressure on storage capacities. This followed similar critical storage constraints in the south and centre of Iraq, caused by a surge in the arrival of some food commodities like rice. The results of a household survey/assessment of the adequacy of rations conducted in the three northern governorates are currently being analyzed.

Transport and food handling

58. Assessments by United Nations observers have highlighted the problems facing this sector, particularly

the need for massive rehabilitation of the existing infrastructure. Observers have conducted a number of special studies to assess the status of the port, railways, roads, flour mills and other facilities within the sector.

59. Observation and assessments of the railway facilities confirmed the unsafe conditions and insufficient capacity to meet transportation demands for both humanitarian supplies and passengers. However, some applications for contracts, including rehabilitation equipment and materials for immediate operational requirements, and a $50 million application for locomotives, were recently released from hold. While tangible achievements have been realized, the long lead time between contracting and delivery of material constrains the operational capacity of the railways.

60. Road transport continues to experience increasing demands as a direct result of the greater volume of humanitarian cargo arriving in the country. The state of deterioration of road transport vehicles has been exacerbating demand on the sector. The very poor state of the railway system also implies that the majority of humanitarian goods and passengers must be transported by road. Consequently, there is an increased demand for various types of vehicles, tyres, batteries and spare parts. Owing to the deteriorating condition of the public buses and the reduction in their number, the Iraq Transportation Company, prior to the programme, had been forced to reduce its route coverage by over 50 per cent in spite of an increased demand on both intra-city and inter-city routes. While 6,939 vehicles have already been approved and 993 are already in use in Iraq, the further release from hold of applications for 400 buses, 1,145 trucks and other fleet support vehicles would further enhance the sub-sector's capacity for both passenger and cargo transport.

61. An impact assessment and observation of the port of Umm Qasr also revealed that limited draught stemming from an absence of dredgers and the presence of wrecks in the port and channels is one of the many major constraints in the port's operational capacity. The wrecks continue to pose safety hazards to vessels calling at the port and the reduced number of usable berths is impeding the timely handling of cargo as a result of port congestion. The urgent release of a number of major applications for contracts valued at $21 million for equipment and services to carry out dredging, wreck removal and other ancillary services is essential to improve the port's operation.

62. An assessment of the operational requirements of silos and mills for ensuring the adequate and efficient supply of wheat flour to the population revealed that the Umm Qasr port, which should handle all bulk supplies, actually handles only 85 per cent of the country's grain imports. The remaining 15 per cent has to be bagged and brought in through other more costly entry points owing to the limited discharge capacity at the port. The assessment further showed that the other 21 silos used by the programme in the centre/south are on average 25 years old and operate below design capacity owing to a lack of spare parts and essential equipment. Construction of additional silos has begun, including the construction of a new silo complex in Khan Dari. The assessment reports also confirm the existence of inadequate equipment and materials in the food quality control laboratories for performing normal quality control tests. Of greatest concern are the lack of reagents and the state of the laboratory equipment, allowing only basic food quality tests, which are subject to inaccuracies. Once more, the early consideration and approval of 23 applications for contracts worth $7.8 million, currently on hold, would be necessary to improve this situation.

63. In addition, an assessment by United Nations observers indicated that electrical generators worth $197 million have arrived under the programme, of which 90 per cent have been installed in food processing and handling facilities while the remaining 10 per cent, mostly smaller, 2.5 kV to 7.5 kV generators, are being sold to the general public at subsidized rates to meet domestic power shortages. United Nations observation of these smaller generators is carried out through the food agents where recipients are also registered.

Health

64. In spite of some notable improvements in the health sector relative to the situation prior to the commencement of the programme, shortages of drugs and hospital equipment are still being reported. This is attributable to late and inadequate contracting in respect of drugs and, until recently, vaccines, as well as holds placed on applications in respect of hospital equipment such as autoclaves. About 98 per cent of the applications placed on hold during the period under review are for hospital equipment. It is a major concern to note, however, that not a single application for the health sector had been submitted under phase IX of the

programme, despite indications by the Government to the United Nations Humanitarian Coordinator for Iraq that it had signed many contracts. Unless the Government informs the United Nations about the number of contracts signed in advance of the submission of the relevant applications by the suppliers to the Office of the Iraq Programme, it is difficult for the Office to determine the reasons for the delays in the submission of applications. The results of observation have showed that only 30 per cent of the essential drugs at hospitals were received in adequate quantities. Some essential medicines like aminophylline (a bronchodilatory) injections and sodium valproate (an anti-epileptic) and basic medical equipment, laboratory reagents and hospital supplies are still in short supply owing to either late submission of contracts or holds on applications or erratic arrivals. However, chronic drugs to treat chronic diseases are now generally available in the country.

65. The stock of human vaccines in the country falls short of annual requirements. Only 3.5 million doses for measles (about an eight months' supply) and about 1 million of diphteria-pertussis-tetanus (DPT) doses (a two months' supply) were available as at 30 April 2001. The present stock of oral polio vaccine (OPV), bacillus of calmette and guerin for tuberculosis and bladder cancer (BCG), tetanus, and paediatric hepatitis-B vaccines would last for only the next six months. Nevertheless, three successful rounds of national immunization days for polio eradication were conducted, with 95 per cent coverage.

66. During the reporting period, United Nations observers carried out six observation visits to Samarra Drug Industries (SDI) plants. Findings from these visits showed that the plants have started benefiting from programme inputs. The plants recently received laboratory equipment, three production lines and 30 manual vessel units for ampoules. However, the laboratory equipment is yet to be installed. All production lines have been installed, but are not yet operational owing to the unavailability of some complementary equipment, such as autoclaves, beating jackets and compounding vessels, which are on hold. In addition, some machines and equipment at the factories are old and due for replacement. As at 30 April 2001, out of $148 million worth of applications submitted for SDI, only $56 million worth of items (37.8 per cent) had arrived. Forty applications with a value of $39 million are at present on hold. The current output is less than 7 per cent of needs and urgent rehabilitation is overdue.

67. The distribution of items from Kimadia to governorate warehouses has improved as a result of the arrival of programme trucks, ambulances and refrigerated vehicles. So far, of 1,209 ambulances approved, 800 have arrived in the country. In addition, another 292 of a total of 1,424 approved vehicles for the transportation of medical goods have also arrived in the country. However, the ambulances were delivered without radios, which had to be removed from contracts as a condition for the lifting of holds on the applications. In addition, 209 refrigerated trucks ordered for the Ministry of Health and SDI are still on hold.

68. The problem of inadequate systems for the management and monitoring of voluminous supplies of programme data at Kimadia has persisted. Three applications for computers and accessories valued at $7.8 million, which have remained on hold for almost a year, need to be released.

69. In the three northern governorates, renovation and equipping of facilities have continued, as well as the training of health care professionals. The World Health Organization (WHO) completed renovation of 12 medical facilities, while 43 other projects are ongoing. WHO has replaced old and obsolete equipment with a view to providing improved diagnostic and medical services. Whereas most essential medicines and medical supplies are available in sufficient quantities, serious shortages have been observed in certain chemicals and reagents such as growth media, which are on hold. WHO also conducted nine different training courses to improve the skills of various categories of health personnel. WHO is also strengthening the capacity of local health authorities to improve decision-making with regard to the prioritization of health programme activities.

70. Under the programme, three rounds of polio vaccination were conducted, reaching 95 per cent of the 0.6 million children targeted. Training in safe delivery practices was provided to 182 traditional birth attendants and to 43 professionals in early detection of childhood disabilities.

Nutrition

71. Roughly 5,000 metric tons of high-protein biscuits were distributed equitably to targeted

malnourished children under five years of age (2.14 million) and pregnant/lactating women (350,000) during the period under review. Available supplies of high-protein biscuits reportedly were adequate to cover the requirement of these targeted beneficiaries. The major problems of delays in contracting and arrival of nutrition supplies, inadequate transportation and storage facilities and the lack of incentives for community child care units programme volunteers have continued to adversely affect implementation of the targeted nutrition programme. In all 15 governorates in the centre/south, transportation of nutrition supplies is effected in vehicles hired by the volunteers, 97 per cent of whom are yet to be reimbursed owing to lack of local cash to support the programme. The problem could be reduced if an application for 189 trucks, submitted under the distribution plan for phase VII, could be released from hold.

72. While still well below the target of 3,000 that had been set for phase IX, the number of functional community child care units increased from 2,357 to 2,418. The expansion was adversely affected by the irregular supplies of high-protein biscuits, delays in reimbursement of transportation costs and lack of incentives for volunteers. The United Nations Children's Fund (UNICEF) continues to provide training and material support for the programme.

73. In line with the discussions held during the finalization of the distribution plan for phase VIII, the palatability of the high-protein biscuits for the beneficiaries was assessed by the health authorities in collaboration with United Nations observers. At a meeting with the United Nations Humanitarian Coordinator for Iraq, the Minister of Health acknowledged that the acceptability of high-protein biscuits by the target group was almost 100 per cent. The Ministry has therefore indicated its renewed interest in importing more high-protein biscuits. Also, imported therapeutic milk is currently undergoing quality control. It is recommended that the Government expedite the quality control of the imported therapeutic milk and also take the necessary measures to contract urgently the supplies required in adequate quantities in order to address the nutritional needs of the beneficiaries concerned.

74. In the three northern governorates, 5,961 metric tons of assorted food commodities were distributed to a monthly average of 256,270 beneficiaries through the supplementary feeding programme of the World Food Programme (WFP). The supplementary feeding project for malnourished children has been redesigned to include advocacy of proper feeding practices to achieve a better nutritional status for the malnourished children and their siblings. This will be implemented in collaboration with the local Women's Union. The Food and Agriculture Organization of the United Nations (FAO) is assisting WFP in a new small-ruminants programme intended to enhance the diet and provide income generation for about 10,000 female-headed households in 788 villages.

75. UNICEF initiated the provision of nutritional supplements, reaching 60,000 of a total of 80,000 targeted pregnant and lactating women, through 95 antenatal care units in three northern governorates. UNICEF also established an additional 18 growth monitoring units and 30 community child care units, raising the totals to 400 and 269 respectively. The system, with a current capacity to screen approximately 280,000 children, found that 23,500 were moderately or severely malnourished. Household surveys conducted in November 2000 indicated that 16.2 per cent of children under five years of age suffered from chronic malnutrition, 9.7 per cent were underweight and 3.1 per cent were acutely malnourished, which constituted an improvement over rates of 30.3 per cent, 15.9 per cent and 3.1 per cent, respectively, in November 1997.

Water and sanitation

76. Data available during the period highlighted variations in the water and sanitation situation between rural and urban areas in the country. According to preliminary results from a national survey conducted in 1999/2000 by UNICEF/CARE and released in December 2000, access to potable water in rural areas improved from 41 per cent in 1997 to 46 per cent in 2000, while for urban areas it decreased from 94 per cent in 1997 to 92.4 per cent in 1999/2000. Also, United Nations assessment results from 40 per cent of the 218 existing water treatment plants indicated a 10 per cent average increase in their overall production efficiency. There has also been an overall reduction of 52 per cent and 46 per cent, respectively, in failed samples of bacteriological and chlorine tests for water, indicating a marked improvement in water quality.

77. Supplies delivered so far have arrested a further deterioration of the existing water and sanitation systems. For instance, in Baghdad City, the garbage

disposal situation has improved with the provision of garbage disposal vehicles under the programme. In addition, the recent arrival of construction equipment and transport vehicles, previously on hold, has facilitated the installation of pipes. To date, 1,423 kilometres of pipe of different sizes has arrived in the country, of which 862 km has been distributed. Installation of these pipes commenced with the recent arrival of construction equipment, and 206 km of pipe has already been installed. The rest of the pipe forms very conspicuous heaps in streets and in warehouse premises, awaiting installation. The local water authorities have recently begun ordering the required equipment for rehabilitating abandoned water and sewerage treatment plants. However, an assessment of 74 of the 135 water-boosting stations showed that 57 per cent were operating below half of their expected capacity, as a result of power outages and an availability of standby generators to support only 50 per cent of the boosting stations.

78. During the period under review, 2,499 metric tons of chlorine gas arrived. Stocks in the Baghdad Water and Sanitation Authority currently stand at 317 metric tons, and are expected to last for almost two months, at a consumption rate of approximately 6 metric tons per day. Stocks at the General Establishment of Water and Sewerage stand at 2,694 metric tons, and are expected to last for almost 10 months, at a consumption rate of approximately 9 metric tons per day. The increasing arrivals of chlorine cylinders without the availability of adequate safety equipment, particularly protective masks with appropriate filters at sites, are causing major safety concerns for implementing and observation personnel. In this regard, the release of protective masks, forklifts and computers from hold will enhance chlorine handling and record-keeping.

79. In the three northern governorates, a recent household survey showed improved access to safe water (93 per cent) and sanitation (92 per cent) at the end of 2000. However, there are significant differences between urban (96 per cent) and rural (83 per cent) areas for access to safe water, while access to adequate sanitation is reported to be 98 per cent for urban and 83 per cent for rural communities. WHO reports, however, that bacterial contamination remains a concern as a result of network corrosion, occasional failure to carry out chlorination (predominantly in semi-urban areas and villages) and illegal connections (particularly in cities and collective towns). Holds imposed by the Committee on bulk-purchased growth media for bacteriological water quality analysis are causing considerable difficulties and concern. The major urban centres of Erbil, Dohuk, and Sulaymaniyah are serviced by old and inadequate water supply, storm drainage, and sewerage treatment systems which in some cases require major overhaul, upgrading, extension or replacement. In this regard, arrangements are on hand for a series of feasibility studies for four large projects in the three urban centres.

Agriculture

80. As at 14 May 2001, cumulative applications submitted under the sector amounted to $2.32 billion, an increase of 55 per cent in comparison to 1 November 2000. Similarly, the value of approved applications increased by 50 per cent, in tandem with this, however, the value of holds increased by 129 per cent. Items on hold, worth $487 million, include essential agricultural production items such as pesticides, sprayers, veterinary vaccines and equipment for irrigation systems. To date, items worth 72 per cent of cumulative arrivals have been distributed.

81. The results of sectoral impact assessments for irrigation pumping stations, veterinary cold chain, winter vegetables and bee-keeping, indicated in my last report (S/2001/186, paras. 102-105) are now available. They show an improvement in a number of areas as a result of programme inputs. In six governorates, winter vegetable production increased by 27 per cent. Similarly, in 10 governorates (Diyala, Baghdad, Babylon, Wasit, Basrah, Najaf, Anbar, Ninevah, Salayaldeen and Tameem), the number of bee-keepers increased by 31 per cent and the number of beehives by 153 per cent. However, increases in insect pests and diseases (65 per cent), predators (85 per cent), inadequacies and poor quality of procured inputs and the lack of updated technical knowledge of farmers reduced projected honey production by 29 per cent per hive. An assessment of the veterinary cold chain showed that the use of generators, refrigerators and cold trucks, provided under the programme, enhanced the storage and transportation of animal vaccines and heat-sensitive medicines. An irrigation assessment completed in March 2001 in three governorates (Baghdad, Najaf and Anbar) showed a 22 per cent increase in the irrigated areas, and a 37 per cent increase in water-pumping capacity in four governorates (Salayaldeen, Diyala, Baghdad and

Kerbala) as a result of the installation of centrifugal water pumps over the past two years. Also, the delivery of programme excavators contributed to more than 30 per cent of the total 1,534-km length of canals excavated in four southern governorates (Muthana, Missan, Thiq Qar and Basrah) during the 1999/2000 season. However, long and cumbersome administrative procedures allowed only about 31 per cent of the spare parts already received in the country to be delivered. Available programme tractors represented only 29 per cent of current needs.

82. An assessment of the veterinary diagnostic laboratories in the 15 governorates of the centre/south indicated that all three central laboratories were operating at a minimal level, while only 27 per cent of the governorate laboratories and 2 per cent of the district laboratories were operational, owing to a severe lack of equipment, reagents and diagnostic kits. All the facilities experience great difficulties in collecting, transporting and processing test specimens. The release from hold of diagnostic kits and other required equipment would enhance performance in the sub-sector.

83. It is worth noting that despite the spread of foot-and-mouth disease in some of the neighbouring States, no case was reported in Iraq during the period under review. This contrasts with a similar situation in 1998-1999 when Iraq suffered tremendous livestock losses owing to the spread of the disease. The Government of Iraq in the south and centre, and FAO in the northern governorates, continued to plan, coordinate and undertake preventive measures, including a foot-and-mouth disease revaccination campaign using programme vaccines for small and large ruminants.

84. For the first time in the last 10 years, the Government of Iraq notified FAO that aerial spraying against crop diseases and pests would be conducted by Iraqi pilots. The Government rejected the suggestion by FAO to include FAO observers on board during the spraying. FAO brought the matter to the attention of the Committee and in a letter dated 8 May 2001 addressed to the Permanent Representative of Iraq to the United Nations, the Chairman of the Committee drew attention to the earlier authorization by the Committee for FAO to undertake the aerial spraying activities in Iraq on the understanding that all procedures established by the Committee for such operations would be followed as in previous years. In view of the timing of the operation and taking into

account the wish of the Government of Iraq, the Committee was "ready to authorize Iraqi pilots to be used, provided FAO observers would be permitted on board each and every such flight during the operation and that all other elements of the established procedures remain intact". At the time of the finalization of the present report, Iraq had not yet responded to the Chairman's letter, even though it was reported that the spraying had already taken place.

85. Based on the results of two surveys, an integrated pest management method was initiated in the plain areas of Erbil to control the infestation of wheat by soft-scale insects. In addition, an integrated package programme for the promotion of industrial tomato growing in three sub-districts was introduced to ensure a steady supply of raw materials for the tomato paste production plant in Harir. Civil work for the Harir fruit-processing plant was completed, 304 farmers signed contracts to supply sunflower to the Arbat oil-processing plant and a dairy product marketing survey was conducted.

86. During the reporting period, 26 gravity irrigation schemes were completed in the three northern governorates. This programme activity benefited 2,926 farmers, irrigating 2,093 hectares of arable land. Sixty deep wells were drilled in drought-affected areas for irrigating orchards and watering livestock. FAO and UNICEF have been setting up sustainable water sources management systems and collecting the hydro-geological information required for them.

87. With respect to training, 11,505 farmers and 766 agricultural staff were trained in 380 regular and 60 specialized courses. In addition, 115 agricultural field days were conducted, involving 5,623 farmers.

88. With respect to animal health, as a precaution, FAO provided one primary dose of foot-and-mouth disease to 83.8 per cent of the cattle. This activity was limited by a shortage of vaccines owing to non-delivery by the contracted suppliers.

Electricity

89. As at 30 April 2001, out of a total of some $2.3 billion in approved applications since the start of the programme, electrical equipment valued at $696 million had arrived in Iraq — of which $233 million worth had arrived during the reporting period. Of the latter, $222 million worth, representing 95.3 per cent, had already been distributed to installation sites in the

centre/south. Owing to the long lead time for the delivery of equipment in this sector, these arrivals represent only 31.3 per cent of the approved equipment and materials received in the country. As an indication of the very slow delivery process for electrical supplies, equipment valued at $9.44 million which had been contracted under phase I, only arrived during the current reporting period.

90. The Government continues to accord very high priority to this sector, with actual contract application levels almost consistently above the distribution plan sectoral allocations. However, despite this and other self-reliant initiatives that have been undertaken, an analysis of the demand in relation to generating capacity in the centre/south indicates that the current deficit of over 50 per cent will continue until more substantial blocks of generating capacity are added to the grid. As estimated by United Nations observers, the generation deficit at peak demand during the summer months in 2001 could be as high as 3,294 megawatts (MW), a substantial increase from the estimated 1,800 MW reported unofficially for the same period in 2000. Rehabilitation and new generation projects added 296 MW to the generating capacity, but this was offset by units removed from service for routine maintenance as well as the decreasing capacities of other operating units owing to deterioration. The generation problem has been compounded by the three-year drought, which reduced hydropower generation to 15 per cent and also affected the performance and reliability of thermal units resulting from a scarcity of cooling water.

91. The United Nations team, in visits to the three thermal power stations at Baiji, Mussaib and Baghdad South, found them to be in critical condition, with corrosion of water treatment equipment, tanks and pipelines causing heavy leakage of chemical fumes in the water treatment plant area. The release from hold of applications for water treatment systems would address this problem. Also, the release from hold of safety and communication equipment will help improve the personal safety of plant workers and enhance the timely implementation of the sector's rehabilitation projects.

92. In addition to generation, about 300 (1140.4 kilovolt-ampere capacity) distribution transformers were installed, adding 73 megavolt-amperes capacity to the distribution system. These have stabilized the power supply to areas covered and improved the voltage profile, enabling about 20,000 consumers in cities in the centre and south to be connected or reconnected to electricity. In this regard, contracts concerning transmission, distribution and communication equipment necessary for power systems operation urgently need to be released from hold. As at 14 May 2001, a total of 243 electricity sector contract applications was on hold, with a value of $874 million, representing 28.1 per cent of the total value of applications circulated to the Committee.

93. The overall power supply situation in the three northern governorates remains critical. Despite improved rainfall over the past winter season, the three-year drought still severely affects the water level in the reservoirs serving the two hydropower stations, resulting in the continuing low levels of power generation. The total generation from these stations averaged 40 MW during the period under review, with about 10 MW distributed to Erbil and about 30 MW to Sulaymaniyah. Dahuk, which is the only northern governorate connected to the national grid, receives an average of 10 MW. These figures fall short of the respective demands of 250 MW for Erbil, 350 MW for Sulaymaniyah and 100 MW for Dahuk. To meet existing emergency needs in the three northern governorates, a total of an additional 100 MW is being produced by small diesel generators. A major milestone for the programme was the commissioning and handover of the Erbil and Dahuk 29 MW diesel plants to the United Nations Development Programme (UNDP) by the contractor in March and April respectively; the plant in Sulaymaniyah is expected to be handed over in May.

94. Effective implementation of electricity projects in the three northern governorates has been extensively hampered as a result of inordinate delays by the Government of Iraq in the issuance of visas. Since 1 November 2000, 312 visas for UNDP staff have been requested, of which 190 had been granted by 14 May 2001 and a total of 122 were awaiting clearance by the Government. About half of those pending are for staff required to operate and maintain the three 29 MW power plants for six months until local staff have been trained. The number of visas required by the project will have to increase as more contracts are awarded. Inordinate delays in granting the required visas will adversely affect project implementation, resulting in contract or bid cancellations and financial losses to the programme.

95. As indicated in my previous report (S/2001/186, para. 115), discussions have now been held with the local authorities in the three northern governorates, who have reached common understandings on reconnection of the northern governorates to the national grid. The local authorities agreed that reconnection to the national grid is one of the most technically viable and economically cost-effective options to provide the north with a sustained electricity supply. Irrespective of when precisely the peak-load electricity needs of the country can be met, the local authorities agreed that it is worthwhile to proceed with reconnection and that practical steps towards this end would contribute to confidence-building between all concerned and thereby encourage better cooperation and collaboration. They also agreed that these steps were essential for the successful execution of short-term and medium-term emergency electricity generation projects currently under way in the north. In addition, they agreed that reconnection should be complementary to both approved and planned emergency electricity projects, under the humanitarian programme. With respect to the national grid, the local authorities agreed that generation projects could be funded from the ESC (15 per cent) account and integrated into the grid on the condition that they were erected and installed within the three northern governorates and that the Government of Iraq would supply fuel for them. Conditions preceding reconnection would be that the Government of Iraq would provide a solemn assurance that the same level of electricity supply would be provided to the three northern governorates as is available to the other governorates in the centre/south of Iraq and that a uniform rate per unit of electricity consumed would apply throughout the country.

96. The above understandings reached among the local authorities have been brought to the attention of the Government of Iraq, whose response is pending. The United Nations is ready to undertake, under the programme, the necessary transmission work for the reconnection of the three northern governorates to the national grid in collaboration with the Government of Iraq.

Education

97. During the reporting period, $70.8 million worth of supplies were received. However, throughout the education system, shortages of educational materials and equipment, sub-standard institutional resources and pronounced disincentives to the academic cadres continue to inflict greater structural damage than the programme can address. Such steady deterioration of the educational infrastructure is compounded by a rise in the value of applications for contracts on hold, which has almost doubled, from $78 million to $154 million, during the reporting period. It is regrettable, however, that as with the health sector, not a single application has been received under phase IX of the programme.

98. An assessment of 1,208 schools confirmed widespread deterioration of school buildings and facilities, a shortage of school textbooks and insufficient classroom space to accommodate the growing number of pupils. Observers also noted that only 72 per cent of the schools visited had received rehabilitation materials from the programme. Specifically, 79 per cent of the school buildings were assessed as being in sub-standard or critical condition. In addition, 27 per cent of programme rehabilitation materials still had not been installed two years after their distribution. The inability of the school authorities, in the absence of a viable cash component for the sector to fund the cost of the installation/rehabilitation of materials contributes to the paucity of such materials procured. Consequently, increasing multiple shifts continue to be adopted in order to meet the requirements of a growing school population in the midst of unsafe school conditions.

99. Currently, only 15 per cent of textbook requirements are met through local printing facilities; 35 per cent consists of imports from Jordan and the remaining 50 per cent is met by reusing second-hand books. This has led to a situation where students are obliged to use textbooks in various stages of deterioration. Meanwhile, rehabilitation of the Ministry of Education printing press is constrained by the lack of expertise and funds to install spare parts. The printing press still operates at 10 per cent of its original capacity. A UNICEF-sponsored team of experts appraised the printing press and recommended the replacement of some machines and the procurement of spare parts to repair others. The Ministry of Education accepted the report and has submitted contract applications accordingly.

100. Higher education has also suffered deterioration in terms of infrastructure. Available equipment, particularly science laboratories, is grossly insufficient

for the student population. For example, on-site verification of 10 tractors distributed to agricultural colleges revealed the student-to-tractor ratio of 200 to 1, while none of the supplementary accessories, such as different ploughs for soil preparation, had been provided. In addition, 114 microscopes distributed to the higher institutions covered only 30 per cent of the requirements. Such inadequacies have continued to have a negative effect upon the standard of instruction.

101. With respect to primary education in the three northern governorates, the programme supported the rehabilitation of 14 schools, benefiting 2,235 children. In addition, two new schools, benefiting about 450 children, were constructed. About 254 teachers received various types of training. In secondary and higher education, the United Nations Educational, Scientific and Cultural Organization (UNESCO) concentrated on improving access and participation of students, enhancing the quality of education through professional training and assisting local education authorities in planning, upgrading facilities and providing supplies and equipment. Construction projects included rehabilitation of institutional infrastructure. In addition, two secondary schools and two computer training centres were completed and handed over to the local authorities.

Telecommunications

102. The telecommunications infrastructure in Iraq is outdated and remains in a precarious state despite the inclusion of a telecommunications sector in the distribution plans since phase V of the programme.

103. Of the 180 applications for contracts, of a value of $321.8 million, submitted for the telecommunications sector, only 96 have been approved since the inception of the programme, with a value of $91.5 million. Supplies worth $17.8 million have arrived and $8.6 million worth have been distributed. The slow rate of arrival has been attributable to the long lead time required for the supply of equipment in this sector. In addition to applications previously submitted, 41 applications with a value of $53.8 million were submitted under the sector during the period under review. So far, most applications related to core telecommunication equipment and material, with the exception of one satellite earth station, have been placed on hold since phase V.

104. United Nations observations indicate that there are no spare parts for the maintenance of the network, and the situation is deteriorating at a fast pace. Local and international calls are extremely difficult to make. Only 4 per cent to 11 per cent of the international calls placed are successfully completed. This inoperational telecommunications infrastructure is affecting not only normal activities within the country but also communications related to programme activities, particularly in the health, transport and food handling and oil sectors. Similarly, weather observation and forecasting in the meteorological sub-sector is difficult, with adverse effects on agriculture and the environment.

105. Efforts to address these problems through the programme have unfortunately not yielded any result, owing to holds placed on applications. Holds in the sector include spare parts for crucial equipment required to sustain normal communication services in the country. It is hoped that, following the briefing provided to the Committee by the International Telecommunication Union (ITU) in early May, there would be some relief from the problems in the sector, including release of contract applications from hold.

106. During the reporting period, ITU established a new office in Sulaymaniyah to support its implementation activities in the governorate. ITU projects in the three northern governorates include the replacement of three obsolete telephone exchanges, one each in Erbil, Dohuk and Sulaymaniyah, with an aggregate capacity of 40,000 lines, along with transmission systems required to integrate these exchanges. The tender evaluation report has been completed and the contracting process is under way and will be completed shortly. Additional projects currently being planned will call for a new local network, a GSM mobile network, expansion of existing local lines and an extension of the telecommunication network to the district level. To ensure connectivity and interoperability, all telecommunication projects in the north are being carried out in full consultation with the relevant authorities in Baghdad.

Housing

107. In my previous report, I drew attention to the tremendous increase in the number of applications submitted and approved, which had been introduced in June 2000 (S/2001/186, paras. 135-138). Out of the total value of $1.6 billion of the applications submitted,

$1.4 billion worth had been approved, and $531 million worth of supplies had arrived in Iraq by 14 May 2001. During the period under review, materials with a value of $224 million had arrived and just over $61 million worth had been distributed. It remains a concern, however, that the total value of holds on construction machinery, equipment and spare parts, which are essential for utilizing the building materials for the construction industry, has increased to $139 million. This has resulted in shortages of construction materials such as cement and bricks, which are normally locally produced. With very few factories for construction materials currently operational, the ensuing shortages and subsequent high prices of these products present real bottlenecks to housing construction.

108. In tandem with the increase in allocations and supplies to this sector, the Ministry of Housing and Construction created a Directorate of Housing to oversee the construction of social housing, as outlined under the Special Allocation section of the phase IX distribution plan (S/2001/134). The Directorate is currently studying 240 tenders for the construction of social housing complexes, at 504 units per site, in each of the governorates of Baghdad, Missan, Thiqar and Muthana. These are intended for the low-income earners who cannot afford construction of individual houses.

109. Meanwhile, the Government of Iraq has adopted several other policies to ensure that building materials are more efficiently accessible to the general population. Thus, the distribution of serviced land plots and the provision of low-rate mortgages and prototype architectural designs are measures for providing material and financial support to individuals. The adoption of measures to streamline applications for building under the programme has already helped to expedite this activity. One of these measures is the discontinuation of government inspection of construction sites prior to the approval of building applications, in order to accelerate the number of applications. The number of applications for end-users to obtain building materials almost doubled between November 2000 and April 2001, from 23,879 to 42,486. The distribution of building materials under the programme has been based on proof of intent to construct, which has benefited both private and public end-users. Private builders receive materials according to a quota system, with a maximum plot size of 400 square metres for each applicant. An analysis of data

available to United Nations observers indicates that the quantity of housing materials arriving in the country and being distributed to the beneficiaries is generally adequate.

110. While the distribution of construction materials from central to governorate warehouses has remained efficient, the cost of transporting them from the warehouses to construction sites is high, discouraging some qualified private builders from acquiring their quota of building materials. The high transportation costs are related to the weight of these heavy materials and the long distances involved; hence some qualified private builders consider it more cost-effective to procure building materials at nearby markets at slightly higher prices than those for the subsidized programme materials. This matter has been brought to the attention of the Government, which expressed concern that if prices were set too much lower, that would encourage beneficiaries to sell the items or smuggle them to neighbouring countries. Further discussions on the matter will be pursued with the Government with a view to finding satisfactory arrangements to all concerned.

Settlement rehabilitation

111. During the period under review, the United Nations Centre for Human Settlements (Habitat) completed the construction of 47 schools, 2,555 houses, 9 village clinics, 19 kilometres of sewerage, laid down 61 kilometres of water pipe and constructed 178 kilometres of roads. These activities benefited an estimated 35,000 families in 192 villages, including 13,361 families who took advantage of self-build programmes. Revised project management procedures led to a doubling of the agency's work budget from $35 million to $70 million during the reporting period. As mentioned in my previous report (S/2001/186, para. 136), the rate of provision of housing has been inadequate. In response, Habitat has increased the proportion of expenditures devoted to housing from 30 per cent to over 45 per cent. Despite these achievements, however, the programme faced a number of constraints which occasionally halted or slowed down construction activities, including heavy rains and shortages of cement and other building materials. Consequently, Habitat is exploring the feasibility of measures to arrest further deterioration of the Tasluja Cement Factory and options for increasing cement availability through imports.

112. As outlined in my previous report (S/2001/186, para. 135), Habitat is supplementing its initial survey of internally displaced persons with a more comprehensive survey to identify all vulnerable groups in order to widen and improve its programme intervention.

113. In my previous report I informed the Security Council that the United Nations Office for Project Services (UNOPS) had taken over from the United Nations Office of the Humanitarian Coordinator for Iraq the primary logistics activities related to relief of the internally displaced persons, including the responsibility of procuring emergency relief items such as tents, blankets, kerosene heaters, stoves, floor mats and water tanks (S/2001/186, para. 138). The distribution of winter relief items was completed by the end of February 2001, by local non-governmental organizations, on behalf of the United Nations Office of the Humanitarian Coordinator for Iraq. Moreover, the procurement process for summer relief items has been initiated and is expected to be completed by early June 2001. A transit camp near Dersiok in the Dahuk Governorate is being upgraded. Overall, the scope of operations established by UNOPS to date has allowed the programme to streamline the procurement cycle, enhance warehouse management of relief items and strengthen the distribution network. Initial feedback from the field indicates that the programme has been able to reach a larger number of beneficiaries in a shorter period of time, thus relieving a major programme constraint.

114. The next step in the programme is the integration of UNOPS plans and activities, at both sectoral and multi-sectoral levels, for improved temporary shelter, as well as for more viable communities at final resettlement sites. In this respect, I had indicated in my previous report that UNOPS would complete an assessment, in April 2001, of the emergency needs of the internally displaced, particularly the most vulnerable groups. Owing to initial delays involving issuance of visas and the recent arrival of the Project Coordinator in April 2001, the nature and scope of the assessment is under review, in consultation with the United Nations Office of the Humanitarian Coordinator for Iraq and Habitat.

Mine action

115. The UNOPS mine action programme has now completed a survey that details the range and scope of the mines and the problem of unexploded ordnance in the three northern governorates. The contamination directly affects 1,098 communities, out of a total of 4,424 communities surveyed. The survey found that in the majority of cases the presence of mines blocked access to agricultural and pastoral land. The mine action programme has worked on 67 minefields and completed the clearance of 12 minefields, which are now used for grazing, farming and construction. To date, 18,572 families in 76 communities have benefited from the programme. The total area cleared since the beginning of the programme is 6.2 square kilometres, of which 1.9 sq. km has been cleared during the current phase. Under the programme, 7,007 pieces of unexploded ordnance have been destroyed in the vicinity of 26 villages inhabited by 11,921 families. The rate of clearance has doubled in the current phase, from an average of 200,000 square metres per month to more than 400,000 square metres, owing to the presence of more experienced teams, better procedures and the availability of more detection dogs.

116. During the period under review, mine victim support included the provision of 829 prostheses and a mine awareness programme benefiting 159 communities. The number of monthly casualties has declined from between a range of 30 to 68 up to September 2000, to a range of 25 to 53 subsequently.

117. Launched in early 2000, the mine action programme survey of 2,251 km of transmission lines was completed in December 2000. In addition, mine clearance supported the repair of secondary power lines, the construction of mini-power-generating stations and transmission substations, work at Habitat resettlement sites and the safety of microwave sites for ITU. However, owing to the inordinate delays in granting of visas to the UNOPS personnel required for the implementation of the programme — 89 visas were pending as at 14 May 2001 — as well as delays in import approvals, initiatives to expand the capacity of the programme and to enhance local capacity have been frustrated. In addition, safety is also being jeopardized by the lack of communications equipment and replacements for worn and/or unserviceable personal protective equipment.

B. Cross-sectoral considerations in the three northern governorates

Programme coordination

118. As indicated in my previous report (S/2001/186, para. 145), the United Nations Office of the Humanitarian Coordinator for Iraq (north), pursuant to a decision taken at the inter-agency level, had initiated action to upgrade planning data and enhance information-sharing within the inter-agency programme in the three northern governorates. A Joint humanitarian information centre was established in early January 2001 and has begun surveying the availability of data required to develop a common programme framework. It is also developing a tracking system that will be compatible with the project approach of the inter-agency humanitarian programme, based on clear targets and performance indicators. The absence of entry visas for consultants in multi-sectoral planning, gender relations, agro-economics, and needs assessments for vulnerable groups has delayed, to a considerable extent, the unit's programme of work.

119. The increased scope and scale of the inter-agency humanitarian programme is in many instances placing a heavy strain on local counterpart institutions in health, education, water and sanitation, electricity and agriculture. In some cases, they lack the skills and resources to operate and maintain the equipment or to staff the facilities being provided. In that regard, as title to all goods imported and installed under the programme vests for the time being in the United Nations, agencies and programmes are faced with not only the installation of new projects, infrastructure and equipment, but also with their operation and maintenance. As a result, United Nations agencies and programmes are obligated to bring in international staff not only to install project equipment, but also to ensure the running of this equipment once it is in place. As more of these projects are set to come on line, additional international staff, and with them the issuance of more visas, will be required to install, maintain and train local staff without further depleting the already limited expertise in the local institutions, until local counterparts can be trained and attain the necessary experience.

Drought contingency

120. Additional rainfall, while leading to a partial recovery of rain-fed agriculture, has not been sufficient to restore irrigation or hydroelectric generation to normal levels. The inter-agency drought coordination committee is therefore continuing to conduct surveys and prepare contingency plans, with emphasis on human, animal and agricultural water supply and electricity. With respect to electricity, the total generating capacity will remain far short of requirements until water levels are restored in the Dokan and Derbendikhan reservoirs.

Delays in issuance of visas and clearance imports

121. The considerable number of delays and refusals in the issuance of visas to international staff, consultants and contractors, contrary to the relevant provisions of the Memorandum of Understanding signed between the United Nations Secretariat and the Government of Iraq (S/1996/356), and in particular its section VIII, paragraph 46, has been adversely affecting the implementation of the programme as a whole. While 528 visas had been granted since 1 November 2000, as at 14 May 2001, the total number of visas pending stood at 246, mostly for staff of UNDP (122) and UNOPS (89) in the three northern governorates. United Nations experts, in addition to carrying out the project activities required, have also been training national staff to take over, as soon as possible, the operations concerned. Until such time as there is a sufficient number of qualified national staff available, the programme will require outside expertise. The delays have been undermining the effective implementation of the activities in those sectors, and I appeal to the Government of Iraq to expedite the granting of the visas pursuant to paragraph 46 of the Memorandum of Understanding. The matter has been brought to the attention of the Committee. In a letter dated 7 May 2001 addressed to the Permanent Representative of Iraq to the United Nations, the Chairman of the Committee expressed the concern of the Committee with regard to the situation concerning visas and urged "the Government of Iraq to fulfil its obligations under the Memorandum of Understanding, and to expeditiously address this issue".

122. In April 2001, the Government of Iraq made passage of goods between Zakho and Mosul contingent on prior provision of details on the consignments concerned. This new measure resulted in a build-up, at one point, of several hundred trucks in the Dahuk Governorate. The humanitarian problem has eased,

following intense consultations between the United Nations Humanitarian Coordinator for Iraq and the Government of Iraq, Iraqi customs authorities, however, have been instructed not to allow the import of any materials without the approval of the Government, effective 1 June 2001. Discussions are continuing with regard to long-term arrangements for the facilitation of import and export of goods under the programme through all entry points. The Security Council will be informed on the outcome of the discussions.

VI. Conclusions and recommendations

123. The present report reflects both the positive achievements in meeting the humanitarian objectives of Security Council resolution 986 (1995) and the constraints and difficulties experienced in the effective implementation of the programme. Over the past four years, the humanitarian programme has contributed not only to arresting the decline in but also to improving the living conditions of the average Iraqi. I should like to reiterate, however, that the achievements of the programme should not lead us into a sense of complacency. The programme can and should be allowed to achieve its humanitarian objectives to the maximum. To this end, it is essential that it have the full cooperation of all parties concerned in order to meet the humanitarian and essential civilian needs of the Iraqi people.

124. In my previous report I had expressed concern that the $5.556 billion required for the implementation of the approved distribution plan for phase IX might not become available, owing to the substantial drop in the oil exports from Iraq under the programme (S/2001/186, para. 137). I very much regret to confirm that, despite the increase in the daily average rate of oil exports under the programme to at least the levels of the previous phase during the last two months, it is now estimated that the total revenue of oil exports under the programme during the current phase (which will end on 3 June 2001) will reach only 6.5 billion euros, or about $5.7 billion, which will provide only about $1.5 billion for the implementation of the programme, after the deductions pursuant to the relevant resolutions of the Security Council.

125. The authorization for Iraq to export unlimited amounts of oil and to import a wider range of goods has transformed the programme's nature and range of activities from providing emergency humanitarian relief to encompassing many aspects of rehabilitation of essential civilian infrastructure. I should like to reiterate the recommendation made in my previous report (S/2001/186, para. 161) that the provisions of paragraph 17 of resolution 1284 (1999) be applied also to the remaining sectors of the distribution plan and that the lists of items already approved (the "green lists"), relating to different sectors, be expanded to include all items, with the exception of those covered under resolution 1051 (1996). Accordingly, I appeal to the Security Council and its Committee further to streamline their current cumbersome approval procedures and allow greater latitude so that a wider variety of medicine, health supplies, foodstuffs, as well as materials and supplies for essential civilian needs can be procured and supplied most expeditiously. Such an approach by the Council would also reduce the excessive number of holds placed on applications.

126. Notwithstanding the range of opinions and discussions on a broader framework for the programme, I appeal to all parties concerned to preserve the distinct humanitarian identity of the programme established under resolution 986 (1995). I am encouraged by the work and achievements of the United Nations observation mechanism to date and am confident that the mechanism can provide the necessary assurances to the Security Council and its Committee that supplies and materials provided under the programme are indeed being utilized for approved purposes.

127. As indicated in the present report, a number of major difficulties continue to be encountered in the effective implementation of the programme, due to the absence of a viable arrangement for local procurement of goods and services and the provision of a cash component. An increasing range of equipment is being imported under the programme, with insufficient local resources available to undertake installation, training and maintenance. This makes such an arrangement more necessary than ever, as it is essential for the efficient use of imported commodities. The absence of arrangements for local procurement, for example, has led to a situation where locally produced agricultural items cannot be purchased under the programme for inclusion in the food basket. In turn, the importation of food items has become a disincentive to local agricultural production. I very much regret that there has been no progress on the arrangements for local

procurement and cash component foreseen in paragraph 24 of resolution 1284 (1999). With this in mind, I appeal to the Government of Iraq to work with the United Nations in developing the necessary and viable working arrangements for local procurement and a cash component, which will ultimately serve to stimulate local production.

128. I am pleased to inform the Security Council that a team of experts visited Iraq from 18 March to 1 April 2001, pursuant to paragraph 15 of resolution 1330 (2000), to discuss arrangements for the utilization of up to 600 million euros from the deposited funds in the escrow account established by resolution 986 (1995). Subject to the Council's approval of the proposed arrangements, these funds will be used for the cost of installation and maintenance, including training services, of the equipment and spare parts funded under the programme for the oil industry. The team of experts is about to finalize its report and, pursuant to paragraph 15 of resolution 1330 (2000), I will submit my recommendations thereon to the Council. I should like to express the hope that, once the arrangements proposed are approved by the Council, similar modalities could be extended to support activities in other sectors.

129. With the increased funding level and the growing magnitude and scope of the programme, the whole tedious and time-consuming process of the preparation and approval of the distribution plan and its annexes are no longer in step with current realities. It may be recalled that the distribution plan for the present phase was submitted by the Government of Iraq almost two months into the current phase. It should be borne in mind that soon after the approval of a distribution plan, thousands of amendments are submitted throughout the course of a given phase and thereafter. Accordingly, I have directed the Executive Director of the Iraq Programme to continue discussions with the Government of Iraq with a view to devising a more appropriate and flexible planning process that would meet the requirements of the expanded programme.

130. Current contract applications and processing procedures were put in place at a time when the overall focus and magnitude of the humanitarian programme were considerably smaller. Now that the programme has grown in size and complexity, many more contracts, in almost all sectors, involve large-scale technical equipment. For such contracts, current procedures involve the submission of additional technical information before processing and approval can occur. Omissions can delay the process by weeks, and at times by months. In addition, current procedures, from the time of authentication of goods to the payment to a supplier, can take from six to eight weeks. I have therefore requested the Executive Director of the Iraq Programme further to review and streamline all relevant procedures and make recommendations thereon to the Committee.

131. I should like to express the hope that the revised and updated lists of items and technology to which the import/export mechanism approved by resolution 1051 (1996) apply, to be submitted pursuant to paragraph 19 of resolution 1330 (2000) by the Executive Chairman of UNMOVIC and the Director-General of IAEA, will lead to a reduction in the number of disagreements between the Secretariat experts and members of the Security Council Committee on the status of applications submitted under the humanitarian programme. A better-defined list of items to be submitted under the mechanism approved by resolution 1051 (1996) would also reduce the number of holds placed on applications. Even for "dual use" items or items on the resolution 1051 (1996) list, I should like to appeal to the Security Council Committee to have confidence in the United Nations observation mechanism and to approve and/or release applications on hold, if necessary on the condition of "end-use" observations and reports thereon to the Committee. The United Nations observation system is now capable of tracking the "end-use" of items throughout the country and providing the Committee with regular reports and information on such items, as required. I also would like to appeal to the Government of Iraq to fully cooperate in this undertaking.

132. It is essential for the Government of Iraq to prioritize its contracting, giving particular attention to the food, health and nutrition sectors. Furthermore, with the size of revenues available to the programme, shortfalls in distribution of food basket items and essential medicines can no longer be justified. I am therefore instructing the Executive Director, in full consultation with the United Nations Humanitarian Coordinator for Iraq, the United Nations agencies and the programmes concerned, to provide me with an assessment in time for my next report to the Security Council, including a list of essential medicines in short supply and measures required to resolve this problem without further delay.

133. It is also essential to address urgently the problems arising from inordinate delays in submissions of applications and from the submission of non-compliant applications. It is unfortunate that while the Secretariat has notified the Government of Iraq of its concern over delays in the submission of contracts, feedback from the Government showed that in many cases contracts have been signed but suppliers have yet to submit them. With only about three weeks left to the end of the present phase, on 3 June 2001, the total value of applications received, as at 14 May 2001, was $1.8 billion, including $1.2 billion for items for the food basket. Not a single application under the health, water and sanitation, education and oil sectors has been received. I therefore appeal to the Government of Iraq to insist that its suppliers submit applications in a timely fashion. I should also like to reiterate my appeal to the Government of Iraq to provide information to the Office of the Iraq Programme and the United Nations Office of the Humanitarian Coordinator for Iraq on contracts signed, even before the applications concerned are submitted by the suppliers to the Office of the Iraq Programme. Such advance information would definitely expedite processing of the applications received. In this context, I should also like to recommend to the Government of Iraq that the Central Bank of Iraq take all necessary measures to expedite the processing of the outstanding $1.151 billion worth of unopened letters of credit for already approved applications.

134. I wish to express my deep concern over the current visa situation and the negative impact that the interruption in essential activities is having on the humanitarian situation in the three northern governorates. In this regard, I reiterate my call upon the Government of Iraq to issue the required visas to United Nations officials, experts and other personnel performing contractual services for the United Nations in Iraq, in conformity with the letter and spirit of the relevant provisions of the memorandum of understanding, paragraph 46 of which stipulates that these staff shall have the right of unimpeded entry into and exit from Iraq and shall be issued visas by the Iraqi authorities promptly and free of charge. In this regard, it should be noted that, as title for all ESC (13 per cent) account properties remain, for the time being, with the United Nations, the Organization finds itself responsible not only for the building and installing of infrastructure and equipment, but also for its operation and maintenance and for the training of national staff. With the expansion of the programme activities, in order to fulfil the responsibilities entrusted to it by the Security Council, the United Nations will require an increasing number of international staff.

135. I have repeatedly expressed my deepest concern over the safety and security of United Nations personnel working around the world, an increasing number of whom have lately made the ultimate sacrifice in the line of duty while carrying out humanitarian and peacekeeping missions. I have been following very closely the criminal court proceedings in Baghdad concerning the tragic event that took place in June 2000 within the premises of the FAO office in Baghdad, in which two staff members were killed and eight persons were injured, including four United Nations staff members. I wish to inform the Security Council that, on 14 May 2001, the criminal court postponed, yet again, for the seventh time, its proceedings in the trial of the accused, to 28 May. I will keep the Council informed of the proceedings of the court, which, I do hope, will be concluded expeditiously.

136. In conclusion, I should like to stress that it is incumbent on all parties concerned to take concerted measures to ensure the effective implementation of the humanitarian programme in order to alleviate the plight of the Iraqi people, and to refrain from any actions that could exacerbate the already fragile living conditions of the average Iraqi.

Annex I

Allocation of total oil revenue among the various funds and corresponding expenditures, as at 30 April 2001

1. As at 30 April 2001, 3,253.8 million euros had been deposited into the account for phase IX as authorized under Security Council resolution 1330 (2000), bringing the total value of oil sales since inception to US$ 37,333.9 million and 4,833.4 million euros.

2. The allocation of total oil proceeds received from inception to date and the corresponding expenditures as at 30 April 2001 are as follows:

(a) $19,488.4 million and 2,719.3 million euros have been allocated for the purchase of humanitarian supplies by the Government of Iraq, as specified in paragraph 8 (a) of resolution 986 (1995). In addition, $892.3 million and 9.5 million euros of interest earned in these accounts were available for the purchase of humanitarian supplies in the central and southern governorates of Iraq. Letters of credit issued by the Banque Nationale de Paris on behalf of the United Nations amounted to approximately $19,538 million for humanitarian supplies and oil industry spare parts for Iraq and payments amounted to $11,431.6 million under phases I to IX;

(b) The sum of $5,259.4 million has been allocated for the purchase of humanitarian goods to be distributed in the three northern governorates by the United Nations Inter-Agency Humanitarian Programmes, as specified in paragraph 8 (b) of Council resolution 986 (1995) and as revised by paragraph 2 of Council resolution 1153 (1998). Expenditures recorded for humanitarian goods approved by the Committee amounted to $3,192.2 million;

(c) The sum of $12,343.7 million has been transferred directly into the United Nations Compensation Fund, as specified in paragraph 8 (c) of Council resolution 986 (1995). As at 30 April 2001, a total of $224.9 million had been allotted to cover the operating expenditures of the Compensation Commission up to 31 December 2001, and an amount of $10,737.8 million had been allotted for payment of various instalments of "A", "C", "D", "E" and "F" claims;

(d) The sum of $844.1 million has been allocated for the operational and administrative expenses of the United Nations associated with the implementation of resolution 986 (1995), as specified in paragraph 8 (d) of the resolution. Expenditures for and the administrative costs of all United Nations entities involved in implementing the resolution amounted to $477.1 million;

(e) The sum of $303.8 million has been allocated for operating expenses of the United Nations Special Commission for the Disarmament of Iraq and its successor the United Nations Monitoring, Verification and Inspection Commission, established by Council resolution 1284 (1999), as specified in paragraph 8 (e) of Council resolution 986 (1995). Expenditures for the Commission amounted to $90 million;

(f) The sum of $870 million has been set aside for the cost of transporting petroleum and petroleum products originating in Iraq and exported via the Kirkuk-Yumurtalik pipeline through Turkey, in accordance with paragraph 8 (f) of Council

resolution 986 (1995) and in line with procedures adopted by the Committee. Of that amount, $796 million has been paid to the Government of Turkey;

(g) The sum of $129.5 million has been transferred directly to the escrow account established pursuant to Council resolutions 706 (1991) of 15 August 1991 and 712 (1991) of 19 September 1991 for the repayments envisaged under paragraph 6 of resolution 778 (1992) of 2 October 1992, as specified in paragraph 8 (g) of resolution 986 (1995) and subsequently in paragraph 34 of my report number dated 1 February 1996 (S/1996/978). The total repayments made amounted to $129.5 million.

Annex II

Oil proceeds and humanitarian supply letters of credit, as at 30 April 2001

Oil proceeds

(United States dollars)

Phase	*Last dispatch*	*Number of letters of credit opened*	*Value of letters of credit from oil sales (United States dollars)*
I	27 June 1997	123	2 149 806 395.99
II	2 January 1998	130	2 124 569 788.26
III	30 June 1998	186	2 685 326 345.25
IV	28 December 1998	280	3 027 147 422.35
V	25 June 1999	333	3 947 022 565.12
VI	23 December 1999	352	7 401 894 881.57
VII	10 July 2000	353	8 301 861 931.46
VIII	5 December 2000	347	8 296 257 148.06
Total		2 064	37 233 886 478.06

Oil proceeds

(Euros)

Phase	*Last dispatch*	*Number of letters of credit opened*	*Value of letters of credit from oil sales (euros)*
VIII	29 December 2000	61	1 579 611 932.15
IX	As at 30 April 2001	103	3 253 792 480.77
Total		164	4 833 404 412.92

Humanitarian supply letters of credit for ESB (53 per cent) account and bulk procurement

Phase	Number of letters of credit opened	Value of letters of credit opened (United States dollars)	Bank payments made on delivery (United States dollars)
I	870	1 229 078 786.79	1 208 736 287.84
II	538	1 193 975 676.69	1 179 368 936.19
III	672	1 210 934 759.07	1 179 286 982.40
IV Humanitarian supplies	705	1 598 269 135.50	1 499 326 774.44
IV Oil spare parts	478	273 895 216.48	233 854 160.35
V Humanitarian supplies	1 042	1 852 950 412.77	1 540 910 869.06
V Oil spare parts	518	284 560 522.88	182 672 049.04
VI Humanitarian supplies	1 548	3 140 045 912.02	1 728 916 012.33
VI Oil spare parts	850	456 174 771.92	193 639 263.03
VII Humanitarian supplies	2 047	3 714 692 767.06	1 704 334 061.27
VII Oil spare parts	651	344 436 076.10	58 526 895.12
VIII Humanitarian supplies	1 194	3 755 761 720.89	722 017 728.03
VIII Oil spare parts	56	31 576 414.56	-
IX Humanitarian supplies	30	458 186 022.09	-
Total	13 199	19 538 518 214.92	11 431 990 381.10

Annex III

Sectoral observation table for the period 1 November 2000-30 April 2001

Sector	Type of observation: Tracking	Assessment	End-use Visit	Total
Food	95 237	15	0	95 252
Transport and food handling	240	20	13	273
Health	1 491	14	382	1 887
Nutrition	1 810	813	-	2 623
Water and sanitation	1 891	226	832	2 951
Agriculture	1 165	689	166	2 020
Electricity	261	3	37	301
Telecommunications[a]	3	2	1	6
Education	510	1 413	4	1 925
Housing	197	4 870	0	5 067
Total	102 726	7 939	1 434	112 113

[a] With the arrival of equipment provided under the humanitarian programme, the Telecommunications Sectoral Working Group resumed observation activities on 26 April 2001.

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Translated from Arabic

Permanent Mission of Iraq to the United Nations

No.: M/7/710

Date: 5 November 2000

شركة تسويق النفط / مكتب المدير التنفيذي
الرقم / ٢٢٢٤
التاريخ ٨ / ١١ / ٢٠٠٠

Sir,

On instructions from my Government, I have the honour to transmit to you herewith a letter dated 5 November 2000 from Mr. Amir Muhammed Rashid, Minister of Oil of the Republic of Iraq, conveying the intention of the Iraqi State Oil Marketing Organization (SOMO) to incorporate in contracts for the sale of oil a provision to the effect that the sum of 1.5 euros per barrel should be remitted to a special account designated by SOMO to meet the costs of the production, transportation and exportation of oil, the maintenance of oil-related installations and other essential expenditures within Iraq.

Accept, Sir, etc.

(*Signed*) Saeed H. Ki
Ambass
Permanent Represent

His Excellency Mr. Kofi A. Annan
Secretary-General of the United Nations

S/2000527

Mr. SHAYS. Mr. Pruniaux.

Mr. PRUNIAUX. Mr. Chairman and distinguished members of the subcommittee, my name is Andre Pruniaux. Since 1998, I have been employed as Senior Vice President of Cotecna Inspection in Geneva, Switzerland, which has some 4,000 personnel in over 100 offices around the world. I appreciate the opportunity to appear before the subcommittee today to clearly establish for the public record the difficult task of Cotecna as a contractor of the U.N. Oil-for-Food Program.

Mr. Chairman, my primary duties at Cotecna consisted of managing operations in Africa and the Middle East as summarized in my curriculum vitae included in my prepared statement. We hope to clarify Cotecna's responsibilities and authority under the Oil-for-Food Program in the United States and the CPA contracts. The documents we provided to the subcommittee clearly demonstrate our performance under the contracts has been fully consistent with our obligations.

Since the inception of its contract in Iraq, Cotecna has authenticated the arrival of goods in Iraq worth a total of $29.2 billion, of which no single authentication has been proven to be erroneous. To fairly judge our performance, you must first understand what services Cotecna was and was not contracted to perform under the OFF program. Cotecna was not hired to perform inspection services in the traditional sense which would normally entail a broad range of tasks, in support of full customs inspection services, including, for instance, price analysis, quantity, quality inspection, and port-of-origin and/or port-of-destination.

The 1992 request for proposal on which Cotecna was the successful bidder issued by the U.N. did incorporate broader, more traditional customs inspection mandates. That contract was never awarded, however, because the Iraqi Government would not give its consent. A subsequent contract was awarded in 1996 to Lloyds Register and included the narrower scope of responsibility and authority for authentication of goods under the 986 OFF program. The parameter of this contract were originally established by the Security Council working with the U.N. OIP and Lloyd's. In 1998 Cotecna presented the strongest technical proposal at the lowest price, and on that basis was awarded the contract succeeding Lloyds.

Importantly, the term "authentication" in this context is unique to the U.N. OIP contract. In the world of customs inspection services, the term "authentication" does not appear. This reflects the limited role under the contract of authenticating the arrival of approved and permitted shipments in Iraq so suppliers could be paid.

Under the narrow scope of the contract, Cotecna played a limited technical role in verifying that the goods entering Iraq matched the list of goods authorized for importation, and in the case of foodstuffs, assessing their fitness for human consumption. Our prepared testimony includes these details.

Conversely, Cotecna was not involved in selecting the goods to be imported, establishing the specifications of such products, selecting the suppliers, negotiating the prices to be paid, nor designating any sales commissions.

Further, Cotecna was not involved in handling any funds for the payment for any goods, but only with verifying that items that had been approved for import were delivered in Iraq.

Mr. Chairman, it is important for this committee to understand that two types of goods were coming into Iraq under U.N. authority and approval. The first set of goods entered the country under the Oil-for-Food Program pursuant to Security Council Resolution 986. In addition, a separate volume of goods, valued by some to be worth double that of 986 goods, were imported under Security Council Resolution 661. These 661 goods were the subject of private contracting, were not financed by the OFF program and, therefore, Cotecna had no responsibility or authority to authenticate or inspect them.

Under the contract, Cotecna authenticated the shipments entering Iraq under the 986 program, and was required to perform physical examination on up to 10 percent of them, with the exception of quality control testing of food basket items, as I have already mentioned. We consistently fulfilled each of these mandates.

The company was operating in a difficult and challenging physical and political environment as detailed in part 4 of my prepared written statement. Relations with the U.N. officials, the Humanitarian Coordinator for Iraq, the UNOHCI-Baghdad, were sometimes difficult, because Cotecna was required to report directly to OIP only, while UNOHCI-Baghdad was assisting Cotecna activities and inspections for logistics, visas, transportation authorizations, and complaints from the Iraqi authorities related to Cotecna inspectors. Also the relationship with U.N. humanitarian agencies was delicate and a source of tension because these humanitarian agencies adopted a more sympathetic attitude toward Iraqi and Kurdish entities. UNOHCI, for example, presided over monthly coordination meetings in Baghdad between these humanitarian agencies and Cotecna. Congestion in the port of Umm Qasr became a very serious problem, and suppliers began to complain that the government was refusing to remove containers from the port unless suppliers paid a fee to the port authority, and the government continuously sought ways to influence the authentication and payment process for financial gain.

In direct response to concerns raised by Cotecna to U.N. OIP, this process stopped and the congestion situation immediately eased. Iraq frequently exerted pressure on Cotecna to resolve or retract authentication. Cotecna was directed under the contract to refer all such matters to U.N. OIP New York, but this did not alleviate the pressure from the government, particularly in Umm Qasr.

Mr. Chairman, Cotecna has consistently performed its limited technical role in the authentication of goods under the 986 OFF Program under difficult physical and political conditions. In so doing, the company fulfilled its contractual obligations as established by the U.N. Security Council. There were problems, and many. The company reported those problems. We have sought to cooperate with the subcommittee and have provided documentation of those communications to you.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions members of the subcommittee might have. I would respectfully ask that my full statement be included in the

record along with a letter I sent to you on October 1 regarding an article that appeared in the New York Post.

Mr. SHAYS. Your letter and all of your statements will be in the record in their entirety. Without objection, that will happen.

[The prepared statement of Mr. Pruniaux follows:]

Prepared Statement of [redacted]
U.S. House Committee on Government Reform
Subcommittee on National Security,
Emerging Threats and International Relations

5 October 2004

Mr. Chairman, distinguished Members of the Subcommittee, my name is André Pruniaux. Since 1998, I have been employed as Senior Vice President of Cotecna Inspection, S.A. ("Cotecna") in Geneva, Switzerland. I sincerely appreciate having the opportunity to appear before the Subcommittee today to clearly establish for the public record the limited technical role and performance of Cotecna as a contractor under the United Nation's Oil-for-Food program.

Mr. Chairman, my primary duties at Cotecna consisted of managing operations in Africa and the Middle East, as summarized in my curriculum vitae, which has been presented to the Subcommittee as a part of my prepared statement.

My statement today will cover four main topics:

(1) How Cotecna won the Oil-For-Food ("OFF") contract;

(2) What role Cotecna did and did not play in the OFF process, and how the OFF contract therefore differed from Cotecna's other similar contracts;

(3) What challenges Cotecna encountered, and how Cotecna and the United Nations ("UN") addressed them, including legal, ethical and due diligence procedures Cotecna followed; and

(4) What changes to the OFF programme's structure might have better prevented Iraqi manipulation.

At the outset, I believe it is important for the committee to understand that Cotecna's duties under its contract were limited to verifying that goods entering Iraq matched the list of goods authorized for importation, and in a limited number of cases to assessing the quality of the goods. Cotecna was not involved in selecting the goods to be imported, establishing the specifications of such products, selecting suppliers, negotiating the prices to be paid, or designating any sales intermediaries or sales commissions. In addition, Cotecna was not involved in handling any funds for the payment for any goods, but only with verifying that items, which had been approved for import, had actually been delivered.

My main point will be that Cotecna played a limited, technical role, albeit a difficult, dangerous and important one, and that Cotecna deserves high praise for its performance. I will seek to correct the public record that has been so misinformed and distorted.

(1) How Cotecna won the OFF contract:

On 9 October 1998, the UN issued a Request For Proposals ("RFP"), addressed to several companies, including Cotecna, for a six-month contract to provide inspection services supporting the OFF programme.

Cotecna had submitted a similar proposal previously, in 1992, at which time the UN had selected Cotecna. Cotecna and the UN did not negotiate and sign a contract following Cotecna's 1992 selection, however, because Iraq rejected the proposed programme.

Cotecna had submitted yet another proposal in August 1996, in response to a July 1996 UN RFP. At that time, however, the UN selected another company, Lloyd's Register.

On 2 November 1998, Cotecna submitted its proposal in response to the UN's October 1998 RFP. Cotecna based its submission on proposed authentication procedures as set out in the RFP, Cotecna's own Information Technology ("IT") programme and telecommunication equipment, its staff (mostly inspectors coming from its African, Asian and European affiliates and agents), and the public information available on the OFF programme.

In early December 1998, the UN narrowed the list of respondents and invited Cotecna and another company for direct interviews to detail their proposals, respond to UN queries, etc. Cotecna, it was understood, had submitted a strong technical proposal at the lowest price.

The UN chose Cotecna on the abovementioned basis and invited it to enter into preliminary negotiations with the UN during December 1998. The UN then had Cotecna come to New York City for final negotiations (28 to 30 December 1998) and for contract signature (on 31 December 1998). Contract performance started on 01 February 1999.

(2) What role Cotecna did and did not play in the OFF process, and how the OFF contract therefore differed from Cotecna's other similar contracts:

Cotecna's UN-OFF contract was limited to the authentication of goods, imported under the OFF programme and entering Iraq. As stated in the UN's October 1998 RFP and Cotecna's December 1998 contract, the UN's Office of the Iraq Programme ("OIP") implemented authentication procedures as required by Security Council resolution 986. Such procedures required documentary control at three land border posts and at the Port of Umm Qasr.

The different contracts that Cotecna signed with the UN clearly define Cotecna's role in the OFF process. I would call your attention particularly to articles 3, 4, 5 and 6 of Contract PD/CON/324/98 dated 31 December 1998 and articles A.3 and B.4 of Contract PD/CO144/01 dated 15 August 2001 (as well as various amendments to these two basic contracts), copies of which I believe have been supplied to the Committee. The contracts foresaw certain

"traditional" inspection techniques, mostly related to food supplies that arrived in bulk at the Port of Umm Qasr and that laboratory analysis would confirm was fit for human consumption ("FFHC"). In other ways, though, Cotecna's role was "untraditional."

I will provide more details about Cotecna's role later, when I address certain strengths and weaknesses in the authentication process. For now, I would note that Cotecna's OFF Contracts were particularly tough for the contractor (Cotecna) and imposed severe obligations, heavy (standard UN) general conditions, and very limited resources and support for Cotecna in case of evacuations, medical and security assistance, etc. Cotecna and its staff of inspectors had significant previous experience and references in working in remote, desert conditions and in controlling land border posts and port facilities, inspecting "sensitive" imports (such as oil products), in such developing countries as Niger and Chad. The OFF programme, however, was Cotecna's first involvement in a sanctions programme even though it had experience in commercial inspections in Saudi Arabia and elsewhere in the region also under difficult conditions.

(3) What challenges Cotecna encountered, and how Cotecna and the UN addressed them, including legal, ethical and due diligence procedures Cotecna followed:

The general working and living conditions for Cotecna inspectors were very harsh, and the environment hostile. Inspectors were awarded 15 days leave for every two and a half months of working on the sites. Cotecna and its inspectors encountered major problems in implementing its responsibilities under the contract. Among other challenges, the company:

- Had no insurance coverage for Cotecna's capital investments in Iraq and, accordingly, no ability to recover any money after the war destroyed certain inspection sites and caused equipment to be looted, documents lost, etc.;
- Has had to bear high insurance costs, including recently kidnapping insurance, to cover inspectors;
- Has borne the cost of expensive security measures, requiring that Cotecna obtain and maintain top quality equipment and special facilities for transportation, water, power, cabins, etc.;
- Has had to carry tremendous telecommunications service and equipment expenses for the professional and personal use of our inspectors;
- Has been faced with providing and maintaining inspection equipment under the most extreme and, often, unforeseen conditions;
- Has been challenged with handling the administrative management of inspectors (leaves, salaries, dismissing, hiring, authorizations from OIP, etc.);

- Continues to successfully manage a highly diverse staff—some 30 nationalities—in the face of sickness, accidents, discipline problems and cultural tensions, both internal and with the Iraqis;

- Had to navigate Cotecna's delicate web of contacts with UN's Office of the Humanitarian Coordinator for Iraq ("UNOHCI"), Iraqi authorities, port officials, Iraq's Ministry of Trade ("MOT"), to process visas, requests for dismissal, etc.;

- Had to maintain a positive working relationship with the UN Iraq-Kuwait Observation Mission ("UNIKOM"), for help during accidents and evacuations, and with Kurdish authorities (as well as with the Jordanian and Turkish officials);

- Had to deal with direct pressure from Iraqis;

- Had to provide its employees with the tools and training to survive extreme desert conditions, which sometimes poisoned the water and required organized catering;

- Had to deal with heightened dangers such as shootings, sandstorms, dangerous driving, and even camels and snakes – all of which made evacuations and the rotation of inspectors between sites difficult, as 1,000 kilometres separated Amman from Baghdad (all transportation in Iraq had to go through Baghdad); and

- Finally, had to deal with an inherited disarray of OFF records, and to respond appropriately when carriers presented incomplete or erroneous entry documents.

Faced with these challenges, Cotecna exhibited the highest degree of professionalism and followed all appropriate legal, ethical and due diligence procedures. Cotecna is a leading inspection companies and as such is a member of the International Federation of Inspection Agencies ("IFIA") and adheres to its code of obligations and best practices. Cotecna is also International Organization for Standardization ("ISO") certified. Cotecna properly enforced Standard Operating Procedures for UN contractors and wrote, distributed, implemented, and audited its own Specific Operating Procedures ("SOPs") for each site. Cotecna inspectors were required to rigorously follow Cotecna's detailed and highly specific Field Inspection Manual (FIM). Cotecna issued and regularly updated these confidential administrative procedures.

Generally, I would say that the UN also responded appropriately to the above challenges. When I describe authentication procedures later in my statement, I will discuss Cotecna's coordination with the OIP, which I would characterize as fair. Meanwhile, relations with the UNOHCI were sometimes delicate, because Cotecna was required to report directly to OIP only, while UNOHCI-Baghdad was assisting Cotecna for logistics, visas, transportation authorizations, and complaints from Iraqi authorities related to Cotecna inspectors (discipline, behaviour, etc.). When receiving messages from Iraqi authorities regarding Cotecna's authentication activities, UNOHCI passed them to Cotecna in a way that often reflected a sympathetic attitude toward the Iraqi complaints or requests. Finally, dealing with UN-agencies was always a delicate task and a source of tensions, because these humanitarian agencies adopted a more sympathetic attitude

towards Iraqi and Kurdish entities. In direct response to concerns raised by Cotecna, UNOIP arranged for monthly coordination meetings in Baghdad with the various agencies and Cotecna.

(4) What changes to the OFF programme's structure might have better prevented Iraqi manipulation

Under the terms of its UN contract (from 01 February 1999 to 21 November 2003), Cotecna maintained between 54 to 67 inspectors at five entry points located on Iraqi territory at the borders with Turkey, Syria, Jordan and Saudi Arabia (first opened in November 2002) and at the sea port of Umm Qasr in the Persian Gulf. Umm Qasr operated on a 24-hour basis, whereas the land border inspection sites mirrored the opening hours of the individual border crossings. The UN required suppliers to present all goods approved under the OFF programme for authentication by Cotecna at these entry points. To assist in the authentication process, the OIP in New York supplied Cotecna with a live copy of the OFF database. The OFF database tracked each contract via a unique reference number referred to as the Comm. (communication) number. Before the export of goods, suppliers were issued an approval letter by OIP referred to as the O.C. (Official Communication) letter. The O.C. letter specified the point of entry (as stated by the supplier in its application to OIP), the list of goods to be shipped (item by item) and the date of validity of the approval letter, generally one year from the date of issuance.

Importantly, Cotecna had no mandate to inspect trucks or board vessels to ascertain whether the goods on board were approved for export to Iraq pursuant to Security Council Resolution 986 ("986 goods"). In addition to 986 goods, a vast stream of "661 goods" approved by the Security Council 661 Committee for export to Iraq, were the subject of private contracting and were not financed by the OFF programme; therefore Cotecna had no responsibility nor, more important, authority to inspect them.

Upon presentation of goods for authentication at the entry points (the five sites), Cotecna verified that the Comm. number concerned had been approved, that a valid OC letter had been issued by OIP, and that the goods were presented at the appropriate point of entry. Suppliers routinely presented goods at the wrong entry point or with expired approval letters. Cotecna sought guidance directly and only from OIP in all such cases. OIP adopted a facilitative approach to such problems, exhibiting a reluctance to slow the pipeline of humanitarian deliveries to Iraq. OIP therefore typically instructed Cotecna to proceed with the authentication process while OIP arranged with the supplier and relevant permanent mission to the United Nations to change the point of entry or extend the validity of the approval letter in slightly slower time.

Once satisfied that the goods had a valid approval letter, Cotecna verified that the quantity and type of goods listed on the database/O.C. letter matched the bill of lading, invoices, packing lists and any other relevant documentation presented at the sites. All 986 goods presented were authenticated. Cotecna authenticated by replicating shipment inspection reports to OIP and the UN Treasury via the OFF database. Receipt of the shipment authentication report triggered an instruction from Treasury to BNP Paribas to release funds from the Iraq account reserved against the letter of credit.

Cotecna performed physical examination on bulk or containerized imports in connection with approximately 10 per cent of consignments (in number). In addition, Cotecna drew samples of all food stuffs (mostly at the Port of Umm Qasr) and deferred authentication until laboratory analysis confirmed fitness for human consumption. This methodology was agreed with OIP, which in turn briefed the 661 Committee. OIP did not require Cotecna to perform quality control testing other than in connection with food basket items. On occasion, however, carriers presented goods for inspection that had obviously been damaged in transit. Cotecna referred all such cases to OIP. According to my recollection, these cases were amicably resolved after liaison between OIP, the relevant permanent mission to the UN, and the supplier, and the suppliers eventually agreed to withdraw the shipments and to send replacement goods.

Laboratory analysis occurred at Cotecna's laboratories in Amman (since crossing the Turkish, Kuwaiti, Syrian and Saudi Arabian borders was strictly forbidden). This obligation delayed the results of the analysis by an average of 7 to 10 days. The working relationship between Cotecna and OIP was close and continuous, and Cotecna sought guidance in every case where Cotecna observed a deviation from normal practice. Cotecna did not withhold authentication in connection with any consignment unless OIP specifically instructed this, and most cases were eventually resolved. Problems routinely arose when inexperienced suppliers or transporters neglected to present 986 goods for authentication at the sites and when the error came to light only after the carrier had delivered the goods to the receiving Ministry (mostly in Baghdad) and the suppliers sought payment. In such cases suppliers had to return the goods to the entry point for inspection; Cotecna inspectors were dispatched to inspect the goods in situ; OIP liaised with the Ministries in question to receive confirmation of receipt of the goods; or, if through documentary evidence Cotecna was satisfied that a prima facie case existed that the goods had been imported, OIP authorized Cotecna to authenticate without inspection. The latter course of action mostly applied to goods imported on the eve of the war in Iraq that Cotecna could not authenticate at the sites after the evacuation. The 661 Committee approved this measure. Notably, Cotecna had the authority to withhold authentication but not to detain goods.

The Iraqi Ministries complained continuously that the authentication process favored the supplier, often claiming that they had received substandard goods or delivery shortfalls. Iraq frequently exerted firm pressure on Cotecna to withhold or retract authentication. OIP directed Cotecna to refer all such matters to the UN, but this did not alleviate the pressure from the Government of Iraq ("GOI") upon Cotecna, particularly in Umm Qasr. It was the policy of the UN that such matters were in fact commercial disputes between buyer and seller, which the relevant parties should address through normal dispute resolution procedures.

For example, in May 1999, the Iraqi Minister of Trade, accompanied by more than 20 heavily armed guards, approached Cotecna inspectors outside of the camp. He informed them that Iraq would no longer allow discharge of any vessel before completion of analysis in Baghdad. This was an aggressive show of force that left many inspectors in Umm Qasr badly shaken. This aggression and intimidation continued and reached a peak in 2001. These actions coincided with a significant increase in traffic leaving the port, which we reported to OIP.

The Government also lobbied strongly with Cotecna and OIP to introduce a deferred authentication period to facilitate quality control testing by the Ministries. Cotecna and OIP

vigorously resisted such a measure, because it might have permitted the Ministries to influence the payment process by requesting payment of illicit fees by suppliers to ensure that quality disputes were resolved and that payment might go forth. OIP and Cotecna repeatedly and firmly requested the Iraqi Ministries to appoint commercial inspection companies in their contracts with suppliers. The UN specifically asked Cotecna not to act as a commercial inspection company for the OFF imports into Iraq. Cotecna strictly honored this obligation.

The Government continuously sought ways to influence the payment process. For instance, for a period in 2001 OIP instructed Cotecna not to authenticate goods until a carrier had physically removed them from the port of Umm Qasr. Within a short period of time congestion in the port of Umm Qasr became a serious problem, and suppliers began to complain, off the record, that the Government was refusing to remove containers from the port unless the suppliers paid a fee to the port authority. In other words, the Iraqi authorities began to influence the authentication/payment process for financial gain. After discussions with OIP, this process stopped, and the congestion situation immediately eased. Despite the pressure that certain Iraqi officials brought to bear, Cotecna managed to maintain a fair working relationship with Iraqi officials at the entry points and within the Ministries. In fact, inspectors did not feel under particular threat before the war in Iraq.

Cotecna occasionally experienced delays in receiving guidance from OIP or received advice what did not precisely correlate with earlier stances taken by OIP, but, in general, an occasional lack of coordination and some disagreements between various UN offices did not affect the authentication process and the execution of the contract. Cotecna did experience some delays in receiving payment, through a lack of coordination between the different UN entities (UN-OIP, PD, OLA) and often had to adopt to agreed changes, in good faith, before the UN managed to adjust the contract accordingly. The UN also occasionally neglected to make formal written changes to the contract to reflect agreed procedures in the field and a breakdown in communications between departments coupled with the war in Iraq resulted in the UN failing to reimburse Cotecna fully for the construction of a site in Ar'ar. These were not, however, matters that affected Cotecna's performance in Iraq.

Since the inception of its contract in Iraq Cotecna has authenticated the arrival of goods in Iraq with a total of $29.2 billion, of which no single authentication has been proven to be erroneous. Criticism of Cotecna normally stems from ignorance as to the limitations of our mandate. For instance, Cotecna had no involvement at all in the contracting or approval process or the valuation of the goods shipped, and yet blame has been apportioned by some in the media to Cotecna regarding the alleged over-pricing of goods. Cotecna has also received unfair criticism for not inspecting every truck or vessel entering Iraq when, as stated above, the mandate was reactive rather than proactive and Cotecna had no authority to inspect all goods.

OIP appeared to make every effort to facilitate the flow of goods while restricting any influence of the Government of Iraq over the payment process which might have involved coercing suppliers to pay illicit fees to ensure timely payment. It is my opinion that Security Council resolutions 661 and 986 relied upon member states to police exports through their export licensing arrangements rather than providing adequate security at the borders of Iraq. Since Cotecna had no authority to search any vehicle or vessel other than those presented for

inspection, weapons or banned products could simply have been transported across the borders since no mechanism for security inspection existed other than the multinational maritime interception force operating in the Persian Arabian gulf. It is also my opinion that the Security Council could have adopted a resolution extending the role of the Independent Inspection Agent to include physical inspection of all imports to ascertain that only approved goods were entering the country. But, again, such was not the case.

This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions members of the Subcommittee might have.

[CV APPEARS ON NEXT PAGE]

COTECNA
At your side

CURRICULUM VITAE

NAME:	**André E. PRUNIAUX**
NATIONALITY:	French
LANGUAGE:	French, English, (Spanish/Italian/German)
CURRENT POSITION:	Senior Vice President – Africa and Middle East Cotecna Inspection S.A., Geneva – Switzerland

GENERAL QUALIFICATIONS

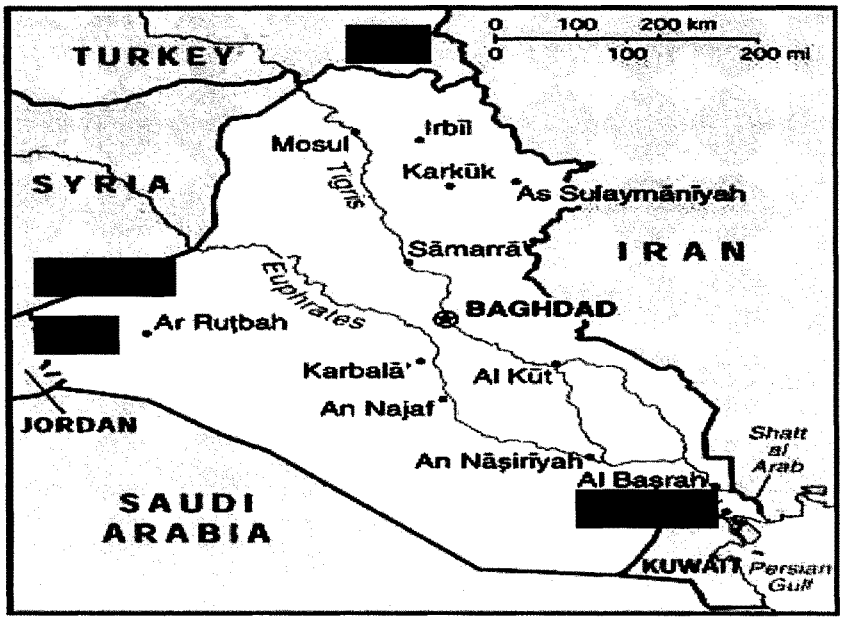
> Chemical Engineer – Ecole Nationale Supérieure Génie Chimique, Toulouse, France, (1963)
> Licence in sciences, chemistry and mathematics, (1962)
> Post graduate research (Doctorate) in nuclear engineering – Centre d'Etudes Nucléaires de Cadarache, France (1964-1966)
> Courses in Business Administration, Washington D.C. (USA), (1968-1969)

BRIEF CAREER HISTORY

1965-1968	Commissariat à l'Energie Atomique, France; various posts
1968-1969	American Chemical Society, Washington, D.C., USA; processing of data, scientific journalism
1969-1971	American Chemical Society, Frankfurt, Germany; Bureau Head
1971-1974	Oronzio de Nora Group, Milan, Italy; Manager of chemical and electro-chemical projects
1974-1987	Universal Engineering and Finance Corporation (UNEFICO), Geneva, Switzerland (subsidiary of Swiss Bank Corporation). Head of African activities, Marketing Director, General Manager
1987-1988	Société Générale de Surveillance, Geneva, Switzerland; Manager, Manufacturing Industry Department
1988-pres.	Cotecna Inspection S.A., Geneva, Switzerland, Senior Vice President

SPECIFIC EXPERIENCE IN TRADE SURVEILLANCE

> Manager with SGS in the Manufacturing Industry Department
> Overall Management of full inspection contracts for the Governments of Nigeria, Kenya, Benin, Pakistan, Comoros, Niger, Togo, Ghana, Tanzania, etc.

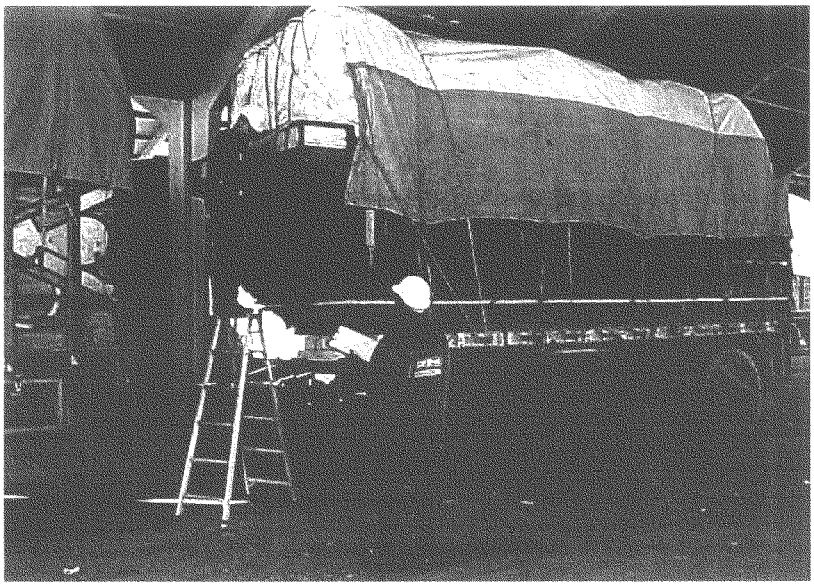


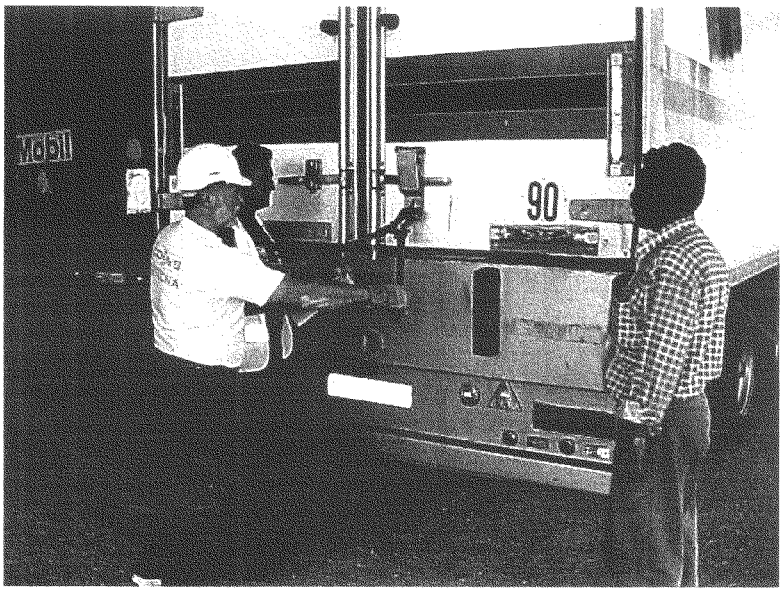
COTECNA

22nd July 2004

INSPECTIONS' PHOTOS

PHOTO N°	LOCATION	DESCRIPTION
1	AL WALEED	Physical Inspection Shed
2	AL WALEED	Refrigirator truck (medicin)
3	DUBAI	Inspection at sea (Launch)
4	DUBAI	Inspection at sea (Launch)
5	UMM QASR PORT	Inspection Seal Verification
6	AL WALEED	Inspection Seal Verification
7	ZAKHO	General Cargo Tires Inspection
8	ZAKHO	General Cargo Tubes Inspection
9	DUBAI	Offshore Inspection (Rice)
10	DUBAI	Offshore Inspection Approaching Vessel
11	ZAKHO	Truck - General Cargo

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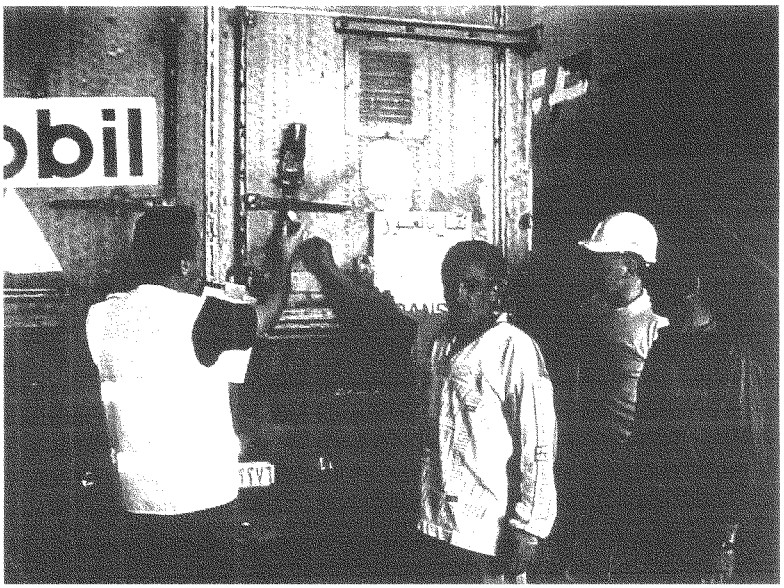
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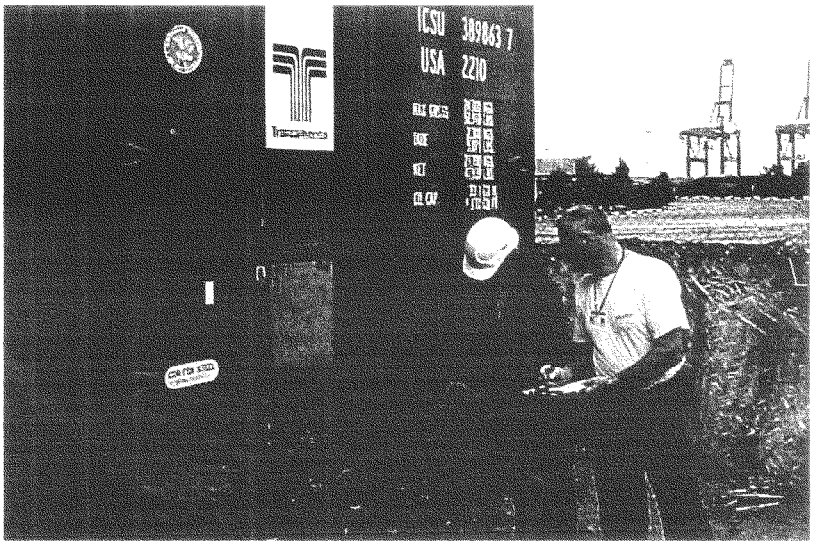
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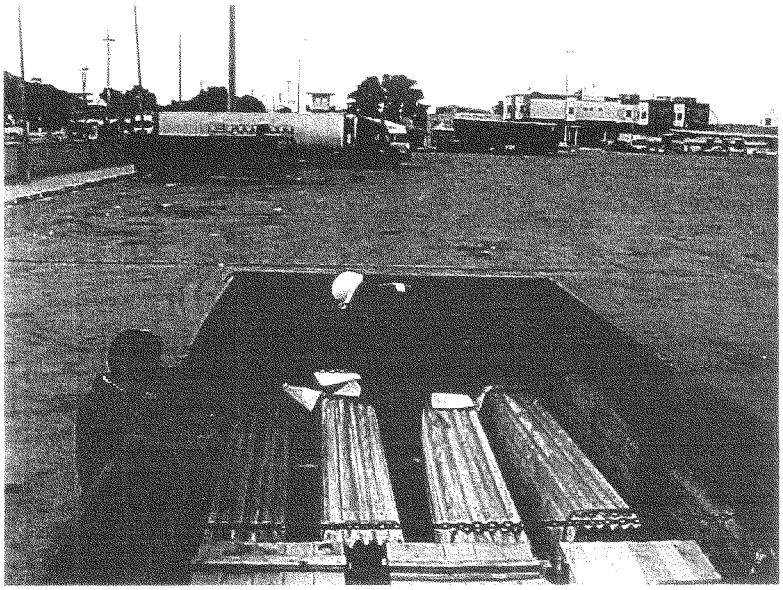
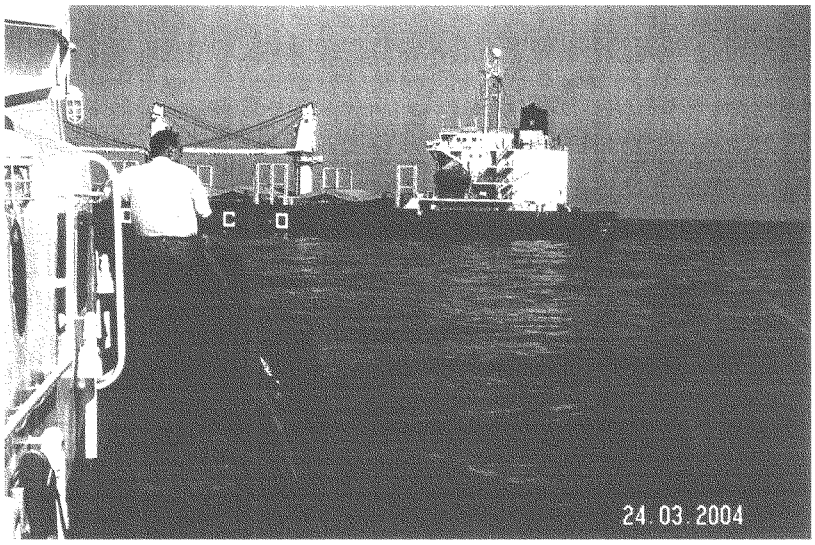
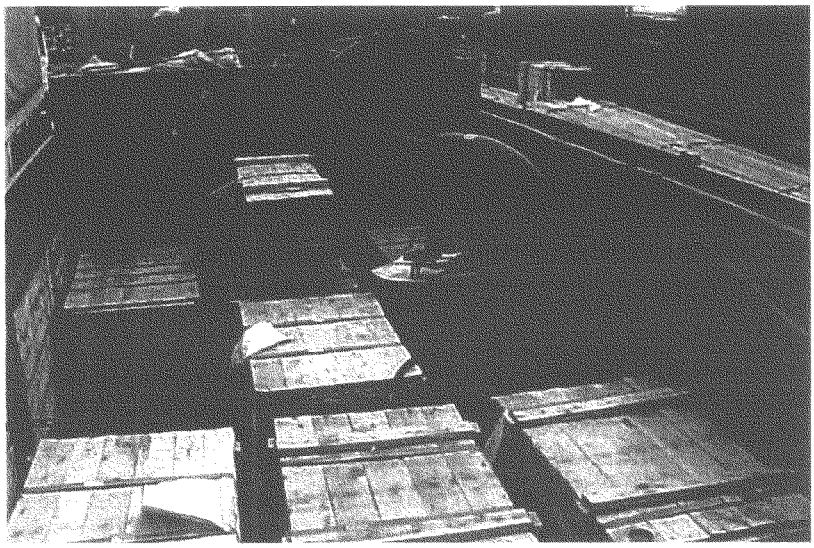



24.03.2004

IMPORT FOR GRAIN BOARD FOR DRY
TECNA COTECH
IMPORT FOR CEREAL
CROP
24.03.2004



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

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

Cotecna Inspections S.A. Documents

"Keith, T" <keitht@baghdadforum.com> on 12-02-2004 11:39:21 AM

To: "A Coins" <coins@un.org>
cc: "Frost, Gary" <gfrost@baghdadforum.com>, "Warlick, James (CIV)" <warlickj@cpha.centcom.mil>

Subject: RE: FW: UN No. S/AC.25/2002/986/OC.1001983

Ron,
Can you confirm or deny for me whether the Syrian authorities are closing the Al Waleed border crossing from today through Saturday? Our employee at the Iraqi side told me that Syrians are either conducting anti-terrorist commando training in vicinity or are attempting to prevent a terrorist crossing. I'm not sure which one, or even if this is true. Do you have any information? If closure is real, what impact do you forsee on authentications coming from there over next three days?

Best Regards,
Tom

THOMAS C. KEITH
DIRECTOR, OIL FOR FOOD COORDINATION CENTER
CPA BAGHDAD
PHONE: 703-270-0467, c: 914-360-3026
EMAIL: keitht@baghdadforum.com

-----Original Message-----
From: A Coins [mailto:coins@un.org]
Sent: Wednesday, February 11, 2004 8:36 PM
To: Keith, T
Cc: "Saliba Joe" <joe.saliba; cotecna
Subject: Re: FW: UN No. S/AC.25/2002/986/OC.1001983
Importance: High

Hi Tom,

I spoke with Gezairi Transport earlier today on this topic (twice, in fact).

My personal preference would be to have the trucks return to the border as
well. If for no other reason than I foresee that this sort of thing will
become routine for the drivers, if they are able to get away with it
without consequences to themselves personally. And, as you mentioned,
there is a definite need for some disinterested 3rd party to confirm
arrival of these goods in general, and specifically with this shipment.

I spoke to our inspectors out at the border after talking to Gezairi, and
learned that there is a bit of a "staging area" just east of the Syrian
Customs port in the "no man's land" in between the two ports. It is a
routine thing for trucks to return as far as that location if/when they
have neglected to follow some procedure (either our's or one of the local
gov't agencie's) before leaving Syria.

Our inspectors have been allowed into that staging area before without any

SPECIMEN

18 inspectors always available therefore total is 24 inspectors

Al Walid

15 inspectors
3 cars
Quiet border, goods coming mainly from Syria. Mainly night work.
Goods : Wheat, salt…all produced in Syria or some are imported trough Lattakie
(Also some Lebanese products)

General information
Sampling – always – analysis – case by case (risk management by they)
There is no airport is Zakho
If goods do not fit for human consumption it can not be authenticated.
Lloyds is proceeding to benchmark with exporter. Fully inspect new exporter or if problems are suspected. Lloyds seem s to apply some risk managment.
9 main foods products imported: Wheat / sugar / Rice / pulses / Baby milk powder/ vegetable gee / Adult milk and cheese / toilet soap liquid detergent
Lloyds is hired 2 IT people in Iraq for all sites.

Les

Notes =
- CVs of Lloyds agents eager to work with us will be available after contract signature
- Lloyds procedures as well as UN operations manual will also be made available to us after contract signature
- The [illegible] are in excellent condition, well maintained and well managed – Catering is fine
- [illegible] cars are not necessary. Petroleum engines –
- Additional series – Some coteca inspectors should have experience in electricity contracts (to verify progress reports of such projects as the Russian all Hassiriyah 18 mois rehabilitation contract)

(6)

HA006407

Pruniaux André

From: Pruniaux André
Sent: Thursday, February 12, 2004 1:40 PM
To: Saliba Joe
Subject: RE: FW: UN No. S/AC.25/2002/986/OC.1001983

Joe,

Thanks. Which 'port area' is Ron referring to?

André E. Pruniaux

Tel Abyad Syria – Darmo[illegible] Al Walid / Al Tanf

-----Original Message-----
From: Saliba Joe
Sent: Thursday, February 12, 2004 12:27 PM
To: Pruniaux André
Subject: FW: FW: UN No. S/AC.25/2002/986/OC.1001983
Importance: High

Andre,
For your information. I will keep you posted.
Joe Saliba

-----Original Message-----
From: A Coins
To: keitht@baghdadforum.com
Cc: "A Coins" <coins; ""Frost@mx3.un.org; Gary" <gfrost; "[illegible]@mx3.un.org; James " <warlickj; joe.saliba; cotecna
Sent: 2/12/2004 10:09 AM
Subject: RE: FW: UN No. S/AC.25/2002/986/OC.1001983
Importance: High

Hi Keith,

I can confirm that all traffic has been stopped by the Syrians since this
morning. Our inspectors report that [illegible] trucks are now lined up to beyond
visibility". Nobody is giving us with any explanations. Perhaps the
US Embassy here in Damascus has this information, or can make enquiries at
a senior level to determine this.

Any impact of this closure on authentications will occur in 15 days time
due to the backlog on processing them. Doing inspections right now will
present challenges as well, as the port area is already apparently filled
to capacity. We would have no way of knowing if an inspected truck did actually enter Iraq, or turned around and went home.

Sorry to be the bearer of bad news,

Warm regards,
Ron

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HA010637

1

14 inspectors always on site plus replacement during holiday : Total 18
Transaction in Kurdish currency.
Mostly Kurdish/Turkish trucks to inspect with goods of Turkish origin.
OC letter must be provided to IIA at Zakho with CMR transportation documents, packing list, and driver passport.
After authentication goods are escorted from the Turkish border at Zakho to Iraqi border 70km from Zakho after crossing the Kurdish territory.
Lloyds has Swedish customs officers team leaders ; some inspectors are Swedish and Norwegians, Security agents are British
Trucks are not always unloaded, inspectors are taking samples. Count only high values goods (ex : Generators, compressors…).
Samples are sent to Amman for analysis.
Lloyds own 3 cars in Zakho (one local, one for sample dispatch, one to escort to Iraqi border). Cars are driven by Iraqi drivers (50 USD/ month).
Gulf catering is providing food.
Prefabricated and local houses are used by Lloyds
This site is mostly day time work.
Phone communication is by satellite.
Sat Phone Back up systems are needed in case of breakdown.
2 sat phones per site are needed, one for voice and one for data.
Temperature is hot in summer and cold in winter. Heater and air conditioner are needed.
Lloyds has excellent contacts with UNICEF in ERBIL.

Umm Qasr

3 seaports
Very hot up to 62 degrees at time, very dusty, extreme conditions.

Main one is New port
Goods : Rice (Vietnamese, Chinese origin), Sugar(FR, BR), salt, pumps, spare parts in containers

Silo port
Goods : Wheat (CAN, USSR, US), boats are unloaded and loaded on trucks
Rice bagged
Poor quality equipment
Weight bridge available at each port. For wheat Lloyds is using manifest figures because hoppers do not give proper figures.
Documents provided : OC letter, Packing list, manifest , certificate from port of loading (Commercial quality certificates are sometimes available)
IIA are not allowed to provide any authenticated figures to suppliers and preferably do not contact directly supplier, but only trough UN-NY.
2 inspectors /ship
Samples are taken with Iraqi customs officers. Tools used are more efficient
Samples are sent to Sharjah by DHL or UPS via Kuwait (UNICOM authorities)
Lloyds to use their land mail system to transport.
Several ships can fall under one OC letter (Ex Bulk)

Reciprocally several OC letters for one ship (Ex containers)
Goods can be authenticated only when ship is fully unloaded.

11 inspectors already present therefore total of 15 Lloyds inspectors is necessary.
Lloyds camp is located in New port (45mn Basrah).
Inspectors can have access to UNICOM shops and areas.
Site can only be reached via Amman
Food is provided by Gulf catering
Camps are prefabricated buildings manufactured in Jordan and Lloyds rents some local houses. Note - all camps are in excellent condition and include bed/TV facilities, etc.
2 persons in each cabin (Bathroom)
One mess, and one office for leisure.
Local water can not be consumed.
Generator backup in case on electric national network failure.
Sat phone are necessary as network is not reliable enough
Kuwait mobile phones woud work in the area (But not allowed)
3 cars available.
All Data is UN property, all containers come from Dubai where goods were containerised.
Note - No control in Dubai and Kuwait

Baghdad

Manager : Senior Swedish customs officer. Excellent (When on leave, he is replaced by another Swedish)
Regular Connection with UN and Ministries
Administration tasks (Visas, permits…) Occasionally performs inspection. Certain trucks may escape control at Al Walid or Trebil and arrive in Baghdad with no authentication. The manager will analyse to understand what happened . He will call an inspector from Trebil and authentication will be performed in Trebil -
Monthly meetings held in Baghdad with all team leaders, Chief LO and UN units involved

Mini-M Satellite phone is available / Or UN phone and E-mail can be used
Lotus mail client, global database available in Baghdad
One car-[redacted]er, no secretary ([redacted]) - He is alone

Iraqi not allowed to rent a house
Officers settled in Al Rashid Hotel (Around 40usd/ night)
Will move in an camp called Canal Hotel
It is not allowed on Iraq territory to have local clerks, secretaries, etc…

Trebil

This site is only a border, there is no town. Well erected and in excellent condition
Camps are prefabricated houses from Jordan - Gulf Catering
Satellite TV, gym, …. Are available for entertainment
Inspection are performed by Iraqi customs and afterward by IIA.
Most problem at this site
4 cars

This unit is dependant on the information we will provide when goods arrive in Iraq.
Procedures between IIA and MDOU have to be defined, since nothing is implemented for the moment.
Unit financed by Oil for Food program
CAO,
GOU(Geographical observer Unit),
TRUST FUND.

In Erbil 13% account
Note: In the north, aid is provided by the following organisations
UN structure is different due to specific political problems
Ex : UNCGI

WFP: World Food Program
Distribution of food in the north, imports, warehouse, distributes...

WHO: World Health Organisation, KIMADIA (iraqi state company which [illegible] all medicines, pharmaceuticals...) in Baghdad.
Centralised buying organisation for medicines and medical equipment / Authentication / warehouse / quality control / distribution.

FAO:
Import Pesticides, herbicides,...
Tested prior shipment by UN
Covers ~~Undertake~~ north part of the country.
Sensitive for IIA, delays are to be avoided.

UNICEF
UNESCO : Education
UNDP: Electricity
Nutrition section, Dr [illegible] water/sanitation (snaples tested prior shipment)
Oil spare parts (500 per [illegible] we will have to authenticate, Saybolt will observe.
Procedures are [illegible] by UNOPS.

Resolution [illegible]

Oil for humanitarian supplies and spare parts
[illegible] chair the Security Council in some 5 months.

Time is divided in 6 months PHASE, for an amount of oil sold goods can be purchased.
We are entering Phase 5, last phase ended 30 November. The first 2 Phases covered 2 billions each , now each phase is some 3 to 5 billions (maximum)

Authentication can be performed on letter OC opened on previous phases:
1. Long delivery time
2. Several partial shipments.

(2)

UN will provide us with all their databases updated. Lloyd is supposed to hand over all hard copy of physical inspection documents filed in Iraq. In fact some shipment under phase 1 (1996) have not been completed yet (partial shipment).

Distribution plan: Define number of items that have to be imported per phase and the amount of money per sectors.
After negotiations UN SG approves DP (document prepared by Iraq).
For Each letter OC (Copy attached) a communication number is attributed
COMM.NO
Data is entered in Lotus notes, and replicated to each lotus clients.
UN gives approval for qty according to DP (DP amendment is possible)
IIA authenticates goods and advises UN
LC can be used for payment after Treasury authentication.
UN can decide payment priority, this affect order in payment. All Humanitarian supplies are preferred.
(See Flow chart)

Other general information:
No interpreters, translators are provided
Lloyd's Customs team leaders are paid 4500 GBP on a 6 [illegible] basis. Every 6 weeks inspector takes 2 weeks holidays in his home country (Tickets paid by Lloyds)
Therefore the GBP 4500 amount covers 8 weeks.
Basic inspectors are paid 3000 GBP per 6 weeks. In addition they get some 30 USD per day and per person plus a discretionary bonus for team leaders.

According to Jonas Larsen, goods on trucks [illegible] are not unloaded for inspection, only samples are collected for analysis.

Timing : From OC date of [illegible] Customs Officer, get 48 H to validate document, and from date of receipt in [illegible] get 24 H to release goods (unless problems).

Copy of OC letter [illegible] to be presented to us at border by transporter.

Note: According to IIA, if sanctions were lifted today, the backlog for phases 1 to 5 would at least [illegible] one year to clear all (already) approved transactions.

[illegible] are [illegible] Cut strictly limited to Oil-for-Food matters such as

Contacts information

Mr James Sutterlin
Mr Jomas Larson
Mr Andre Pruniaux
Mr John Broadhurst
Mr Alexis Poitevin

Zakho North

the Umm Qasr Port Manager.

The combined information obtained by Cotecna has now persuaded me that the boats were delivered just prior to the war and should be authenticated.

I understand that Captain Gaughan is currently in Umm Qasr. I would be grateful if he can verify Captain Ali's account as a matter of urgency as the supplier has been waiting for 7 months for payment. If no response is received by Monday 20 October 2003, I shall advise Cotecna to proceed with the authentication.

We remain concerned about the current whereabouts of the boats but if there is sufficient proof that they were delivered to Umm Qasr, our mandate requires that they be authenticated.

Many thanks and regards

Felicity

U Coins@OIP
10/10/2003 02:26 PM ZE3

To: Johnston@un.org @ UN-MAILHUB
cc: haugk@un.org @ un-mailhub, pulse@life.pl@un-mailhub
bcc:
Subject: Re: 2 Tug Boats with Comm# 702091 LC#U728225

Dear Felicity,

Please be advised that we had a meeting with Dr Alaa Elbadry today.

Venue: Cotecna offices, Port Rashid Terminal, Dubai
Time: 11h00
Present:
1. Dr Alaa Elbadry, representing Petromann International
2. H. Araie, TL, Cotecna
3. C. Grushenkov, Cotecna, ADTL
4. M. Maandhui, Cotecna, Arabic Speaker, translator

We called Mr Aziz Rustom, who is the Deputy General Manager, Iraqi Ports. Telephone 00 964 404 1 4597 [illegible] 964 783 9124, mobile.
He confirms telephonically that the two boats in question were received by Capt Ali who still works as
port Ops Manager.
He further stated that he will sent a fax to OIP, confirming in writing that the tug boats were [illegible]
He said that within [illegible] days, a fax will be sent to us.

I questioned him, as to the whereabouts of the tug boats are now. To this, he said [illegible] no idea.

We [illegible] Capt Ali, who stated that he had received the boats, on/around [illegible] March, and that he had seen them.
I asked if he had recorded their entry into a Port Log Book, to which he stated, yes.
Upon requesting a copy of the log, he stated that the port offices were looted and damaged, hence no documentation is now available.
I questioned Capt Ali on the whereabouts of the tug boats. His reply was that, he left the port prior to the war, and can only assume that they were destroyed, as he assumes that they were taken by the then Iraqi Navy/military. A fax was sent to OIP with this information.

During our meeting, we had a few telephone calls from Mr Mohammed Bindura, from Amman, Jordan, who is a partner in Petromann, and stated his case as well. Basically, the information he provided, is what we have on hand.

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United Nation : Iraq Oil for Food Program

Meeting Wednesday 16 of December 02

A. UN organisation and procedures

Mr John Almstrom
Mr James Sutterlin
Mr Jonas Larsen
Mr Didier Sabroux
Mr Andre Pruniaux
Mr Alexis Poitevin

General information

-Iraq 23 millions inhabitants (Kurds 2.5 millions)
- IA briefly described previous SC resolutions, 661, 687, 778, 986
- IA explained political situation regarding Kurd zone, ZAKHO Area is managed by 3 Kurd Governors, this is called the 3 northern governorates 2 main political zones.
UNGCI is assisting in providing security guards from Kurdish IDP people (Financed by international donations).
-Reliable polish Medical support in Kurdistan, as well Hospital in Umm Qasr / Contractor is responsible for his medical supply. In case of emergency UN support can be provided trough UNGCI (Mr Setthaye).
-Electricity provided by generators, water comes from Amman (Trebil). Drinking water only in bottles
-UN aircraft is not available for Independent Inspection Agency(IIA) excepted with specific authorisation in emergency situation (UN aircraft can land in Habbanyia).
-Iraq entrance for IIA is Trebil for Staff and equipment.
-All equipment imported into Iraq has to be submitted to 661 Authorisation. Letter has to be submitted in NY to Cotecna.
-For transportation passes, application has to be requested in Baghdad.
-UN has good relationship with IRAQ government and administration. UN is willing to help IIA to get all necessary authorisations (Visas, travel permits,....).
-Spare parts [illegible] is new / Purchase for Government of Iraq / IIA authentication planed / Inventory system will have to be provided to Sayholt and MDOU.
- UN ID Card will be provided by UN in Baghdad for inspectors and LOs.
- Water [illegible] is extremely deep (1 ft = five 60 litters!)

The organisation for IRAQ (Chart OIP In Iraq) 986 Application

UNGCI in Baghdad / Operation field / Manager Mr Von Sponick
Co-ordination UN units

In Baghdad
MDOU: Multi Disciplinary Observer Unit / Manager Mr Odeh (Canadian)
15-20 people
Check : if supply is distributed equitably / efficiency / adequacy

(1)

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Attached below is your final draft of our letter to the Committee which resulted in Colecna being authorized to authenticate stranded goods provided there is a prima facie case that the goods were delivered to [illegible]nq. We are not required to have confirmation of arrival from CPA for anded goods - this is only the case for goods authenticated under the ad hoc system and for goods arriving in Umm qasr under the revised Authentication system.

I am naturally concerned that the agent lied to us and that we have no idea where the boats are at present but we do appear to have a strong a case that the goods were delivered as we had for the other stranded cases.

The supplier is in a state of rising hysteria and claims to have been losing $3,000 per day for 7 months. I am trying to avoid calls from the supplier on the days I have nothing to report but he is calling my office number and cellphone some 50 times a day which is very vexing. They are despatching a further agent to meet with us on Wednesday in the presence of the mission.

I would very much appreciate it you can give some consideration as to what we might do if we are not prepared to authenticate. There is no hope of getting any meaningful assistance from CPA I fear. We can discuss it on Monday if you like.

[illegible]ny thanks

Felicity

(See attached file: Authentications-stranded-030503.doc)

----- Forwarded by Felicity Johnston/OIP on 24/10/2003 [illegible]:22 -----

"Lennon Peter S. (O-6)" <lennonp@orha.centcom.mi[illegible]> To: "Felicity Johnston" <johnston@un.org>
cc:
Subject: RE: 2 [illegible] with Comm# 702091 LC#U728225
24/10/2003 07:15 AM

Felicity: Just returned to the port, I discussed this with John Gaughan and ABSOLUTELY NONE knows about these vessels. Where do we go from here? Pete

-----Original Message-----
From: Felicity Johnston [mailto:johnston@un.org]
Sent: Wednesday, October 22, 2003 11:55 PM
To: Lennon Peter S. (O-6)
Subject: 2 Tug Boats with Comm# 702091 LC#U728225

Dear Pete

I anxiously await your feedback on the tug boats.

The supplier and his representatives are now calling me hysterically morning, noon and night and claim to be incurring huge interarest charges on a daily basis.

[illegible]ur assistance will be greatly appreciated.

Best regards

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Felicity

----- Forwarded by Felicity Johnston/OIP on 22/10/2003 04:50 PM -----

Felicity Johnston
To: "Lennon Peter S. (O-6)" <lennonp@orha.centcom.mil>@UN-MAILHUB
18/10/2003 12:50 PM
cc: "Felicity Johnston" <johnston@un.org>, "Von Tersch, Robert L. (O-4)" <vontierschr@orha.centcom.mil>, "Wayne, Victoria P. (SES)" <waynev@orha.centcom.mil>
Subject: RE: 2 Tug Boats with Comm# 702091 LC#U728225(Document link: Felicity Johnston)

Of coursn and thank you - Pete

Best
Felicity

"Lennon Peter S. (O-6)" <lennonp@orha.ce[illegible]ntcom.mil>
To: "Felicity Johnston" <johnston@un.org>
cc: "Von Tersch, Robert L. (O-4)" <vontierschr@orha.centcom.mil>, "Wayne, Victoria P. (SES)" <waynev@orha.centcom.mil>
Subject: RE: 2 Tug Boats with Comm# 702091 LC#U728225
18/10/2003 12:14 PM

Finally spoke with John[illegible]an today regarding this issue. He's been trying to track down [illegible] Captain of the Port to verify the claim, but due to some other [illegible]ons, has been unable to contact him. He will continue try to get [illegible]er. I plan to be in Umm QasrTues and Wed?can we beg for a[illegible]ditional[illegible]uple days? Thanks, Pete

-----Original Message-----
From: Felicity Johnston [mailto:johnston@un.org]
Sent: Wednesday, October 15, 2003 4:40 AM
To: Lennon Peter S. (O-6)
Cc: u coins; mathevet@un.org; zarif@un.org; haugk@un.org; pulse
Subject: Re: 2 Tug Boats with Comm# 702091 LC#U728225

Dear Pete

Further to our earlier correspondence concerning the tug boats, please see the attached report from Colecna regarding recent conversations the team leader Dubai had with the supplier, the Deputy Manager of Iraqi ports and

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All the above documents, duly stamped and signed, confirm the delivery of the tugboats, with no remarks to the contrary.

I further, refer to an email, dated 02/10/2003, in which our then Liason officer based in Baghdad, stated that he had received a signed document by Mr Aziz Roustomon behalf of the General Manager for Iraqi Ports. Another official by the name of Mr Ali Mohamad Ali Nassif MOU Manager at the Ministry of Communication in Baghdad, was also present at this meeting, and that both the officials are legible for issuing statements.

Under the stranded cargo rules, these documents, together with receivers confirmations, independent verbal confirmations, which are on record, there is a "prima facie" case for authentication, that the goods were delivered to Iraq. We are not required to have a confirmation of arrival from CPA for stranded goods.

One of the main issues we tried to, isto locate the said boats, or obtain information on there whereabouts.
This was not successful, and the response from the Iraq officials, was that, it was perhaps used the war, and/or taken by Iraqi Navy, and/or sunk. These are their speculations, now ours.

I note further that on an email dated 24/10/2003, a letter was submitted by the Supplier in Arabic, to which a translation was done, stating that e said tugboats and spares were received.
..ne letter had two officials named as:
1. Engineer Abdul Razak Ali Kateh
2. Aziz Roustom Mohamad
Both of Iraqi Ports.

Therefore, with all the above information, there is a "prima facie" case that the said cargo was
delivered to Iraq, under the rules of "stranded goods".

Based on all the information, written and verbal, and the issuance of documents from the Receivers that the said shipment was received by them, my judgement, based that the cargo was delivered to Iraq, under - "stranded
goods", a "prima facie" case exists for authentication.

That is all I have on this, most difficult and problematic case.

Kind Regards

Hamid Araie

From: Farid Zarif@OIP on 25/10/2003 01:28

To: Felicity Johnston/OIP@OIP, U Coins/OIP@OIP@UN-MAILHUB
cc: cotecna@go.com.jo, Pruniaux André <andre.pruniaux@cotecna.ch> @ UN-MAILHUB, Saliba Joe <joe.saliba@cotecna.ch> @ UN-MAILHUB, Darko Mocibob/OIP@OIP, Karl Haug/OIP@OIP, Jason Abrams/NY/UNC@UNHQ

Subject: Re: Urgent - Sit rep on the tug boats (Document link: U Coins (OIP))

..kay, Fiss, let's meet sometime on Monday. Meanwhile, I am asking Cotecna if they would feel comfortable, on the basis of their professional

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judgement and in the light of the verifiable information available to them, to make an independent decision on authenticating the arrival of the tug boats in Iraq. Thanks. FZ

Felicity Johnston
24/10/2003 05:04 PM

To: Farid Zarif/OIP@OIP, Darko Mocibob/OIP@OIP
cc: Karl Haug/OIP@OIP
Subject: Urgent - Sit rep on the tug boats

Dear Farid

As per the attached e mail, CPA is unable to add anything to the equation and I am unsure how to progress.

Latest is that the supplier submitted a letter to us in Arabic the translation of which is as follows:

Greetings,

..ndly be informed that the following has been received;

Two Tug Boats with Spare Parts
2 Tug Boat: 4000 HP with Spare Parts from Petroman Corporation at Umm Qasr on 16.03.2003, at berth No 3 In accordance with contract No 702091 LC 728225 and we assure that the former Iraqi Army has used the Tug Boats during the war.

Engineer Abdul Razak Ali Kateh
General Manager
General Company for Iraqi Ports
(no signature)

Signed on behalf of the General Manager
Aziz Roustom Mohamad
Manager of Warehouses and Purchase Department
(illegible signature)
(round seal)
(Ministry of Transport and Co... ...
General Company for ports of Ir...

At a meeting bet... ...na and Mr. Mohamed ali Nasif, MOU Manager at the Ministry of Comm... ...s in Baghdad earlier this summer, Mr. Nasif had indicated that Mr. A... ...d be the appropriate person to provide confirmat... ...f the ar... ...of the vessels.

Becau... ...originated from the supplier it was considered necessary to co... ...au... ...nticity.

Cotecna... ...s to Mr. Rustom on 10 October who confirmed that the letter was genuine and that Port operations manager, Captain Ali, had received the boats.

Besides the documentation presented by the supplier in support of their claim we now have verbal and written communications from the port authority that the boats were received.

The supplier had employed a rather slippery agent to handle their case (since dismissed) who stated that the boats had sunk. I am inclined to ...lieve that this was stated in a moment of madness to try to speed things ...p and had absolutely the reserve effect.

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Pruniaux André

From:	Farid Zarif (zarif@un.org)
Sent:	Monday, October 27, 2003 6:06 PM
To:	U Coins
Cc:	Pruniaux André; cotecna@go.com.jo; Darko Mocibob; haugk@un.org; Jason Abrams; Saliba Joe; johnston@un.org
Subject:	Re: OC 702091- Tug Boats

Authentications-stranded-03050...

Dear Hamid,

I take note of the extensive investigations carried out and the set of evidence and documents gathered, including the email dated 24 October 2003 from the supplier conveying electronic version of an Arabic letter and its translation from two senior officials of the Iraqi Ports Authority confirming that the tugboats and spare parts were received.

I also note your judgement that, based on the above investigation and information, there exists a "prima facie" case for authenticating the arrival of the tug boats that were delivered to Iraq after the withdrawal of Cotecna from Iraq due to security reasons.

In view of the above independent conclusion, Cotecna may wish to proceed with authentication of the said cargo.

Many thanks for all the efforts you and your team have invested in clarifying this very naughty issue.

Kind regards,

Farid

U Coins@[illegible] To: Farid Zarif/OIP@OIP@UN-MAILHUB
26/10/[illegible]06 cc: johnston@un.org@un-mailhub, cotecna@go.com.jo, AM[illegible] Pruniaux André <andre.pruniaux@cotecna.ch> @ UN-MAILHUB, Saliba Joe <joe.saliba@cotecna.ch> @ UN-MAILHUB, Darko Mocibob/OIP@OIP, haugk@un.org@un-mailhub, Jason Abrams/NY/UNO@UNHQ@un-mailhub
Subject: OC 702091- Tug Boats(Document link: Farid Zarif)

Dear Mr Zarif,

Your request for professional judgement, on the email dated 24/10/2003 refers.

This has been a very problematic and troublesome shipment, as we are all aware.
I base my comments without prejudice, and the information is what I have been able to obtain, together with
formation that has been supplied to us.

I view this shipment as a "prima facie" case based on stranded cargo rules.

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Mr Benon V. Sevan's correspondence to 661 Committee, dated 5 April 2003 refers.

We have been doing tracking where possible, on stranded cargoes, and have
ived
up to 35 OC's, with 917 manifested containers, 816 not inspected. Value approx $23 751 989.00.
These stranded shipments were authenticated on the basis of mathematical calculations
and documentary evidence supplied by the Shippers only. We could not obtain any information from the Receivers, nor did we physically see the cargo, as they were discharged at Umm Qasr, without our inspection.

In this particular case, the same principles need to be applied. The shipment was not seen, however, we have the documentary evidence of confirmation of delivery from the Iraqi Ports.
Several telephone communications have been done, together with meetings with officials in Baghdad.
The correspondence files on this shipment, is huge.
We have also done an audit on this companies previous shipments, to see perhaps a track record of their previous shipments as well. Todate, we have authenticated $2,288 500 against previous shipments, with another one currently under
a second inspection on OC 702090, Mooring Boats.

. would to start with the correspondence forwarded to us, from the OIP, Mr M. Ahlin who on 16 May 2003, who stated:
"This cas- is pretty strong with the confirmation from the receiver as documentary evidence".
"I need your input on this if we are going to accept this as enough evidence for authentication".

The Supplier forwarded an "Information Sheet on the stated goods (page 2)". This was receipted by OIP on 07/04/2003, wherein the Shipping Company stated that the said goods
arrived at Umm Qasr. There is a OIP official, I assume, who hand wrote on the document,
"approved, stranded", initialed by "DM".

I was originally very skeptical about this shipment, as I stated this in various earlier emails.
However, after bean requested to check and trace as much as possible, which I did, and after having received the confirmation documents from the Receivers confirming receipt of the goods, a different scene started to appear, once telephonic conversations held with the current Iraqi Port officials.
I refer to various tele[illegible]ls, on 10 October 2003, with Mr Aziz Rustom, Deputy G[illegible]nager, Iraqi Ports, and Capt Ali who is Port Operation Manag[illegible] stated verbally, as well in a statement that he had received the said G[illegible]
A separa[illegible]l was sent to OIP on this, dated 10/10/2003.
This pe[illegible]mployed by Iraqi Ports before the war, and is still there now. [illegible]formation is important, as we evacuated on 17 March 2003, and [illegible]d.

Various [illegible]spondences from the Receivers, ie Ministry of Transport and Communication, General Company for Ports of Iraq, are receipted, and OIP has this information as well.
They include:
1. Muakl Abdul Ghafoor Al_Alosy, Director General, General Company for Ports of Iraq, dd 20/03/2003
2. Aziz Roatum Mohammad, Deputy Director, General Company for Port of Iraq, dd 21/03/2003
3. Capt Ali Adul Hussain Faleh, Umm Qasr Port Operation Manager, dd 28/7/2003.
Capt Ali Abdul Hussain Faleh, Umm Qasr Port Operation Manager, dd [illegible]0/7/2003.

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UN

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME - BUREAU CHARGE DU PROGRAMME IRAQ

THE EXECUTIVE DIRECTOR
LE DIRECTEUR EXECUTIF

REF: ED/2003/661/ 5 April 2003

Dear Mr. Chairman,

Pursuant to paragraph 8 (a) (iii) of Security Council resolution 986 (1995), paragraph 25 of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council resolution 986 (1995), and paragraph 36 of the procedures of the Security Council Committee established by resolution 661 (1990), the arrival of humanitarian supplies in Iraq must be confirmed by the independent inspection agents appointed by the Secretary General as a condition for payment under letters of credit issued for purchases of humanitarian goods under resolution 986 (1995).

On 17 March 2003, the United Nations independent inspection agents (Cotecna Inspection, S.A.) were withdrawn from the Port of Umm Qasr and on 18 March 2003, from the remaining four authorized entry points in Iraq. At the time of their withdrawal, consignments shipped under 56 contract applications, worth a total of $56,912,865.16, were either under active discharge/delivery or reported to have been discharged/delivered soon thereafter, but neither of which have been authenticated so far by Cotecna. As detailed in the attached table, of the total of 56 cases filed, 34 relate to goods consigned to the Port of Umm Qasr, 20 to Trebil and 2 to Al-Walid.

Cotecna inspectors had registered the arrival of 23 consignments and were well into reviewing documentation relating to further consignments, but were unable to complete the inspection process due to the abrupt withdrawal. Based upon direct observations by Cotecna and/or documentary evidence provided by the suppliers concerned, the Office of the Iraq Programme has established that the consignments under 29 contract applications, with a total value of $19,846,457.56, have been delivered in Iraq. Therefore, the Office if Iraq Programme supports the recommendation by Cotecna to carry out a retroactive authentication of these 29 cases.

His Excellency
Mr. Gunter Pleuger
Chairman of the Security Council Committee
established by resolution 661 (1990)
New York

With regard to the remaining 27 cases worth a total of $37,066,407.60, the Office of the Iraq Programme has requested further information and documentations. Should a prima facie case is established on the basis of customs declarations, bills of lading, receivers reports,

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consignment movement reports and/or other pertinent documentation which would satisfy Cotecna to validate the claim by suppliers that their goods were delivered to Iraq, the Office of the Iraq Programme should like to proceed in support of Cotecna's recommendation to effect retroactive authentication of such deliveries, on an exceptional basis. Consignment of supplies reported to have been delivered to Iraq after 20 March 2003 will not be considered in this category.

I should be grateful if you would circulate this letter to the members of the Committee for their consideration of the approach described above, under a no-objection deadline of 7 April 2003.

Please accept, Excellency, the assurances of my highest consideration.

Benon V. Sevan
Under-Secretary-General

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Markovic Tania

'rom: U Coins [coinsu@un.org]
ent: vendredi, 29. décembre 2000 16:56
To: andre.prunieaux
Subject: CONFIDENTIAL

Andre,

As discussed herewith my views on the mission. Apologies for a lengthy report but I feel it cannot be shortened.

Umm Qasr is a unique site in that we are basically doing the equivalent of
Aqaba and Trebil.
This essentially means that procedures in place at other sites cannot be implemented here. A number of Inspectors on the site have previous port experience which is invaluable regarding co-operation with Port Authorities.

Morale on the site is high; present people on the site can be fully trusted
and are responsible.
Umm Qasr is frequently thought of as the best site although working ours
are a lot longer than the other sites (at least 8 hrs/day) due to the independent nature of the job.
Job-wise, a lot is expected of the Inspectors - professional judgement and
evaluation of landed bulk cargo for one as well as daily data entry (weighbridge tickets) and production of Inspection Notes which are sent to
OIP together with Authentication Sheets.
Our present system suits the nature of the job and is working well as has
been confirmed by OIP even though we have had to adapt rapidly many and
varied procedures required by OIP.

Since I have been TL I have instituted the following:

Created a harmonius and cohesive team of pro[illegible] represent Cotecna's interests
Standardised Fax Cover Sheets
Standardised Inspection Notes
Improved Documents checking proc[illegible]
Improved communication between the[illegible]
Improved relations with the port authorities
Improved security related [illegible]
Increased the presence [illegible]
Improved morale of [illegible]

Basically there is a hap[illegible] environment which has improved efficiency although the wo[illegible] has increased 150% since the last contract. [illegible] the site is working well.

How[illegible] disappointed as I feel I get little or no sup[illegible] on operational issues from Amman. On many occasions suggestions from "Amman [illegible] can only be construed as ignorance of port operations.
As TL I have to evaluate how best to utilise the staff complement efficiently within the port, having a regard for Cotecna's and OIP's interests. To this end I constantly keep Amman informed and issues are discussed and agreements made verbally. However, it is often the case that
follow up written instructions from Amman are in contradiction to the prior
verbal agreement for no apparent reason.

While I am constantly striving to improve the operational efficiency of the
site, it appears as if many illogical decisions made by Amman are of no
resistance and impact negatively on improvements I am trying to make.
...aring in mind OIP's obvious approval of our performance in Umm Qasr, I
...nd it frustrating having to deal with unnecessary side issues.
Furthermore important information (such as operational matters discussed with OIP in Nov/Dec) is not divulged at all or is "top secret". Obviously certain information is needed to enable us to operate efficiently and according to OIP's requirements.

It is my opinion that every Inspector is employed to do a job and that it
is the duty of the TL to ensure that people perform their duties thereby protecting Cotecna's interests.
I also believe that it is the duty of the TL to report and act on non-performance and that there is a reasonable expectation that the Contract Manager will take suitable and firm action in such cases.
Unfortunately on the odd occasion during the last 11 months disruptive elements on the site have been transferred. Sadly, untrue accusations made
by resentful people appear to have been taken seriously by the Contract Manager without any reference to my myself.
This has created unnecessary disharmony and rumours that the site is not performing adequately or not being run by myself in a professional manner.
I wish to stress that my criteria for Inspectors is performance and the ability to work in a team, NOT have an active presence in the bar.
...and that support for my decisions and actions is totally lacking and not
what should be expected from a professional company such as Cotecna.

I am bitterly disappointed having found it necessary to write this report
but I honestly feel the above is having a negative effect on the mission and my honest intentions on the site. I am loyal to Cotecna and am becoming
increasingly frustrated with the Contract Manager's indecisiveness and lack
of support which incidentally also serves to undermine my authority on the
site.

I would appreciate your comments.

Best regards

Craig Airey
TL - Umm Qasr

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COTECNA INSPECTION S.A.

CO-INS P.O. Box 6155 - 1211 Geneva 6 - Switzerland
TEL: (00 41 22) 849.60.00 FAX: (00 41 22) 849.62.26

UN SCR-986 PROGRAMME

Minutes of the meeting held in Geneva 29th December 2000
COTECNA S.A /UN SCR 986 Programme contract – Iraq

Participants:		
	Robert Massey	Chief Executive Officer
	Andre E. Pruniaux	Senior Vice President
	Milan Radenovic	Contract Manager
	Joe Saliba	Ass. Contract Manager

Meeting was to emphasise and clarify in details the scope of work in Iraq, administration, Field, personnel, technical and procedures.

A- Administration: Contract, Sites structure - Contract Manager (Amman) Report to AEP
- Assistant contract Manager (Geneva) Report to AEP
- Liaison Officer (Baghdad) Report to Amman/Geneva
- Team Leader, Deputy T.L and Acting Deputy TL

(Sites) Report to Amman/Geneva.

B- Field: Four sites are run smoothly i.e. Management, inspection, personnel, IT and communications.

C- Recent correspondence from suppliers to sites and Geneva enquiring about their goods if inspected and authenticated has highlighted Cotecna's position and activities in Iraq.

D- Complaints were made against Cotecna delaying authentication consequently experiencing delays in payment from BNP Paribas for goods shipped to Iraq. In fact it is based on very little information on Cotecna's scope of work in Iraq and contractual obligations. Therefore it was suggested (AEP) that a standard letter to be faxed/sent to whom is enquiring/complaining about Cotecna's work. A draft was sent to OIP for their approval on the said letter.

E- UmmQasr in particular is experiencing operational delays in the port due to broken down equipment i.e. only forklift which is an old one and scarcely working. The recent increase of workload due to constant arrival of ships has created a backlog thus an average of 10% of arriving containers waiting to be inspected at one stage. Also some of these containers have insufficient paperwork consequently inspection cannot take place until proper paperwork is submitted, therefore goods to be released and authenticated.
Despite Cotecna's proposals to UN- OIP-NY, the procedures have been maintained- goods are authenticated only when they leave the port (although they have been inspected earlier).

F- UN 661 committee released all applications for cranes to Iraq, virtually few of these cranes to remain in the UmmQasr Port to replace the current ones.

G- Once goods are authenticated, sites report to OIP by signed faxes on a weekly basis unless instructed to do otherwise for a particular case i.e. (enquiry through a permanent mission), OIP control and add any other information to all reported comms, then passed to treasury whom confirm and pass to BNP for payments, it could take two to three weeks from the day OIP receives authenticated items to BNP releasing payments.

H- Email Authentication is presently running in parallel with faxing on all sites. Once it is proven accurate, sites will be instructed by OIP to switch fully to Email Authentication. The full switch is anticipated in January 01.

2- Personnel:

A- As of inspection teams in UmmQasr we have 9 teams entailing two inspectors constantly and whom are responsible for the allocated ship since arrival until departure, therefore could take one to two weeks on one particular ship with an average of 40 containers to be checked, inspected and authenticated providing that there is no missing papers or complications with the ship, whereas other sites have shift basis involving 4 to 5 inspectors and one in the front office daily.

B- As of Data shift, each site has a minimum of two people on shift and responsible for data entering and reporting daily and weekly.

C- OIP has agreed to have additional 8 inspectors that Cotecna proposed to cope with the workload on sites in particular UmmQasr, thus we will have a minimum of 62 permanent inspectors on sites instead of 54, with 21 inspectors in UmmQasr. Total inspectors will be increased to 81 as of February 2001.

3- Technical and Procedures:

A- Weekly report to be copied regularly to OIP.

B- Monthly report for Iraqi Operations to be defined and submitted regularly to RM/AEP.

C- Copy of sites Procedures enclosed.

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handling equipment, many examples of cargo, stocked end to end exist in the port. We are not able to examine these. The mere arrival of goods in the port, discharged from ships, does not necessarily constitute formal report to us as these goods often remain in the port for weeks or months. We do endeavour to inspect such cargo during this period. However, we do not assume responsibility for not inspecting cargo that has subsequently left the port without our knowledge. We cannot and as instructed by UN-OIP will not authenticate such cargo. We do consider that "reporting of cargo" (for the purpose of authentication) takes place at the time the goods are presented to us upon leaving the port.

3. Dejan's statement about "cargo reported to Cotecna" needs clarification, since it could mean that formal notification has been issued by the transporter that this particular cargo is about to leave the port area. This notification is always provided to Cotecna by the Port Authorities. Consequently, when Dejan mentions, "leaving without inspection", we consider that **unreported cargo.**

4. As previously stated, Cotecna's inspections in the port area were initiated to try to relieve the congestion in the port and assist the port authorities. However, such assistance can only be done when the port authorities formally advise Cotecna that goods [illegible] **the port and are entering Iraq.**

5. While we will continue our efforts to facilitate and assist [illegible] authentication of goods, we are limited in that we must rely on the appropriate Iraqi authorities.

   Please note that some of the cases of shipments [illegible] Port without inspection" date back to April or May of 2000 (notably, Ministry of [illegible]tion shipments of school desks).

6. Our procedures, as supported by UN-OIP, [illegible] that we will authenticate goods that were inspected by us. We do not, however, feel that it is appropriate or within the mandate as supported by the MOU to authenticate goods where we were at least not given the opportunity to inspect. We do not enjoy any law enforcement capabilities to "prevent" such actions but must rely entirely upon cooperation of the authorities.

7. We are continuing daily dialogue with Port Authorities to enhance the communication exchange with regard to goods being removed from the port. We note, however, that the majority of cases of goods removed without our knowledge are goods consigned to SOMO and the Ministry of Education. When we ask the Port Authorities for explanations of such discrepancies we are told by them that "SOMO (or MOE) said that these goods were examined by Cotecna – clearly not necessarily the case".

Finally, the [illegible] approval by UN-OIP of additional inspectors in Iraq (as requested by Cotecna in [illegible]ber 2000) will enable us to better respond to the important increase of traffic, in the [illegible] Umm Qasr. In addition, we understand that better equipment is expected in the [illegible]. We are, therefore, trying to have a proper inspection area as well as a dedicated [illegible].

We will continue to keep you closely informed. However, kindly let us know if you have any other concerns or comments.

Best regards,

André E. Pruniaux
Senior Vice President

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COINS

COTECNA INSPECTION SA *Umm Qasr* UN SCR-986 PROGRAMME

Fax

Date:	**13 January 2001**
To:	Cotecna Geneva
Att:	**Andre Pruniaux** 13/01/01
From:	Craig Airey
Subject:	Containers Leaving the Port without Inspection
Our Ref:	UQF/01/17
Pages:	1

Dear Andre

I refer to the e-mail sent by Dejan on the above subject.

Admittedly, there has been an increase in the number of containers which have left the port without inspection. However, my feeling is that we are doing our best to minimise this.
We have put in place various procedures but are being hampered by the lack of port equipment and poor co-operation from receivers. There are 2 Receivers, SOMO and MOE who are repeatedly lying to the container office, saying that goods have been inspected when they haven't.

Basically I feel that the 986 programme has been going for a number of years and all parties concerned are fully aware of the requirements i.e. goods must be presented to us for inspection.

I feel that it is unfair for us to push the blame onto us. More pressure should be put on Iraqi receivers to adhere to the procedures. From my side I will not authenticate any goods which have been taken without inspection nor do I feel that we should inspect at destination as this will only encourage receivers to continue taking goods without advising us.
However, if suppliers are not getting paid they will put pressure on receivers to act in the proper manner.

Best regards

Craig Airey
TL Umm Qasr

COTECNA
13 JAN. 2001
UNSCR 986 PROJECT
UMM QASR

0041 22 8490928

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<- MR - NH - JS

Felicity Johnston
09/02/2001 06:36 PM

To: Carl de Cruze/OIP@OIP
cc: Dejan Radojevic/OIP, Herve Mathevet/OIP@OIP

Subject: Re: RFP Cotecna

Some thoughts that the ED's office may wish to consider including in the scope of work section of the RFP.

The overall performance of the current contractor is good and there are no key personnel issues we need to raise. Cotecna has been slighly slow in the area of IT development in Iraq and is taking steps to remedy this situation. EDP has made a separate contribution regarding OIP's [illegible] with Cotecna.

1. Reports authenticating the delivery of goods should be received by the contractor to OIP on a daily basis.
Since the inception of the programme authentications have been reported to OIP by the Independent Inspection Agent on a weekly basis. This procedure generally involved the contractor faxing thousands of shipment inspection reports to OIP. The four sites each reported authentications on different days so as to stagger the procedure. In late 2000 Cotecna commenced electronic authentication. Shipment Inspection reports authenticating the delivery of goods are currently being mailed to OIP on a weekly basis. The contractor will imminently be transferring to daily authentication from all sites and this should be a stipulated condition of the scope of work.

2. Contractor should maintain a staff compliment with appropriate skill sets
The contractors staff should contain a high percentage of customs officers. Staff from a non-customs background should have skills pertinent to examination e.g electrical engineers.

3. Contractor should deploy staff, as appropriate, to authenticate the provision of services
Many contracts contain service elements which require special authentication procedures such as on site inspection to verify that services have been performed, before authentication may take place.
Deployment of this nature is covered by point 2. above. The contractor should recruit staff capable of making a professional judgement that services have been performed in accordance with the contract.

4. Contractor should not reject any consignment without prior consultation with OIP
The contractor should bring any cases involving expired approval letters, presentation at a point of entry other than that specified on the approval letter, obviously damaged cargo or deficient paperwork to the attention of OIP immediately. Attempts to resolve such cases with the transporter rather than with the supplier through the appropriate medium of OIP and the Permanent Mission tend to lead to cases where cargo is rejected as the transporter proceeds with the delivery in spite of reservations raised by the [illegible] authentication procedure may not, in such cases, go forth and the supplier does not receive payment.

5. Contractor should arrange for the timely laboratory testing of food stuffs
This is an area where OIP has always mainatained pressure upon the contractor and it may be useful to include it in the scope of work.

6. Comments on the original scope of work
- Para. 2. Line one should read - the contractor shall provide up to 62 Agents as per OIP's agreement with Cotecna of January 2001
- Para. 3. The reference to quality inspection should be removed. The contractor does not have a

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COTECNA INSPECTION S.A.
P.O. Box 6155 - 1211 Geneva 6 - Switzerland
58, Terrassière - 1207 Geneva
TEL : (41-22) 849.69.00 TLX : 413 107 COT CH FAX : (41-22) 849.69.39

CO·INS

FAX

Date : 15 January 2001 *URGENT*

To : Felicity Johnston / Dejan Radojevic
UN-OIP New York
Fax No. : 00 1 212 – 963.80.83 (00 1 212 – 963.60.90)
Copy : Mr. Farid Zarif
Chief Contracts Processing Section
Fax No. : 00 1 212 - 963.59.47 / 80.83 (tel.: 00 1 212 - 963.87.93)
Milan Radenovic – Cotecna Amman
Craig Airey – Cotecna Umm Qasr
Goran Ciric – Cotecna Trebil
Joe Saliba – Cotecna Geneva
From : Co-Ins Geneva/AEP
Page(s) : 2
Our ref. : 012/jb
Subject : Left Port without inspection
Dejan Radojevic's e-mail to Goran Ciric of 11 January 2001

Felicity, Dejan,

We have thoroughly analysed the content of Dejan's e-mail of 11 January 2001 and I wish to comment as follows:

1. The Umm Qasr team, in response to the increased congestion of cargo in the port proposed to be proactive **and to inspect the incoming cargo in advance of the formal presentation of the goods for inspection prior to removal from the port. However, authentication of such goods is done only after goods are removed from the port.** It should be noted again, that some 11[illegible] containers were landed in the Port of Umm Qasr in 1999 whilst some 27'000 containers were landed in 2000.

2. The procedures as we understand and as confirmed by UN-OIP are that authentication is based principally on documentation presented by the supplier / transporter agent at the time the goods are being entered into Iraq. This is quite straightforward at land border crossings such as Trebil, Al Waleed and Zakho. Umm Qasr, however is somewhat special since **authentication takes place only after confirmation that the goods have entered Iraq i.e. have physically left the port area.** As you also are aware, authentication is also done on **some goods that are physically not inspected.** Authentication, as confirmed in the MOU may be done upon the presentation of documentation and when possible after physical examination. The key element to authentication is notification by the supplier / transporter (plus in the case of Umm Qasr by the Port Authority) that goods are being entered. **We do not authenticate goods that are not presented to us.** We are of the opinion that the decision as to the **practicality or physical availability** to examine such cargo is ours to take, and does not limit us in authenticating presented cargo as long as we are convinced that the documentation presented to us reflects the cargo. We cannot be held responsible for cargo leaving the port without inspection, as we would consider these goods as not having been

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of them are barely literate but they are working to live and it is important, (while their responsibility as an agent of the supplier) that they are aware of their requirements of reporting. This is where you

come in. I know by my visits to the sites that you all do a lot to facilitate this, but sometimes non-reports are out of your control and other times they are due to a lack of control. This is where shared responsibility comes in and as long as you recognize it, you will have OIP
support in resolving these cases. Resolutions do not come about by covering one's backside while burning someone elses. Genuine cases of non-reported cargo will be supported by the appropriate advice from Felicity/Dejan

Rejections: I think that sometimes there are cases where rejections take
place too quickly. Please take the time to determine what is required and
if necessary, call Dejan or Felicity for the necessary advice. Be judicious, as well in using the term "rejected" as this is something that
will need to justify at some point.

As you know the Programme is one that has been imposed on the Iraqi Govt.
They do not necessarily celebrate the success of your efforts. In fact your efforts are often frustrated by and through actions by others outside
of your control. In addition, as the Programme has evolved, your respective responsibilities have increased. This increased workload brings additional frustrations. Changes in POEs, non-reported cargo, less than complete or accurate documents, the corruption in Umm Qasr are all
issues that put pressure on everyone. Dejan included because he has to face the Missions on the front-line here in the capital on your behalf and also
explain why cargo has not been authorized because the receiver refuses
to remove the goods form the port. None of us should fall into the
trap of taking these frustrations out on our colleagues. We work together
to make the Programme work. I will always expect that everyone involved,
Coalcna & OIP will conduct themselves as colleagues and respect one
another.

Lastly, we have had some complaints expressed to me regarding the less than
gentlemanly treatment of drivers by some inspectors. Drivers, (as are all
other people) for those of you who have had the pleasure of working with them in Customs environments, are if fact human beings deserving of common
courtesy and respect like everyone else, regardless of whether or not they
piss us off. I'm not interested in knowing who the offenders are, but

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ar
Team Leaders, you all know that this is unacceptable and we all expect that
will all take the appropriate action. Inspection staff, I suspect, have to be able to tell others that they work for the UN and as such, they
should conduct themselves in a manner that does not bring disrepute to the
UN. It is not a one way street. You are also there not necessarily to build bridges (although its not a bad idea) but are certainly not there to
tear them down or give people reason to complain about the UN. Please remind all of your staff that as guests of the Iraqi people, any inappropriate behaviour on their part will have serious consequences.

So guys, cut out the caustic e-mail fencing on all sides and lets get back
to working as a team. Milan, I expect that you will encourage the teams
to get on with the job at hand in as amiable fashion as possible.

My best personal regards to all of you.

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Pruniaux André

m: Saliba Joe
nt: lundi, 12 février 2001 10:06
To: Pruniaux André
Subject: FW: Authentications

Rules / HOP to answer

12/02/01

For Info.
Joe
-----Original Message-----
From: Verne Kulyk [mailto:kulyk@un.org]
Sent: Friday, February 09, 2001 6:11 PM
To: A Coins; T Coins; U Coins; Z Coins; azouni@un.org; Cotecna Inspection Jordan <cotecna; "Saliba Joe " <joe.saliba; "Saliba Joe " <joe.saliba
Cc: Cotecna Inspection Jordan <cotecna; Dejan Radojevic
Subject: Authentications

ntlemen:

I have to do this. I'm not writing this to create problems, rather it is
because I feel that there might be some problems out there that need to be
cleared up. I'm doing this because it is I who has had the relationship
with the sites on authentications for the last year or so. The team is
changing but the relationship should only improve. This is absolutely
necessary to ensure the smooth continuation of the relationship. We all
know that there are frustrations out there on everyone's part. The current
frustrations being passed back and forth must stop.

As you know, I am leaving at the end of March, and it is important for all
of you to know that as far as I am concerned, Dejan is in complete charge
uthentications. Dejan has to OIP based on his intimate knowledge
sh authentication p as far as I am concerned, Dejan has met
everyone's expectations with respect to his abilities to deal with
authentication issues. In the first few months here, Dejan was tasked
with all of the (you would) clean up issues on the data base, and as a
result, his contact with the sites has been of a corrective nature.
This situation has not been overly conducive to creating a "good news"
type of relationship. I can assure, however, that in spite of all the
"please fix this" calls that you received, he is your disposal for advice that you can feel confident in.

For issues regarding policy or political decisions regarding

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thentications, you will take your lead from Felicity and/or Herve (who will replace me as Deputy). In all cases of dispute or if you are nsure w to proceed, you must feel free to contact OIP and you have a right
to expect guidance and advice as to how to proceed. In addition, as long
as I am here, I will also be available to give you advice in their absence.

We (you and I) have built up a very good and amiable working relationship.
This will continue. This office has never gone out of its way to assess blame or responsibility to the sites for a cock-up. In fact, this office
has always defended your procedures as pursuant to the MOU. We work these
things out together and with a team approach. Nothing is gained by taking
up positions on opposite sides of the fence. We are on the same side and
this office will ensure that your independent status is maintained. For reason, we will not instruct you to do something unless it is a policy
matter.

This said, however, you all know that you have specific guidlines as to how
to fulfill your mandate as UN Independent Inspectors. In this respect we
will not tell you what to do or how to do something. We will, however, give
you advice to resolve situations in the most expeditious and non-intrusive
manner . You are all in the best positions to judge how to proceed on issues as the situations are right in front of you. Sometimes something gets away from you and we will help quickly the situation. Do not however
confuse the giving of advice with official instruction. When it is something that has happened as a result of a mistake or missed communication at the site, (whether it is the driver's responsibility or rs) do what you have to (within the legal parameters) to remedy the situation. If you need advice on the matter, feel free to ask, but then do
not say that you were instructed to do so. The decisions are , in most cases yours to make. Sometimes this office will be in a position to advise you because of a political sensitivity or whatever else. In those
cases, you will be free to cover yourselves by saying " on the basis of OIP
advice".

Non-reported cargo: Sometimes it is not enough for Sites to sit back and
wait for drivers to do what they are required to do. We all know that many

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being
> closed is to review the entire documentation file to see if any
items
> were missed.
Yesterday, I was shown a copy of an e-mail from Cotecna to a
supplier
> informing the supplier that nothing (2 million worth of detergent
> powder) that was shipped could be authenticated due to the fact
that
the
> goods were never presented for inspection. This is fine but I
think
> that you should have been copied.
> We also spoke of daily authentications and I think that your ideas
in
> this regard should be conveyed to Milan (dating the S/Is the same
as
the
> authentication sheets) given the requirement for authentications to
be
> forwarded to OIP within 24 hours of the arrival of these goods in
Iraq.
> We do not want them to be unfairly criticized for doing something
that
> was appropriate and in the best interests of facilitative
procedures.
>
> Let's have a conversation about this.
>
>
>

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Markovic Tania

File Amman Lo

F n: Prunlaux André
Sent: lundi, 26 février 2001 18:15
To: AIREY Craig (UmmQasr)
Cc: RADENOVIC Milan (Amman); Saliba Joe
Subject: FW: FW: Cotecna Um Qasr (Iraq) CRAIG AIREY - URGENT

Craig,

Thanks for your comments which are ok. However, I do not understand Zeljko's message (quote) to the supplier. Is it correct? Are we permitted to, directly, provide this type of info?
Thank you for your urgent attention.

André E. Prunlaux

-----Original Message-----
From: Saliba Joe
Sent: lundi, 26. février 2001 14:45
To: UNJOIG-(UmmQasr) Airey Craig
Cc: Prunlaux André; Massey Philippe; Massey Robert
Subject: RE: FW: Cotecna Um Qasr (Iraq) CRAIG AIREY - URGENT

Craig,

Thank you for your prompt reply, we will reply from Geneva (Standard Letter).
Best regards,
Joe

-----Original Message-----
From: U Coins [mailto:coinsu@un.org]
Sent: Monday, February 26, 2001 2:01 PM
To: Saliba Joe <joe.saliba
Cc: andre.prunlaux; philippe.massey; robert.massey; cotecna
Subject: Re: FW: Cotecna Um Qasr (Iraq) CRAIG AIREY - URGENT

<< File: C.DTF >>

Joe

A few points:

1. We are obviously aware of this shipment [illegible] on our pending Comms list which is updated and [illegible] OIP every day.

2. The containers were not presented to us for inspection so we are unable to authenticate.
The fault lies with the [illegible] who is fully aware of the procedures. We deal with [illegible] as you know, so I fail to understand why [illegible] the containers from the port without notifying us.

3. All [illegible] (or should be aware) that they should refrain from contacting [illegible] directly with queries and that all queries should be addressed to their respective Permanent Mission who will in turn contact OIP who will then contact us if necessary.
However, we have suppliers here almost on a daily basis and I give them a standard answer which is for them to contact their Permanent Mission. This is not an answer I have dreamed up but one which is required by OIP.
This particular supplier visited the site and I advised them of the

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Pruniaux André

...m:	Jean Azouri [azouri@un.org]
...nt:	dimanche, 4. mars 2001 14:19
To:	andre_pruniaux@coteona.com
Cc:	coteona@go.com.jo
Subject:	Graboski, Aherne Incident - Urgent and Important
Importance:	High

I was approached by the UNOHCI Coordinator Mr. Tun Myat and was informed the following;

He was at a meeting with MoFA and was informed that Mr. John Aherne Irish,
and Mr. Gary Graboski, Canadian should leave Iraq within one week, the problem is that they had brought into the country the Star of David and put
it on a X-Mas tree, both of them were inspectors for Trebil at that ...e.
... Tun Myat tried to explain to them that this is the Star of Bethlehem but with no success.

The instructions for leaving the country came from high ranking officials
at MoFA and there is nothing which can reverse this decision.

Our immediate action and advise would be highly appreciated, considering that the Coordinator asked to be briefed about this issue and the issue of
Tourdiev, before he meets with MoFA next Saturday.

I will be in the office on Monday, I have cancelled my trip to Zakho.

Regards,

...n

SPECIMEN

Please
> give me a call regarding some feelings that are being expressed here.
> Verne
> ---------- Forwarded by Verne Kulyk/OIP on 21/02/2001
... 7 PM
>
>
> Verne Kulyk
> 20/02/2001 06:35 PM
>
> To: Dejan Radojevic/OIP@OIP
> cc:
>
> Subject: Sites
>
> Dejan: I was just thinking about a few things, procedurally and thought
> that I would run them by you and see what you think.
> As all Coteona staff require the UN's approval for deployment into Iraq,
> it also seems that this approval (or at least a certain amount of
> consultation) should be solicited from OIP when staff moves regarding
> Team Leaders, Deputys etc., are contemplated. While we do not want to
> interfere with operationally driven changes, there should be some
> consultation, resulting in consent or at least, non-objection from
... for such managerial moves. Staff changes at these levels impact on OIP
> as these are the persons who interact with you on a daily basis. We
> have all experienced occurrances when the T/L goes on leave and we
> already know that we might not get the same level of responsibility from
> the Deputy. Part of the reason for this is that we were not always
> consulted as to these types of appointments. As per the contract with
> the UN, the UN may ask for the removal of any unacceptable inspector.
> In the some regard, Coteona has the right to terminate the contract with
> any employee, but I believe that it should be consulted ... do not
> think of any reason why OIP would object to the termination ... an
> employee that was not performing up to the expectations of the employer,
> however it should be at least a matter ... before the action is
> taken. Needless to say, objectionable ... inappropriate behavior on
... part of any employee would ... in that employee being terminated
> would be highly supported by OIP.
> I seem to remember ... was used to integrate a rotation scheme with
> all of their employees ... Team leaders. Something like a move
to
> another ... employees' second leave would inject "fresh
> blood" ... and give the employees a well rounded experience.
> This was done with Team Leaders and Deputies. What is your opinion
> on this?
> It seems that often, mission or supplier's representatives come to us
> saying that all of their goods have been delivered. When we check the
> data base, we find outstanding non-authenticated lines. I think that
> one thing that an inspector should check when the comm is close to

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To whom it may concern,

In regards to the false allegations concerning myself with a connection to a star of David. In trying to recall any association with this star, or of the like, it was of great surprise and confusion. The only time I can recollect even hearing the words Star of David, is in Trebil Iraq in December during the holidays. In preperation for the holidays, the camp of Trebil had some decorations for this occasion. The camp had set up Christmas lights, some paper decorations, and a Christmas tree. This tree had a star on top made of some wood. The tree and office where decorated by others and in no way shape or form did I have anything to do with decorating of the tree or placement of a star or anything. In fact, I was completely out of the office when this was being done. It was brought to my attention the next day that an outlet did not work in the office and this outlet was by the tree, in which lights where to be plugged into. Being the liason officer between Cotecna and the Camp staff, I asked our camp manager Nasar to fix the outlet, in which he said he would. After 3-4 days of this outlet not being fixed, I approached our camp manager and asked him why this job was not done, when it is normally a five-minute job. Nasar, being an electrical engineer, such a job should be very easy, and with some discussion he finally fixed the outlet. After a number of days our back office was to be painted by the local staff. During this job, the local staff had to enter the Trebil office and move furniture, rugs etc. around in order to paint the room...During this time I noticed that our tree decoration was removed and was told by our ATDL, that the local staff did not approve of the star on top of the tree, therefore it was removed.

This recollection is all that I can associate with the Star of David. In early January I was relocated to Zakho site by my request. It should be noted that Nasar, the camp manager in Trebil, was dismissed by the Team Leader some time in Feb. For the record I had nothing to do with the decorating of the office, the decoration of the tree, nor placement of such a star. This all that I can associate with anything to do with the term star of David or of the like.

Gary Graboski
March 4 2001

COPY

Markovic Tania

m:	Pruniaux André
Sent:	mardi, 6. mars 2001 15:21
To:	'JOHNSTON Felicity'
Cc:	'mathevet@un.org'; RADENOVIC Milan (Amman); Saliba Joe
Subject:	CONFIDENTIAL - Incident in Trebil - Gary Graboski and John Aherne

Felicity,

MoFA have requested that these 2 inspectors leave Irak by 09 March at the latest.

This was communicated verbally to Mr. Tun Myat, UNOHCI coordinator. After giving due consideration to the "reasons" presented by MoFA, Cotecna has decided to obey and not to argue.

These two inspectors are now in Amman or on their way to Amman.

They will be replaced.

This is for your information. We can discuss on the phone if you wish.

Best Regards,

ré E. Pruniaux
or Vice-President

SPECIMEN

COTECNA INSPECTION S.A.

CO-INS P.O. Box 6155 - 1211 Geneva 6 - Switzerland
TEL : (00 41 22) 849.68.00 FAX : (00 41 22) 849.68.28

UN SCR-986 PROGRAMME

Date	: 08 March,2001	
To	: Mr Tun Myat United Nations Humanitarian Coordinator UNOHCI, Baghdad	**Confidential**
From	: André E.Pruniaux Senior vice President – Cotecna SA -Geneva	
CC	: Milan Radenovic , Joe Saliba, Jean Azouri	
FAX	: 00 1 212 963 3009	
Page(s)	: 1 of 2	
Our ref.	: js/03.00 S	
Subject	: Star Incident – Trebil, Iraq	

Dear Mr Tun Myat,

I refer to our telephone conversation of today. We deeply regret this unfortunate incident. As a result, two of our good inspectors have to leave the mission.

As you can see from the attached confidential reports, the star was already on the site among other Xmas decorations. It was unintentionally placed on the tree.
We have instructed the two inspectors to leave Iraq before Saturday the 10th March and they are on their way to Amman.

Please forward our sincere apologies to the Iraqi Government insuring them that our Inspectors on sites are very well aware of the procedures and local Customs, re assuring that we are doing our best at all times to ensure a friendly relationship in Iraq.

I take this opportunity to thank you for your kind assistance.

Best regards,

André E.Pruniaux
Senior Vice-President

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Saliba Joe
From: T Coins [T_CoinsUNDPA.OIP@intlhub.un.org]
Sent: Monday, March 05, 2001 11:09 AM
Cc: joe.saliba
Subject: Gary Graboski & John Aherne

Dear Andre,

You are already informed about the MOFA's request. I spoke by phone to Bosko who was in charge of the Site at that period and Janne who was his Deputy and they independently told me the same facts. Following is what happened:

Gary Graboski and John Aherne were in charge of Xristmas & New Year celebration. That included decorations and preparations of meals and social events during this period. In Trebil we already have Xristmas Tree (plastic) and decorations that were on the Site since at least last Xristmas. That means that The Star (David's Star according to MOFA) was already on the site. In many Christian countries people put The Star on the top of the Xristmas Tree. As the mentioned Star was among other decorative items kept since previous times, Gary and John used it to decorate the Tree.

Bosko and Janne realised that the local Iraqi staff started to look at the Star in a strange way making comments in Arabic at the same time. That was the signal for Bosko and Janne to take the Star off the Tree and put it in the garbage bin. Number of local staff witnessed that and there were no any further problems. Local's co-operation in organising the celebration was very good and it is very strange that such accusations were made against those 2 Inspectors.

I was talking to John Aherne about the issue and he told me that what happened was not done with any intention to provoke local people.

One relevant fact is that Nazar, Camp Manager at that time was fired by the end of January because of extremely low performance and in co-ordination with Botan. Mentioned 2 Inspectors have nothing to do with that fact.

Best Regards,

Goran Ciric
Trebil

SPECIMEN

Markovic Tanja

m: Pruniaux André
Sent: mercredi, 14. mars 2001 15:26
To: RADENOVIC Milan (Amman)
Subject: CONFIDENTIEL - FW: Star Incident Update

For info.

André E. Pruniaux

-----Original Message-----
From: Jean Azouri [mailto:azouri@un.org]
Sent: mardi, 13. mars 2001 12:04
To: andre_pruniaux@cotecna.com
Cc: cotecna@go.com.jo
Subject: Star Incident Update

I met with the coordinator and asked him about a feedback related to his recent meeting with MoFA. He informed me that he had personally
mitted a
) Verbal with three enclosures (Letter to Tun Hyat & two statements)
to
MoFA informing them about the departure of the two inspectors. He told them
that although the two inspectors don't seem to be guilty as charged, Cotecna has taken the necessary action to depart them. MoFA had emphasized
that the case is closed and they are grateful for the prompt action.

He apologized for not informing us accordingly after the meeting, and as discussed during your last telecon with him this was the best decision
to
undertake, he sends you his best regards.

Regards,

Jean

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1

Pruniaux André

From: Dejan Radojevic [radojevic@un.org]
Sent: mardi, 13. mars 2001 14:54
To: Cotecna Inspection Jordan
Cc: "Dejan Radojevic (radojevic" "Joseph Saliba" <joe.saliba; "Geneva M. Pruniaux" <Andre_Pruniaux; coinsl@un.org
Subject: For Mr.Radenovic

Dear Milan,
Thanks for updates as I've just arrived from vacation. That would be great
if you during your visit to sites clarify/advise/investigate with sites management/inspectors , in case of any doubt , recent exchanges.
Would you please also, sort out discrepance between "date printed" on Authentication Sheets and actual mailing date.
Remind Authenticating officials about "adjustment policy"(any minus input
has to be with OIP permission).

As reminder please find below:

Dejan Radojevic
27/02/2001 09:27 AM

To: cotecna@go.com.jo
coinsu@un.org
cc: Farid Zarif/OIP@OIP
Felicity Johnston/OIP@OIP
Herve Mathevet/OIP@OIP

Subject: "Left port without inspection"

Dear Milan/Craig,

Number of cases "left port without ... is at the moment 16
/Shipments (worth a... Sir... time has come that solving authentication problem... start .Suppliers have already started with
inquiries about pay...
For crosscheck, pleas... of such OCs reported to OIP :
00371 ,005... 0202 ... ,600831 ,601480 ,601483 ,630424 ,630489 , 630946
, 6307... ...3017 ,700077
700200...

According to procedures we expect that initial core for action should be on
site ,like:
-Evidence of ship and cargo arrival and departure
-List of containers selected for examination
-Documentation collected on first/upon arrival visit to vessel(cargo manifest, bill of lading,list of containers,samples, etc)
-Analysis results

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1

landed this
morning in Baghdad. He has also seen the arriving commodity and people, and
he is going to report to Mr. Sevan the situation.
(He himself was expecting some of Cotecna people to go to the airport, as
well . However he realizes our position - I instructed J.Azouri not to have
any move unless we will be contacted by OIP through Geneva)

Regards,
Milan

SPECIMEN

From: cotecna@go.com.jo on behalf of Cotecna Inspection Jordan [cotecna@go.com.jo]
Sent: Monday, October 16, 2000 8:00 PM
To: 'Markovic Tania'
Subject: RE: Flights to Baghdad - Info

Confirmed receipt on 16/10/00 at 19:00.Regards,
Milan

-----Original Message-----
From: [redacted]
Sent: Monday, October 16, 2000 5:48 PM
To: 'cotecna'
Cc: Saliba Joe; 'azouri@un.org'
Subject: RE: Flights to Baghdad - Info

>
From : **André E. Pruniaux**

I wish to confirm that under no circumstance we are going to inter[illegible] Baghdad airport.

This is a very delicate political matter which as to be handled [illegible] Cotecna Geneva.

Kindly confirm reception of this email.

André E. Pruniaux

-----Original Message-----
From: [redacted]
Sent: Wednesday, October 11, 2000 3:05 PM
To: ANDRE
Subject: Flights to Baghdad - Info

From: Cotecna Inspection [illegible] <cotecna@go.com.jo>
Date: Sun, 8 Oct 2000 [illegible]10 +0200
To: "'Gene[illegible]e Pruniaux'" <Andre_Pruniaux@cotecna.com>

André,

[illegible] Adam has attended landing of one recent aircraft which landed this [illegible]ing in Baghdad. He has also seen the arriving commodity and people, and [illegible] is going to report to Mr. Sevan the situation.
[illegible]e himself was expecting some of Cotecna people to go to the airport, as [illegible]ell . However he realizes our position - I instructed J.Azouri not to have [illegible]ny move unless we will be contacted by OIP through Geneva)

Regards,
Milan

SPECIMEN

COTECNA INSPECTION S.A.

58, rue de la Terrassière 1207 GENEVA - SWITZERLAND TEL. 41.22.849.69.00 -Fax 41.22.849.6909

FAX

Date : 16 october 2000
To : Felicity Johnson Chief Customs Expert
: Verne Kuiyk Customs Expert
Page(s) : 1 (this one inclued)
Our ref : 006/tm
Subject : **Flight to Baghdad**

We have been unofficially invited to attend the arrival of a re[illegible] which was carrying some commodities.

I have instructed the cotecna staff in Baghdad and [illegible] in Iraq not to intervene unless directly authorised by Cotecna Geneva (m[illegible]ng on firm written instructions from UN-OIP New York.

Kindly confirm by return that this is the right p[illegible]ure.

Best Regards,

André E. Pruniaux
Senior Vice-President

SPECIMEN

[redacted]
From: Jean Azouri [azouri@un.org]
Sent: Tuesday, October 17, 2000 9:40 AM
To: Markovic Tania <tania.markovic
Subject: RE: Flights to Baghdad - Info
Importance: High

From Jean Azouri

I confirm the recipient of the mentioned instructions and I wish to emphasize that Mr. Tun Mya[illegible] was informed that unless clear instructions from Geneva Headquarters and/or OIP NY we cannot intervene in any activity related to this matter.

Regards,

Jean

Markovic Tania <tania.markovic@cotecna.ch> on 16-10-2000 0[illegible]

To: "cotecna" <cotecna@go.com.jo>
cc: Salibe Joe <joe.salibe@cotecna.ch>, "ezz[illegible] <azouri@un.org>
(bcc: Jean Azouri/CANAL-HQ/UNOH[illegible]
bcc: Jean Azouri/CANAL-HQ/UNOHCI
Subject: RE: Flights to Baghdad - Info

[redacted]
I wish to confirm that under no circ[illegible]s are going to intervene at the Baghdad airport.
This is a very delicate poli[illegible] matter which as to be handled by Cotecna Geneva.
Kindly confirm receipt [illegible]
André E. Pruniaux
-----Origi[illegible]
[redacted]
Sent: Wednesday, October 11, 2000 3:05 PM
To: ORE
Subject: Flights to Baghdad - Info
Date: Sun, 8 Oct 2000 14:00:10 +0200
From: "Geneva M. Pruniaux" <Andre.Pruniaux@cotecna.com>

Andre,

Lloyd Adam has attended landing of one recent aircraft which

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Active vessels (on discharge) 16
Vessels departed during week 19
Vessels at Inner Anchorage(samples taken -awaiting berth) : 5
Vessels at Pilot Station 5 (3 out of them with containers)

Vessels awaiting for berth might be big concern for the suppliers, as average delay of 3 weeks now tends to increase.

There is increasing congestion in the container port, mainly due to the fact that only one fork lift is working and due to the apparent shortage of trucks, engaged in general cargo transportation. Lack of inner manipulation is slowing-down our inspection of selected containers.
From our side, we are undertaking additional measures:

* Starting from this Saturday 21.10.00, containers in the container port will be inspected by Cotecna inspectors, without presence of receiver, and sealed after inspection with ORIM Cotecna seal. Inspection will be done as soon as containers will land [illegible] port authority has been advised accordingly. This will make a room in the [illegible] containers (backlog of containers remained due to non-show of receivers and inspection and take-over the cargo).
We may expect increased Iraqi claims for "non-conform[illegible] cargo against contract specification" as their representatives mostly will not be present in time of inspection .This is the reason why this common practice lasted from the very beginning of the project.
* 3 additional inspectors have been allocated from offices to Umm Qasr, making total of 20 active on the site (in addition to 5 on leave).
* Average allocation of 3 ships per team now [illegible] to 7 ships per team, consisting of two inspectors.

Regards,
Milan

SPECIMEN

17/10 '00 13:16 FAX 41 22 849 69 39 COTECNA GVA HQ 001

****
*** RAPPORT TX ***
****

EMISSION OK

N° TX/RX	1469
TEL. CORRESPONDANT	00012127721794
SOUS-ADRESSE	
ID CORRESPONDANT	IRAQI MISSION UN
RG.HEURE	17/10 13:16
DUREE	00'28
PAGES ENVOYEES	1
RESULTAT	OK

COTECNA INSPECTION S.A.

58, rue de la Terrassière 1207 GENEVA - SWITZERLAND TEL. 41.22.849.69.00 FAX 41.22.849.6909

FAX

Date	: 16 october 2000
To	: Felicity Johnson Chief Customs Expert
	: Verne Kuiyk Customs Expert
Page(s)	: 1 (this one included)
Our ref	: 006/tm
Subject	: **Flight to Baghdad**

We have been unofficially invited to attend the arrival of a recent flight which was carrying some commodities.

I have instructed the cotecna staff in Baghdad and elsewhere in Iraq not to intervene unless directly authorised by Cotecna Geneva (myself) acting on firm written instructions from UN-OIP New York.

Kindly confirm by return that this is the right procedure.

Best Regards,

André E. Prunlaux
Senior Vice-President

SPECIMEN

In any case Umm Qasr team need to show high vigilance and accuracy dealing with increased workload.

Regards,
Milan

SPECIMEN

[redacted]
From: Markovic Tania
Sent: Thursday, October 19, 2000 10:27 AM
To: 'Cotecna Inspection Jordan'
Cc: Saliba Joe
Subject: RE: Umm Qasr Port - struggling with heavy traffic

From : André E. Pruniaux

1) Please re-format this message in a better way (statistics, presentation of our new measures, etc) and send it urgently to Felicity Johnson and Verne Kulyk, copy : AEP.

2) In your opinion, is this situation going to last? Do we need more permanent inspectors in Umm Qasr? Can we move some from other sites, without exposing us on these sites? Should we ask fore more inspectors in Iraq? According to your answers, I will prepare a statement to UN-OIP-New York (Stephanie Scheer who must be alerted).

Also, is this situation in Umm Qasr producing delays in transfers of data [redacted] to UN-OIP?

Many Thanks for your urgent attention.

André E. Pruniaux

-----Original Message-----
[redacted]
Sent: Wednesday, October 18, 2000 9:[redacted] PM
To: 'Geneva M. Pruniaux'
Cc: 'Joseph Saliba'
Subject: Umm Qasr Port - struggling with heavy traffic

Andre,

I meant to address to Felicity [redacted] ding traffic situation in Umm Qasr, but for the time being this is first info[redacted] you [redacted] shortly afterwards we will advise OIP.
Reason is increasing [redacted] ships berthing and start of discharge, which will affect suppliers and increase pressu[redacted] ght be ultimately blamed for delayed authentication.
Traffic is getting [redacted] m day to day, discharge is much bigger as vessels are using their own [redacted] on contrary - port cranes and fork lift remain as they were a year ago.

Enclo[redacted] tatistic from our Weekly Report from 31/08/2000 until 12/10/2000.
Umm[redacted] .08.2000.07.09.2000 14.09.2000 21.09.2000 28.09.2000 05.10.2000
00
Vesse[redacted] ssed this week 6 7 5 5 7 7 14
Discharge per day average (MT)7,576.559 12,466.346 5,761.560 10,680.969 11,509.102
102.414 13,055.789
Max daily discharge during the week (MT) 5,844.250/[PARA] 10,084.435
8,403.560/[PARA]15,629.395 3,037.340/[PARA]8,047.030 7,880.290/ 12,922.520
6,043.210/[PARA]13,949.670 4,638.230/[PARA]24,968.570
8,443.480/[PARA]26,904.205

Number of vessels doubled in last 2 weeks, from average 7 to 14.

Present traffic (figures taken today 18.10.2000) :

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Oct. 13, 2000

Tun Myat, the U.N. humanitarian coordinator in Baghdad, told a news conference inspection procedures needed to be changed for the flights that he said were giving "more moral support than anything else" in alleviating Iraq's needs.
Some 26 flights have landed in Baghdad in the last month, from Arab countries and Russia and France, who started the challenge to the U.N. sanctions by contending there is no ban on civilian air travel.
But a member of the Security Council's Iraqi sanctions committee, speaking on condition of anonymity, said the problem was not who inspected the flight but orders from Iraq that they could not be scrutinised without a week's notice.
Most of the aircraft depart with short notice or none at all. "We certainly aren't getting them seven days in advance," the envoy said.
Myat was in New York for the first time since he took up his post in Baghdad last May for a review of the "oil-for-food" programme that allows Iraq to sell oil in order to buy supplies and offset the impact of 10-year old U.N. sanctions.
Iraq imports an average of 150 to 200 tons a month of food and other supplies. Humanitarian goods airlifted were only a fraction of the total, Myat said.
All the planes are carrying some medicine or food but also trade delegations, politicians or advocacy groups protesting the sanctions.
However, some of the recent flights, notably from Egypt and Syria, have not given any notification. Most of other flights have received permission to fly from the sanctions committee.
Russia and France say the committee should be notified 24 hours in advance so cargo can be inspected for banned goods. But they argue the committee has delayed to give permission, as Britain and the United States have contended.
Myat said his teams usually inspected such humanitarian flights, but the growing number made the task increasingly difficult.
Currently outside inspectors hired by the United Nations look at goods arriving under the oil-for-food programme at the border and ports. Myat said the council should authorise them to survey the cargo on planes also.
"There has been a practice because there was no further U.N. presence in town than my office to attend to the arrival and departure of flights and provide a manifest of who came in and who came out," Myat said.
But now that some flights are unannounced, his job is far more difficult. "We will not be able to do it, in any case, because some time that is needed," he said.
Some council members want details of the planes flying near or through the United States and British-enforced no-flight zones over areas of northern and southern Iraq. They want details of the flight paths in advance time to ensure a plane's safety.
The council's sanctions committee is expected to begin discussions of the issue on Friday but not necessarily reach any immediate conclusion, members said.

IPU Calls for Lifting Economic Blockade on Iraq

[illegible] October 20 (Xinhua)--The 104th Inter-Parliamentary Union (IPU) conference finally [illegible] Friday to call on the United Nations Security Council as well as international community to soon put an end to its global economic blockade imposed on Iraq, instead of just reassessing it. During its final plenary session, all participants of the conference cast their votes with 592 in favor, 517 against and 105 abstaining. Earlier, the IPU's drafting committee adopted the draft of resolution on embargoes and economic sanction, including a call for the U.N. Security Council to reassess all sanctions imposed on Iraq. But the draft resolution was vetoed by the plenary session.

6

HA004125

SECRET

[illegible]

From: Markovic Tania
Sent: Thursday, October 19, 2000 3:08 PM
To: 'Cofacru Inspection Jordan'
Subject: RE: Situation in Umm Qasr Port - answers

From : André E. Pruniaux

Milan,

Thank you.
I think that we have to officially inform, in writing, UN-OIP-NY providing this, plus your previous, info.
Kindly and urgently prepare a draft and send it to me.
I will review, edit and send it to Felicity.
Thanks,

André E. Pruniaux

-----Original Message-----
[illegible]
Sent: Thursday, October 19, 2000 1:09 PM
To: 'Geneva M. Pruniaux'
Subject: Situation in Umm Qasr Port - answers

Andre,

In regards to your reply, these are my comments:

1) Traffic increase or stable high traffic in Umm Qasr is the least, and will have an ascending trend. I assume according to the recently released brand new contracts from phase 6, phase 7 , and first part of phase 8 - forthcoming months are going to be very busy, converting Umm Qasr into main port of entry for the biggest volume of cargo. OIP is well aware of the backlog of contracts to be delivered.
2) I have used our internal reserve [illegible] one person from Al Waleed, and two from Trebil , without disrupting work [illegible]
For your info (between us), I am going further into doubling inspection shifts in : Trebil (currently 4 hours daily), Al Waleed (currently 4.5 hours daily) and Zakho (currently 2.5 hours daily) which is feasible [illegible] highly unpopular and might lead into lack of consentration and possible [illegible]
We can say that with 3 extra people in Umm Qasr we have used our internal reserves.
On the ground we have reached the figure of 74 inspectors,
[illegible] Baghdad and myself, to allow extended leave,
and [illegible] people above the paid level.
Increased traffic is a ground for asking for 2-3 paid inspectors
above the agreed minimum, but it can also wait if political
decision will bring some extra job.
Delays in authentication in Umm Qasr have been mostly generated by:
- Non appearance of receivers to attend inspection - practice which I have changed now ;
- Insufficient documentation from suppliers - very often situation causing additional contacts and faxing (OIP was very cooperative in contacting respective Missions for lack of documentation).
- Ships are delayed in berthing, which gives wrong impression to the suppliers that ship is in Umm Qasr (not knowing that discharge did not start yet).
- The only one fork-lift in the container port which cannot satisfy increased requests for inspection.

SECRET

371

HA004139

The communique did not say whether the organization had sought approval from the United Nations sanctions committee for making the flight.
It also did not say what the nationality of the airplane would be, though flights recently from Damascus have been abord Syrian Arab Airlines.
A long list of Arab countries have tested the embargo, following Russian and French flights, since the reopening of Baghdad's airport on August 17.
Paris and Moscow say the air embargo, part of the sanctions regime, does not cover private non-commercial flights. Washington and London insist all flights must be approved by a UN sanctions committee.

Palestinian plane to fly wounded to Baghdad

BAGHDAD, Oct 25 (AFP) - A Palestinian aircraft is to fly out 20 people wounded [illegible] with Israeli forces for treatment in Baghad, a Palestinian diplomat said Wednesday.
"A Palestinian Boeing from Gaza airport is to bring to Baghdad on Sunday 20 Palestinians wounded who will be hospitalised in Iraq," said Dalil al-Qasus, first secretary at the "embassy of Palestine".
"The plane will also carry a delegation from the Palestine National Council for a solidarity visit to Iraq," said the diplomat.
It will be the first Palestinian flight to join the flow of aircraft [illegible] Saddam International Airport since it reopened in August, in a bid to force a end to the 10-year-old embargo on Iraq.
Iraq has despatched two convoys of more than 100 trucks carrying food and medicines for the Palestinians, but charged that Israel refused to let them enter Palestinian territories.

Israel concerned about Iraq military movements

JERUSALEM, Oct 25 (AFP) - Israel is viewing with concern Iraqi military movements near the Syrian and Jordanian borders, a top political source said in the Hebrew daily Yediot Aharonot on Wednesday.
"This big Iraqi force is deployed in an offensive formation. It could be simply a symbolic initiative, but we saw what happened before the start of the Gulf War when Iraq invaded Kuwait," the source said.
"If they want, the Iraqis can enforce Palestinian sovereignty to move on Israel," the source said.
In Washington, however, the Pentagon said Tuesday that the troop movements in Iraq's western desert appeared to be part of routine training exercises and posed no danger to its neighbours.
There was no air cover or logistical back-up for any offensive operation, the US defence department said.
According to the [illegible] Israel and the United States have stepped up contacts to counter any Iraqi threat against Israeli territory.
Israel and Washington, using several European countries as intermediaries, have warned Iraqi President Saddam Hussein -- who has called for jihad (holy war) against the Jewish state -- not to interfere in the Israeli-Palestinian conflict.
A month of clashes in the West Bank and Gaza Strip has cost 138 lives, the vast majority of them Palestinian.

Iraqi troops not threatening Israel-Pentagon

WASHINGTON, Oct 24 (Reuters) - The United States is still closely watching the movement of Iraqi troops west of Baghdad but the move appears only to be part of an annual training cycle, the U.S. Defence Department said on Tuesday.
"We continue to pay very close attention to what they are doing," Rear Adm. Craig Quigley, a Pentagon spokesman, told reporters.

SPECIMEN

He also said that improvements in food and health were held back by the collapsing value of the Iraqi currency and by holds placed by the UN's sanctions committee on contracts to import electrical equipment.
Myat took over as coordinator of the oil-for-food programme in Iraq in April after Hans von Sponeck resigned in protest at what he called the "humanitarian tragedy" caused by sanctions.
He told a news conference that there had been "considerable progress" in the food sector, and every man, woman and child now received 2,470 kilocalories a day.
According to UN data, in the first half of the year, Iraqis received on average 1,990 kilocalories.
The new amount "should be sufficient to sustain life," Myat said, but many people were selling their food rations in order to buy clothes and other necessities.
"For many of them, food rations represent the major part of their income," he said, adding that because of the falling exchange rate, many people lived on two or three dollars a month.
"That is what a junior civil servant would get," he said. Myat said that foreign flights [illegible] began arriving in Iraq a month ago had "given (Iraq) moral support rather than anything else."
He said they carried only a "miniscule" amount of cargo compared with the 1,500,000-2,000,000 tonnes of food and equipment which Iraq imports "in an average month" under the UN's oil-for-food programme.
Several dozen foreign aircraft have arrived in Iraq since mid-September [illegible] Russia and then France allowed oil company executives, athletes and doctors to fly to Baghdad to test the UN's sanctions regime.
Myat recalled that "humanitarian flights per se have always been [illegible]" since the UN Security Council imposed a trade embargo and other sanctions against Iraq in August 1990 after the Iraqi invasion of Kuwait.
The purpose of the flights was to challenge the view that [illegible] humanitarian flights needed prior clearance from the council's Iraqi sanctions committee [illegible].
The United States and Britain, which defend that view, have also been criticised for blocking most of the 2.25 billion dollars worth of contracts now on hold by the sanctions committee.
"Some critical items" had been placed on hold, Myat said, drawing attention to the fact that 36 percent of all contracts for electrical goods had been held up.
"In Iraq nothing works without electricity," he said. Clean water, effective sanitation and decent housing were also important for health, he added.
"To bring about a major improvement in the situation one needs to have improvements in all related sectors," he said.
Myat said he did not believe [illegible] authorities were inefficient and thus to blame for higher infant mortality rates in the centre and south of Iraq than in the Kurdish north, where health programmes are run by the UN.
"The food distribution system in Iraq is second to none," he said. "Food gets to everyone it is supposed to get. You cannot fault them for that."
But, he said, "people need more than food. You need health care and decent infrastructure."
He said that a hospital doctor who was about to discharge a young boy after treating him for [illegible] said he expected his patient to return within three weeks.
"He's going back to the squalor he came from," the doctor said.

UN has problems inspecting cargo on flights to Iraq

By Evelyn Leopold

UNITED NATIONS, Oct 19 (Reuters) - A U.N. official asked for help on Thursday in inspecting cargo on a rash of flights going to Iraq, some of which apparently are not being examined for banned goods.

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PRESS CLIPPINGS

Office of the Iraq Programme

25 October 2000

UN oil-for-food programme in Iraq handling record humanitarian supplies

UNITED NATIONS, Oct 24 (AFP) - The number of ships carrying supplies to Iraq under the UN's oil-for-food programme has doubled in recent weeks and a record 34,000 tonnes of supplies are unloaded daily, the UN said Tuesday.

"Given the limited berthing and unloading capacity of the port of Umm Qasr, as well as the lack of trucks, these vessels can now wait up to four weeks to complete unloading," the Office of the Iraq Programme (OIP) said.

Iraq has only about 70 kilometres (45 miles) of coastline, on the Gulf.

The oil-for-food programme has grown enormously since it was set up by the United Nations in December 1996 to soften the impact on Iraqi citizens of sanctions imposed on Baghdad after the invasion of Kuwait in August 1990.

Iraq's oil exports since the start of the current six-month phase of the programme on June 9 have totalled 282.5 million barrels, for revenue of almost 7.2 billion dollars, the OIP said in its weekly update.

That is one-fifth of total revenues of 36.2 billion since the programme began.

The UN sets no limit to the amount of oil Iraq may export, but only 53 percent of the revenue is allocated to imports to the central and southern parts of the country under government control.

Another 13 percent goes to the northern, Kurdish areas. Most of the rest goes into a fund to compensate victims of the invasion of Kuwait.

In the week to October 20, Iraq exported 19.4 million barrels of oil with an estimated value of 588 million dollars, the OIP said.

The weekly volume is the second highest since the programme started, and almost as large as the amount sold in the last week of May, the official said.

But the official said no particular significance should be read into the figure, since Iraq's oil sales often fluctuate widely from week to week.

In the week ending October 6, Iraq exported only 11.6 million barrels, for revenue of 305 million dollars. The following week, sales totalled 16.3 million barrels, worth 450 million dollars.

The office approved, last week, the Security Council's Iraqi sanctions committee released holds on 17 contracts worth a total of 62.4 million dollars.

"These include contracts for trucks, electrical and sewage equipment, circuit breakers and oil parts," it said.

The committee blocked another 46 contracts worth 89.8 million dollars, including orders for water pumps, transformers, water compact units, a suction dredger and ambulance boats.

The total value of contracts on hold as at October 20 stood at almost 2.28 billion dollars, including 1.99 billion dollars for humanitarian supplies (centre/south of Iraq only) and 285 million for oil industry spare parts and equipment," the OIP said.

It said the value of humanitarian contracts processed under "fast-track procedures" adopted in March had reached 2.55 billion dollars. Another 65 contracts for oil spare parts worth 52 million dollars had been expedited in this way, it said.

HA004109

Iraq's oil supplies to Jordan are exempted from United Nations sanctions.

The newly appointed Jordanian government recently put out feelers to Baghdad, hinting that it sought better ties after a number of misunderstandings over the last few years.

Jordan, sympathetic to Iraq in the 1990-91 Gulf crisis over Kuwait, turned against Baghdad in 1995 and gave shelter to senior Iraqi defectors. The late King Hussein then called for a change of administration in Iraq.

But in recent years Jordan has been an advocate of lifting the sanctions, which it says hurt only the Iraqi people.

Lebanon sends second plane to Baghdad

BAGHDAD, Oct 24 (Reuters) - Lebanon sent a second humanitarian flight to Baghdad on Tuesday in protest to United Nations sanctions against Iraq, witnesses said.

The plane landed in the newly reopened Saddam International airport carrying a 13-member delegation, representing all segments of the Lebanese people including doctors, lawyers and businessmen. The delegation was led by the head of the Lebanese Arab Chamber, Adnan Bashour.

"The trip comes in solidarity with Iraq," Bashour was quoted in Beirut as [illegible] saying. "Lifting sanctions on Iraq contributes directly to the support of the Palestinian Intifada (uprising)."

At least 131 people, all but eight of them Arabs, have been killed in Palestinian-Israeli clashes in the West Bank, Gaza Strip and Jerusalem since a September 28 visit by Israeli right-wing opposition leader Ariel Sharon to a sensitive religious site in Jerusalem revered to both Muslims and Jews.

The plane was the latest of several sent by Arab and [illegible] to Baghdad, since Russia and France started the challenge to the U.N. sanctions by [illegible] pending there is no ban on civilian air travel.

Relations between Iraq and Lebanon were [illegible] in 1998. Lebanon had cut diplomatic ties with Iraq in 1994 after accusing Baghdad of killing an Iraqi opposition figure in Beirut.

Iraq has called repeatedly for U.N. sanctions to be lifted, saying it is no longer justified, but U.N. Security Council members, the United States and Britain advocate keeping firm sanctions in place.

They say sanctions cannot be lifted [illegible] unless Baghdad allows U.N. inspectors back into the country to check on its weapons of mass destruction. Iraq has refused for nearly two years.

Turkish businessmen [illegible] Baghdad on solidarity mission

BAGHDAD, Oct 25 (AFP) - Several Turkish businessmen flew into Saddam International airport on Wednesday aboard a light aircraft in the fifth solidarity flight from Turkey in a campaign against the decade-old air embargo, an airport official said.

Two [illegible] are due to touch down in Baghdad on Thursday, one carrying trade unionists from Tripoli [illegible] the other 120 politicians and cultural figures from Cairo.

Nine [illegible] Arab countries have tested the embargo, part of the sanctions regime imposed after Iraq's invasion of Kuwait, since the reopening of Baghdad airport in August.

Arab trade unionists to fly to Baghdad on Thursday

DAMASCUS, Oct 24 (AFP) - A delegation of Arab trade unionists is set to fly to Baghdad from Damascus on Thursday in an act of solidarity against the decade-old UN sanctions against Iraq, according to a statement from the International Confederation of Arab Unions.

The delegation, made up of people from several countries, will inaugurate a school in Baghdad named in honor of Mohamed al-Durra, the 12-year-old Palestinian boy whose televised shooting death in the Gaza Strip last month riveted the world.

HA004110

SECRET

373

07/11 '00 10:48 FAX 41 22 849 69 39 COTECNA SYA SM

On the other hand congestion in the port can be lessened by inspection of long sitting containers.
I would appreciate your consideration of this issue, as I fear that keeping files pending until containers will leave the port will bring massive flood of queries from the suppliers which will be difficult to handle for both of us.

Best regards,
Milen

3

SPECIMEN

07/11 00 10:50 FAX 41 22 849 69 39 COTECNA SYA SM

Cotecna Inspection Jordan <cotecna@go.com.jo> on 24/10/2000 11:16:23 AM

To: "Verne Kulyk" <kulyk@un.org>
cc: "Felicity Johnston" <johnston@un.org>

Subject: Continued - Umm Qasr inspection procedures

Dear Verne,

Following your recent conversation with Craig, here are my concerns:
To avoid possible confusion for Umm Qasr Team I would appreciate if we can define something for their pretty clear procedure and action:
Moment of the authentication : Will Team authenticate after inspection has been done (with or without receiver) ?,or as I understood from your conversation with Craig:
Team should keep sees pending until cargo(containers) will leave the port
?
Here are points in favor of undertaking immediate inspection of the containers:
1. MOT as a main receiver for the key commodities is pretty expedient and they appear almost always within one week, and if the cargo is to be rejected, they do it immediately. So there are no major delays in the key commodities inspection and take-over, partially because of the nature of the cargo.
2. SOMO is known as very slow in attending inspection, sometimes delayed for more than a month time. Of spares consignments is checked in SOMO warehouse together with Saybolt, and ultimate LOD has been produced for all discrepancies in detail. It is noticed recently that SOMO representatives does not sign for the compliance of goods to the contr specifications during inspection (as it was before), but just stamp for presence during the inspection. However, real moment of t container might be weak or couple of weeks later-depending transportation eveasway. (On the other hand, detailed later by Saybolt, and in the moment of the inspection is be identification of the goods against shipping docu experience of the inspector with random sheet clear that full compliance of cargo against sp in the moment of container inspection. notorious.)

3. MOE is second-known for van in the inspection. Some of containers were stranded for soon clearance. Receivers of the sequence.

Assuming that most inspected short container is on the container yard, it seems very optimistic to or ection of containers (containing spare parts, machinery, spo as soon as they are available - with or without receiver's p (in any case not conditioned to the receiver's

If were suggested from our side, authentication was co nearest date of inspection and mostly because of no the receiver and slow container handling with the only one fork-lift authentication was obviously delayed (I am not excluding reasons inherent to human factor from our side).
Now, making authentication process dependent to the physical removal of the container(s) from the port will bring unpredictable delays in authentication -as there are no guaranties that inspected container(s) will be carried away right after the inspection. Container port is lacking equipment and in the same time, there is no reliable source of container statistics in the port.
Some of containers have been "lost" i.e. without record when and where they have been carried away.

2

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Markovic Tania
From: Verne Kulyk [kulyk@un.org]
Sent: Tuesday, November 07, 2000 3:38 PM
To: U Coins
Cc: andre.pruniaux; Dejan Radojevic; colecna
Subject: Re: Umm Qasr Inspection Procedures

Yes. Wholeheartedly agree with the inspection. This will give the receiver the impression that these goods are going to be authenticated. The receiver will not necessarily know when the goods will leave but may feel that because the goods have been inspected, that authentication is forthcoming. In addition to this, I would suggest that while you will routinely inspect the goods without the receiver necessarily being present, that your staff be accomodating if and when a receiver requests your presence (in the event that there is a suspected short delivery or if the receiver feels that the goods are not according to series or damaged). In any event, authentication will not take place until the goods leave the port.

U Coins@UNDPA
07/11/2000 07:54 AM

To: Verne Kulyk/OIP@OIP @ un-mailhub
cc: andre.pruniaux@colecna.ch @UN-MAILHUB
Dejan Radojevic/OIP@OIP @ UN-MAILHUB
colecna@go.com.jo @ UN-MAILHUB
Subject: Umm Qasr Inspection Procedures

Dear Verne

Reference your e-mail on the above, I met with the [illegible] manager this morning who advised he would be able to advise [illegible] containers were collected. He also mentioned that when we adopted our brief [illegible] inspecting without receiver and resealing the container(s), receivers were [illegible] in collecting their containers.

I would suggest that we inspect regardless of receiver being present but then waiting for the container to be collected before [illegible] the receiver to collect the container(s) in a shorter time [illegible] the container yard in placing containers for inspection.

Please confirm.

Best regards

Craig

HA004093

07/11 '00 10:43 FAX 41 22 849 69 39 COLECNA GVA MM

Pruniaux André

From: Verne Kulyk [kulyk@un.org]
Sent: Monday, November 06, 2000 6:24 PM
To: Pruniaux André (Exchange) <andre.pruniaux; Colecna Inspection Jordan <colecna
Cc: U Coins; Farid Zarifi; Felicity Johnston; Dejan Radojevic
Subject: Re: Continued - Umm Qasr Inspection procedures

André Mission/ Goran: Our understanding is that authentications do not take place until after the goods have left the port. Goods that have not left the port-even if are not accessible to have arrived in Iraq. We have discussed the issue here and are of the opinion that we should not authenticate containers/shipments of goods that may remain in the port area. I understand that they will affix an UNN seal to those containers that they examine/inspect. My concern is that if they then authenticate these goods without knowing that they have left the port area, there is then the possibility that the goods may be rejected without their knowledge. This will leave us open to criticism from the receivers. As well, supervising goods that are still within the port area, while being facilitative to the suppliers in terms of payment, may result in the goods being diverted and never reaching the supplier. Your proposed authentication procedures also make the authentication process vulnerable to such potential allegations of fraudulent actions.

While I agree that it is unfair for a supplier to wait weeks for an authentication for goods that have arrived, but not accepted by the receiver, it is not our role to solve the port authorities' problems. Our office has been quite vocal and has consistently encouraged the purchase of additional equipment and the need to upgrade the port facilities. Suppliers will have to argue this point with the receivers who are the stewards of the facility and in charge of the discharge/distribution procedures. While we can recognize the problems, they do not our problems nor have we created them. It is inappropriate for us or Colecna to be drawn into this issue and for us to take any leadership role in solving their dilemmas. We will, of course assist as we can in any way to ameliorate the situations however should not take responsibility for this. Colecna's role, (perhaps unfortunately due to circumstances), is to work within the current constraints, and make the best of a bad situation.

If the port authorities remove the goods from the port area, the goods should be authenticated, regardless of whether the receiver is in agreement or not (in the obvious case of [illegible] damaged goods, where noted, an appropriate comment should be made on the shipment inspection form. Short delivered goods should be authenticated.). The issue of non-compliance with contractual specifications then becomes an item for discussion between the supplier and the purchaser. With respect to the issue of [illegible] simply meant that containers that your staff will have opened in the site would still be in the port and will not have left the area. As discussed with Craig, authentication should be [illegible] notification that the goods have entered Iraq (aboard the port facilities), which of course dependent on the cooperation shown to your staff by the local Port Authorities. Bottom line is that if goods leave the port without being reported, that is bad for the supplier and the authentication will not take place. This is the responsibility of the Port Authority/MOT/SCMO and we should not take this on as our responsibility. If the situation of goods leaving the port without report to Colecna continues, there will be a long list of suppliers who will be very vocal. Their complaints should then be directed to the Port facilities/authorities. I would not like to see these complaints directed at Colecna for something that was done from a facilitative point of view.
Hope this clarifies our position.
Regards,
Verne

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HA004094

-----Original Message-----
From: U Coins [SMTP:coinsu@un.org] <mailto:[SMTP:coinsu@un.org]>
Sent: Tuesday, November 14, 2000 11:31 AM
To: andre.prunlaux
Cc: Verne Kulyk
Subject: Umm Qasr - Forklift

Dear Andre

Reference my previous correspondence on the above, the top-hoist forklift has broken down and the container yard now has to use a normal forklift to place/reposition containers. They are waiting for spare parts and are hoping
to have it working in a week or so. Effectively it means that the efficiency of the container yard has been seriously impaired and delays can be expected.
Best regards
Craig Alray

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Markovic Tania
From: Prunlaux André
Sent: Thursday, November 16, 2000 10:15 AM
To: 'coinsu@un.org'
Cc: Saliba Joe; 'RADENOVIC Milan'; 'CIRIC Goran'
Subject: Umm Qasr

Craig,

After concertation with UN OIP-NY and due to the fact that the forklift does not work any more, please apply the following procedure (as instructed by UN-OIP) :

You can only operate within the capability of the port authorities. Keep an eye on the [illegible] make the appropriate notations on shipment inspection forms when delays occur. The [illegible] the pressure on the port authorities when the suppliers complain. There is no [illegible] of the inspection staff in this situation. Their role is to inspect and authenticate [illegible] presented to them, not to facilitate the off-loading or handling. As far as [illegible] specifically in this situation, the staff is probably sufficient to the current [illegible] respond to any increases in discharge. No need to adjust the numbers [illegible] port authorities will take some action.

Kindly comment, if necessary.

Best Regards,

André E. Prunlaux

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> > 4) MORE SPECIFICALLY the status of the files which numbers were
> > communicated to Joe Saliba.
> > Your prompt action will be appreciated.
> > Robert Massey
> > Chief Executive Officer
> >
>
> This communication contains information which is confidential and is
> intended for the exclusive use of the addressee(s) only. The
unauthorized
> reading, disclosure or copying of this email is strictly prohibited.
If
you
> are not the intended recipient(s), please note that any distribution,
> copying or use of this communication or the information contained in
it is
> strictly prohibited. If you have received this communication in error,
> please notify the sender immediately and then destroy any copies of
it.
The
> content of this message does not reflect the opinion of the Cotecna
Group
or
> any of its affiliates except to the extent that it relates to their
official
> business.
>
>

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From: Prunlaux André
Sent: Thursday, November 16, 2000 9:21 AM
To: "Verne KUIVK"
Subject: RE: FW: Umm Qasr - Forklift

Verne,

Thank you for message. I will tell the staff in Umm Qasr.

Best Regards,

André E. Prunlaux

-----Original Message-----
From: [redacted]
Sent: Wednesday, November 15, 2000 3:02 PM
To: Prunlaux André <andre.prunlaux
Subject: Re: FW: Umm Qasr - Forklift

Andre: I have advised Farid and others of the situation. M[illegible] also been advised and is contemplating communicating [illegible] the Iraq mission on the issue. Clearly, your staff can only [illegible] the capability of the port authorities. All I can suggest [illegible] keep an eye on things and make the appropriate notations on [illegible] inspection forms when delays occur. This will put the onus [illegible] port authorities when the suppliers complain. There [illegible] liability on the part of the inspection staff in this situation. Their role is to inspect and authenticate the goods that are presented to them, not to facilitate the off-loading or handling. As far as the staff to implement specifically in this situation, my view is that [illegible] and Cotecna management have staffed according to the current workload and are ready to respond to any increases in discharge. No need to adjust numbers at this time. Hopefully the port authorities will take some action.

Prunlaux André [illegible]aux@cotecna.ch> on 15/11/2000 03:44:55 AM

To: "[illegible]Verne UN-OIP" <kuivk@un.org>
cc: "[illegible]OVIC Milan" <cotecna@go.com.jo>
[illegible]e <joe.saliba@cotecna.ch>

Subject: RE: FW: Umm Qasr - Forklift

Verne,

Do you wish to comment on this message?

Thanks,

André E. Prunlaux

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Markovic Tania

From:	Cotecna Inspection Jordan [cotecna@go.com.jo]
Sent:	mercredi, 27. décembre 2000 13:39
To:	Saliba Joe
Cc:	Geneva M. Pruniaux
Subject:	Re: IRAQ (Confidential)

Authentication period Umm Qasr...

Joe,

Let me expresss my feeling about issues raised to the attention of Mr.Robert Massey:

- Poor performance in Iraq - I don't think that any of suppliers can prove poor inspection and handling procedure in Iraq from inspection point of view. My understanding of what has triggered suppliers to pass this kind of ...ge to Cotecna's CEO is unfortunate stipulation in contracts (in all approval letters) where one of the conditions for L/C to be effected is : to supply Standardized Confirmation from Secretary General designee in Iraq (and they will find out that this is Cotecna). Every time when they apply to BNP with all possessing documents they have got the answer - missing standardized confirmation from .... Bottle-neck might be all the way in the chain : Cotecna situs - OIP -Treasury -BNP. Important : This should not be passed to the suppliers by no means, as it will look like accusing our own employer - which can adversly backlash to us.
Each step takes in average up to week time -so supplier ends up minimum 3 weeks under ideal condition that cargo inspected from... left the port immediately -which is not the case(in reality ... up to one and half month).
In addition I am providing latest statistic from ... 2) covering p... 5.11.-21.12. (in which we c... cargo to leave th... port notwidstanding inspect... I can add that most of supp... ction is realted to cargo delivered in containers (Milk, washing powder etc, mil... n-edible items and spare parts) and less to bulk (be... vel for silo.

Answers to ...

1. Yes,there is a ... log of cargo in Umm Qasr Port,delayed for various reasons,mostly : insufficient documentation, discharge in progress, discharge not started yet, and most common - inspected cargo still in the port- still not transported by receiver.
If we need to be extremely self-critical ,say up to10% can be given to Inspector's side and 90 % for afore-mentioned circumstances.
2. Average time for inspection - this is not the major problem itself as cargo is made accessible for inspection in reasonable time (2-3 days),but

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other reasons make authentication delayed.
3. Local conditions: unloading capacity still the same. Fork-lift unreliable
and unpredictable for smooth handling(often breaks-down). Iraqi are well aware of this and they replayed to our people unofficial message that one berth(no 20) will be exclusively prepared for container handling,with sufficient cranes and unloading gear (recently released from the OIP).
4. Specific comm.numbers - will be answered under particular consent from AEP.

I can add that OIP is regularly,once a week,updated from each site with
list of contracts which are pending(not authenticated) and reasons why they
are still pending. This has been introduced particularly for accurate answer
to the queries from suppliers via Permanent Missions.
There is a room for faster reporting, but still major reasons are beyond our
control. I didnot mention that many of the ships are waiting on the high waters for nearly a month time -before being allowed to berth.

Regards,
Milan

----- Original Message -----
From: Saliba Joe <joe.saliba@cotecna.ch>
To: (Amman) Radenovic Milan <cotecna@go.com.jo>
Sent: Wednesday, 27 December, 2000 10:19
Subject: FW: IRAQ

> Thank you for giving me brief answer for ...
> Regards
> J.
> -----Original Message-----
> From: Massey Robert L...
> Sent: Tuesday, Decem... 2000 10:58 AM
> To: Saliba Joe; Pruniaux ...
> Subject: IRAQ
> >
> As I ma... been in contact with traders who complained ...
> bitterly about the poor performance of Cotecna in Iraq.
> The lack of ... from JS on the files numbers given to him is
> surprising.
> I therefore want to know if :
> 1) there is any back log on shipments to be inspected by us at Um Qasr
> 2) what is the average time for inspection from the arrival of the ship
> until we transmit the information to AIY.
> 3) there are the local conditions and/or problems that pre-empt us from
> performing a flawless job.

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difficulties or concerns about having to deal with all the various (and normally time consuming) formalities of actually crossing the border.

That would be the preferred solution from our perspective, and would seem
to meet all of the other requirements of the situation.

Please advise Gezairi to have their trucks go to the staging area tomorrow.
Once they are there, they can contact us by phone, and our inspectors will
meet the trucks there, inspect the loads, and process the documentation properly.

Warm regards,

Ron Neufeld
Deputy Team Leader
Cotecna - Syria.

'Keith, T" <keitht@baghdadforum.com> on 11-02-2004 04:56:22 PM

To: <coins@un.org>
cc: "Saliba Joe" <joe.saliba@cotecna.ch>

Subject: FW: UN No. S/AC.25/2002/986/OC.1001983

Please note the email below. My position is that the trucks should come back to the border. If they cannot come back into Syria, I would ask Cotecna to send someone across the border to authenticate and then send them on their way. The reason I want them to come back is that I'm concerned about the cargo. It seems to me that the only use for this type of rolled paper is to make currency. In this case, it would be highly preferable. I would prefer Cotecna as a disinterested party to authenticate goods into country, so at least someone has seen cargo other than supplier, shipper, and receiver at warehouse. Please let me know if you can send someone across the border for this mission, and when. I (or someone in this CPA) will then correspond back to the company that this is what must be agreed to know soonest.

Thanks,

Tom

THOMAS C. KEITH

DIRECTOR, OIL FOR FOOD COORDINATION CENTER

CPA BAGHDAD

PHONE: 703-270-0467, c: 914-360-3026

EMAIL: keitht@baghdadforum.com <mailto:keitht@baghdadforum.com>

-----Original Message-----
From: Fouad Bawarshi [mailto:fbawarshi@gezairi.com]
Sent: Wednesday, February 11, 2004 3:39 PM
To: Keith, T
Cc: gezairibgd@gezairi.com; hkaturji@gezairi.com

SPECIMEN

Pruniaux André

From: Keith, Tom [keitht@Baghdadforum.com]
Sent: Friday, April 23, 2004 9:30 AM
To: hamid arsie; Moffat, Les; coinsu@un.org
Cc: cotecna@go.com.jo; joe.saliba@cotecna.ch; andre.pruniaux@cotecna.ch; Fennessy, Sean
Subject: RE: OC 830123

Importance: High

Sean and Les,
Please research this and find out why Lina would send forward to authenticate, especially if we don't have any arrival confirmation documents from the ministry.

Thanks bringing this to our attention Hamid.

Best Regards,
Tom

THOMAS C. KEITH
DIRECTOR, OIL FOR FOOD COORDINATION CENTER
CPA BAGHDAD
PHONE: 703-270-0467, c: 914-360-3026
EMAIL: keitht@baghdadforum.com

-----Original Message-----
From: hamid arsie [mailto:hamidarsie@hotmail.com]
Sent: Friday, April 23, 2004 10:58 AM
To: Keith, Tom; Moffat, Les; coinsu@un.org
Cc: cotecna@go.com.jo; joe.saliba@cotecna.ch; andre.pruniaux@cotecna.ch; Fennessy, Sean
Subject: OC 830123

Tom,

You are aware of this OC not been inspected but claims to have been shipped.
I have some correspondence from [illegible]

However, I must point out some discrepancies before proceeding any further.
Shipper claims to have loaded on 16 March 2003. *This is the date we evac,d.
At this point, we have [illegible] all comms outstanding and pending. This was
not one of them.

Now the forwarding provided endorses the shipping date as 07 Dec 2003. *
This is a point of concern as the BL date does not correspond with the shippers information.
Of main concern as well, is that, this cargo was not inspected at all.
Lina Shawket requests us to authenticate.

Also forwarded now is another shipment OC 1230052, which no inspection took
place.

Under these discrepancies, I am not willing to authenticate, unless directed
by you/Les directly
instructing the authentication.
I will endorse on the inspection notes, all these factors.

SPECIMEN

Please clarify that you are satisfied for us to authenticate this un-inspected, not reported cargo.

Kind regards

Hamid Araie
Team Leader
Cotecna Inspection SA
Operations Building
Port Rashid Container Terminal, Dubai, UAE
Tel: Office: + 971 4 4047 285
Mobile: + 971 50 347 0 369
Fax : + 971 4 345 0 351
Email : coinsu@un.org
Email : hamidaraie@hotmail.com

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http://toolbar.msn.co.za?DI=1054&XAPID=2185

SPECIMEN

Pruniaux André

From: hamid araie [hamidaraie@hotmail.com]
Sent: Saturday, April 03, 2004 11:18 AM
To: mahmood.ayub@dpa.ae
Cc: m.sharaf@dpa.ae; amer.ali@dubaimaritimecity.ae; ali.mohamed@dpa.ae; cotecna@eim.com.jo; joe.saliba@cotecna.ch; andre.pruniaux@cotecna.ch
Subject: Possible Investigation

Rei Dubai - Draz

Dear Sirs

I have had a strange phone call today at approx 11h00, from a number 050 614 5277.

The man said he is from Sudan, and wanted to know about cars going to Iraq.
I explained to him, clearly, that we work under an UN Mandate previously, checking cargo,
and now report to the CPA.

If he needed information, he should go to the UN website and get all the information there.
He said he wanted a "shortcut" to cargo bound for Iraq.
I explained to him, that I did not understand what he required but did not want to be involved with him, nor his company.
He again said he wanted to know a "shortcut" etc.

This seemed very funny to me, and it looked like he was up to some [illegible] things.(I am not sure, of this, but felt like this).
I told him to cooperate with Jebel Ali marketing, and to this, he started to swear and be very abusive indeed.
Then, I knew, he was wanting something illegal and hence [illegible] to you.

Thats is all I have on this matter.
I have subsequently had several calls from Mr Sheikh Ali, and I explained to him all these details.

Kindly contact me should you want anymore [illegible]

Hamid Araie
Team Leader
Cotecna Inspection SA
Operations Building,
Port Rashid Container [illegible] Dubai, UAE
Tel: Office: + 971 4 [illegible]47
Mobile: + 971 [illegible]369
Fax : + 971 [illegible]351
Email : coinsu@un.org
Email : hamidaraie@hotmail.com

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SPECIMEN

Pruniaux André

From: Farid Zarif(zarif@un.org)
Sent: Monday, October 27, 2003 6:06 PM
To: U Coins
Cc: Pruniaux André; cotecna@go.com.jo; Darko Mocibob; haugk@un.org; Jason Abrams; Saliba Joe; johnston@un.org
Subject: Re: OC 702091- Tug Boats

Rei Dubai - Iraq

Authentications-stranded-03050...

Dear Hamid,

I take note of the extensive investigations carried out and the set of evidence and documents gathered, including the email dated 24 October 2003 from the supplier conveying electronic version of an Arabic letter and its translation from two senior officials of the Iraqi Ports Authority affirming that the tugboats and spare parts were received.

I also note your judgement that, based on the above investigation and information, there exists a "prima facie" case for authenticating the arrival of the tug boats that were delivered to Iraq after the withdrawal of Cotecna from Iraq due to security reasons.

In view of the above independent conclusion, Cotecna may wish to proceed with authentication of the said cargo.

Many thanks for all the efforts you and your team have invested in clarifying this very naughty issue.

Kind regards,

Farid

U Coins@OIP@OIP Farid Zarif/OIP@OIP@UN-MAILHUB
26/10/2003 06:08 AM cc: johnston@un.org@un-mailhub, cotecna@go.com.jo, Pruniaux André <andre.pruniaux@cotecna.ch> @ UN-MAILHUB, Saliba Joe <joe.saliba@cotecna.ch> @ UN-MAILHUB, Darko Mocibob/OIP@OIP, haugk@un.org@un-mailhub, Jason Abrams/NYAUNO@UNHQ@un-mailhub
Subject: OC 702091- Tug Boats(Document link: Farid Zarif)

Dear Mr Zarif,

Your request for professional judgement, on the email dated 24/10/2003 refers.

This has been a very problematic and troublesome shipment, as we are all aware.
I base my comments without prejudice, and the information is what I have been able to obtain, together with
information that has been supplied to us.

I view this shipment as a "prima facie" case based on stranded cargo rules.

1

HA011673

SPECIMEN

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME - BUREAU CHARGE DU PROGRAMME IRAQ

THE EXECUTIVE DIRECTOR
LE DIRECTEUR EXECUTIF

REF: ED/2003/661/ 5 April 2003

Dear Mr. Chairman,

Pursuant to paragraph 8 (a) (iii) of Security Council resolution 986 (1995), paragraph 25 of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council resolution 986 (1995), and paragraph 36 of the procedures of the Security Council Committee established by resolution 661 (1990), the arrival of humanitarian supplies in Iraq must be confirmed by the independent inspection agents appointed by the Secretary General as a condition for payment under letters of credit issued for purchases of humanitarian goods under resolution 986 (1995).

On 17 March 2003, the United Nations independent inspection agents (Cotecna Inspection, S.A.) were withdrawn from the Port of Umm Qasr and on 18 March 2003, from the remaining four authorized entry points in Iraq. At the time of their withdrawal, consignments shipped under 56 contract applications, worth a total of $19,912,865.16, were either under active discharge/delivery or reported to have been discharged/delivered soon thereafter, but neither of which have been authenticated so far by Cotecna. As detailed in the attached table, of the total of 56 cases filed, 34 relate to goods consigned to the Port of Umm Qasr, 20 to Trebil and 2 to Al-Walid.

Cotecna inspectors had registered the arrival of 23 consignments and were well into reviewing documents relating to 6 further consignments, but were unable to complete the inspection process due to the abrupt withdrawal. Based upon direct observations by Cotecna and/or documentary evidence provided by the suppliers concerned, the Office of the Iraq Programme has established that the consignments under 29 contract applications, with a total value of $19,846,458.56, have been delivered in Iraq. Therefore, the Office if Iraq Programme supports the recommendation by Cotecna to carry out a retroactive authentication of these 29 cases.

His Excellency
Mr. Jüergen Pleuger
Chairman of the Security Council Committee
established by resolution 661 (1990)
New York

With regard to the remaining 27 cases worth a total of $37,066,407.60, the Office of the Iraq Programme has requested further information and documentations. Should a prima facie case is established on the basis of customs declarations, bills of lading, receivers reports,

HA011684

SPECIMEN

COTECNA INSPECTION S.A.

CO-INS

P.O. Box 6155 - 1211 Geneva 6 - Switzerland
TEL.: (022) 849.69.00 / TLX.: 413 107 COT CH / FAX: (022) 849.68.28

UN SCR-986 PROGRAMME

FAX

Date : 29/09/1999
To : Andre Pruniaux
Attention :
Fax No. : 1 202 232 0438
CC :
Page(s) : 1 + 7
Subject : Brief summary of UN 986 mission in Iraq

Dear Andre,

The following is a very brief pen picture of the stations and their operations

	Trebil	Al Waleed	Zakho	Umm Qasr
No. of trucks weekly average	250	50	120	8 (ships)
No. of trucks this week	141	[illegible]	75	7 (ships)
Metric tonnage average weekly	5,5[illegible]	1,250*	3,000	50,000
Metric tonnage this week	929	188*	3117	41175
No. of inspectors	23	12	15	21
No of inspectors on site this week	16	10	11	19

* Note the figures for Al Waleed vary greatly from 40,000 tonnes per week to less than 100 tonnes for some weeks.

SPECIMEN

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME

FACSIMILE

To: Cotecna Inspection S.A. Mr. Dermot Jennings Contract Manager	Fax: 011 41 22 849 6939/6928 Tel:
From: T. Al Istrom Head of Contract Processing Section Office of the Iraq Programme	Fax: + 1 212 963 8063 Tel: + 1 212 963 4046 E-mail:henriksen@un.org
Subject:OC 4417	
Date: 27 September	Number of pages (including cover page):1

Dear Dermot.

Please notice that due to several discrepancies in delivered and authenticated goods, a full audit on Comm 4417 has been carried out here at OIP.

A similar audit should be done at the Zakho site so a comparison can be made, to clarify delivered and authenticated goods.

There have been deliveries [illegible] without lines on the approval letter or in the database. An SOP should be made to avoid this type of mistakes in the future.

Best regards

cc: T. Henriksen
U. Christen

Room DC1 1520 , New York, NY 10021 • Tel: +1 212 963 4046 • Fax: +1 212 963 8063 • E-mail henriksen@un.org

SPECIMEN

Meeting with Mr. Von Sponeck

Maybe it will not be raised in your meeting but just in case I think it's better to be briefed on the issue.

The final point I think you should be aware of is the situation in relation to Mr. Von Sponeck. At the meeting with Mr. Von Sponeck in Geneva he was clear in his views of the embargo and his desire to seek ways of increasing quality control of goods being imported into Iraq. In my meeting with him in Baghdad he was more specific in his criticism of the American involvement in world affairs. He specifically condemned what he called "American hegemony" and asked who gave them the right to decide whether a country should be bombed or not. I listened to his remarks but made no comment.

With reference to his request to discuss an involvement on our part in more detailed quality inspection of goods again I listened. My comments were limited to the expression of the opinion that our contractual duties were specific and that we would not be in a position to bring forward alternative for any developments/ changes in this area as envisaged by Mr. Von Sponeck. Mr. Von Sponeck accepted this position but returned to his previous request that Lloyd Adams of his office and our Liaison Officer in Baghdad be allowed to discuss the matter.

In view of our obligations to the OIP, I enquired of Mr. Von Sponeck as to whether he had any objections to our keeping the OIP informed of our discussions. His reply was that he would prefer to keep the discussions informal and between ourselves at this time. He then requested that I meet with Mr. Lloyd Adams later that same afternoon, which I did. However our position remained the same.

I was accompanied at the meetings with Mr. Von Sponeck and Lloyd Adams by Jean Claude Jacquemin.

On my return from Baghdad I informed the OIP of my meeting with Mr. Von Sponeck without going into details. Torben Henriksen made the comment that Mr. Von Sponeck was causing some concern amongst certain sections of the UN as a result of his outspoken and critical comments.

I hope this is of some assistance. I will expect your call tomorrow morning

In the meantime 'have a nice day'

Best regards

Dermot Jennings

COTECNA INSPECTION S.A.
ZAKHO, IRAQ

UN SCR-986 PROGRAMME

FAX MESSAGE

REPLY CATEGORY: ☐ URGENT ☐ ACCELERATED ☒ ROUTINE

To	Cotecna Inspection S.A. / Geneva	Date	8 July, 1999
Attn	Mr. Lucien Fernandes	Fax No	0041 22 849 69 28
cc		No of Pages	[redacted]
bcc		Reply to	00873 382 086 026
Our Ref.	02 99/06-86	Your Ref.	
Subject	OC /417		

Dear Lucien,

Referring to you fax dated 05/07/99 please find following explanations:

INFORMATION TO SUPPLIERS

The fact is that full description of every line items which we had at the time in our database, was sent to the supplier in order to assist check the line items and determines exact description of 2 items, which were delivered but not found in our database. **No other data was sent.**

Person who made the decision was Jean Azouri who was Acting Team Leader at that time. Inspector who was appointed to contact the company was Iskander Tourdiev for the simple reason that he is fluent in Russian.

Jean Azouri explained the case to Torben Henriksen few days ago and we hope that we are not going to have any further complications.

AUTHENTICATION DELAY

The first shipments start to arrive around 15/04/99.At that time our database was not complete and some shipments were still expected to pass through Trebil. We were instructed by Jonas Larsen to process all the trucks but to wait for his authorization to start with entries and authentications.

By the end of May Zakho database was (almost) complete and upon the approval from HQ Zakho team started to do the entries and authentications. By that time we already had huge backlog of pending inspections. It took several days to enter and authenticate but by the beginning of June only one shipment (truck no. 31D3116/3025) was still pending. The reason was that the documents provided were to detailed and it was impossible to identify the line items without further info from the supplier. On 22/06/99 we received the documents and the authentication was carried out the next day.

4/5

SPECIMEN

FAX MESSAGE continued - page 2 of 2

GATE VALVE 100-200 (STEAM, WATER)

TRUCK	05YPL47/46	61K1325/1326
QTY	35	17
Date inspected	08/06/99	30/06/99
Date authenticated	12/06/99	30/06/99

Reason for delay: Mentioned line item was not in database. In order to avoid confusion whole shipments were not authenticated and put on hold.

Some other inspections were put on hold for the similar reasons but the problems were resolved within several days.

SET OF SPARE PARTS (VANES, BLADES, BEARING) FOR FDF, IDF, GR

Above mentioned line item doesn't appear in our database but 6 shi[illegible] were authenticated as item SOOT BLOWING SYSTEM (SPARE PART[illegible] Data must be incorrect and it will be checked with OIP. You will be advised [illegible]ptly.

Best regards,

G. Ciric

Goran Ciric
Team Leader, Zakho

SPECIMEN

5/5

5/5

SHIPMENT TO IRAQ IN WITH UN RESOLUTION № 986
PURCHASE ORDER S/2/2902449
Supplier: John Brock Company "INTERENERGOSERVIS", Moscow, Russia
Truck № 47 KN 541 / 47 KN 549

OC. Number OC.4417

CONTACT PERSON: YURIY VANKONOVICH, GENERAL DIRECTOR
PHONE NUMBER: (095) 128-86-27
FAX NUMBER: (095) 938-00-10/(095) 128-91-27

Shipment No.128T

Page 1

ITEM № AS PER UN COMMITTEE LETTER	DESCRIPTION OF THE GOODS AS PER UN COMMITTEE LETTER	QUANTITY AS PER UN COMMITTEE LETTER	UNIT OF MEASURE AS PER UN COMMITTEE LETTER	QUANTITY DELIVERED IN TODAYS CONSIGNMENT	DESCRIPTION OF GOODS TODAYS CONSIGNMENT
5,6,7,8,11,12, 14,15,16,24, 24,354	4. The list of spare parts for boiler unit of "Nassiriyah power station (TPP-750) Casevedon shaft forest waterw-rd	72,250	pcs	9101 kg	Casevedon shaft forest waterw-rd (which is 1 pack Casevedon shaft forest waterw-rd)
13	Gas-vessel burners with accessories including:	4	pcs	4 pcs	Gas-vessel burners with accessories including:

As enclosure, please find attached copies of technical passports on all spare parts, which were delivered in the mentioned above table.

Originals of the technical documentation were packed with the goods for delivery.

V.I. BARILO
General Director

SPECIMEN

Operations

The operations are running fairly smoothly at this time. However we carry out reviews of our procedures and the recently published new SOP is a direct result of such an in-depth study. With these new Standard Operating Procedures and our new Sampling Procedures in place we feel that we have further improved our examination operations. Early this month we started a programme in Umm Qasr to improve our examination techniques in relation to cargo ex ship. With 25 customs officers and another 7 officials with an in-depth knowledge of customs procedures on our staff – nearly half our staff- in Iraq we have a considerable amount of experience to call upon and we are using this experience fully.

Complaints from shippers / exporters

As I said the operations are running fairly smoothly. However we still have a number of calls from shippers and exporters complaining about the delays in receiving payment for their goods - 90% of the complaints are related to goods coming through Umm Qasr. We refer all such complaints to the OIP.

In Umm Qasr for a variety of reasons the Iraqis reject, disagree the amounts or enter into discussions on acceptance /rejection of all or part of most of the cargo coming through the port. Also the power supply in Umm Qasr is most irregular and the port equipment is in bad condition. These problems add up to delays or frequent stoppages in discharging cargo or moving containers. As a result our work, on occasion, can be delayed considerably.

In some instances it has taken more than a month for a ship to fully discharge at Umm Qasr. The average time to fully discharge a ship is 10 to 12 day.

Communications

One issue that has caused us some concern and to which we devoted a considerable amount of time is the communication systems. We have suffered from a variety of problems over the last months –some within our control some outside of our control. For those problems within our control we are hopeful that the arrival of our new VSat system, which will be installed in Trebil and hopefully will be fully operational by the 1st. of November, should considerably improve the operational reliability of our communication systems. However we are also presently in discussions with James Sutterlin in New York to discuss ways of improving our 'hard copy' transmission systems. We have made progress and look forward to an early agreement.

OC 4417 –Russian spare parts through Zakho

One issue that may be raised by the OIP is that of OC 4417. This OC covers a consignment of spare parts supplied by a Russian company for the repair of power station(s). The problem is that it appears that on information now available some items – parts or parts of parts – not listed on the OC were imported.

The OIP has sent a note requesting a full audit of the OC, which audit is presently nearing completion in Zakho. You will note the tone of the final sentence of the last paragraph of the letter.

I asked Goran to give me a full report on the matter and I have attached previous related correspondence.

This consignment, the importation of which is ongoing for some time, was originally destined for importation through Trebil. Subsequently the place of importation was changed to Zakho and the details of the delays in New York, were entered in the Zakho database. However when the importations started in April the database was not completed (nearly completed) until May.

This was and is not the only problem. Many of the documents accompanying the goods show figures that cannot be verified. I have attached a copy of one document showing the details of the quantity ordered as '4', the unit of measurement as a 'set'. But the quantity being delivered in this importation is 0.0206 of a set. Without detailed information it is impossible to know what 0.0206 of a set represents. Therefore we can only authenticate against the documents that are produced with the goods.

Now we have this additional problem that subsequently we have discovered that some of the documents presented were in fact incorrect.

I have spoken with the UN OIP and they have assured me that they have knowledge of this problem. They have also assured me that they accept that there is no blame on our part. However it appears to me that there is some political elements to this. The situation is a messy one with some of the blame resting on the OIP due to the initial delay in updating the Zakho database. Although the OIP was made aware of the problems of trying to identify and subsequently authenticate small fractions of sets without the proper paperwork. It appears now that, since some sections of the UN have become aware of the problem, the OIP wants to distance itself from the problem. Torben has told me that we should not worry and that this will all be sorted out satisfactorily!

SPECIMEN

COTECNA INSPECTION S.A.

P.O. Box 6155 - 1211 Geneva 6 - Switzerland

58, Terrassière - 1207 Geneva

TEL.: (41-22) 849.69.00 TLX : 413 167 COT CH FAX : (41-22) 849.69.39

FAX

Date	:	16 December, 1999
To	:	Mrs Stephani L. Scheer – UN – OIP
		Mr. John Almstrom – Chief, Contracts Processing Section – UN – OIP
Fax No.	:	00 1 212 - 963.80.83 (tel.: 00 1 212 - 963.60.90)
Copy	:	[redacted] – Cotecna – Contract Manager – UN – OIP
From	:	Co-Ins Geneva/AEP
Page(s)	:	1 + 4
Our ref.	:	864/jb
Subject	:	Authentication of Commodities – Your fax of 09 December 1999

We refer to your above mentioned fax and to the attached MOFA note verbale of 05 December 1999.

As indicated in UNOHCI's transmission fax of 08 December 1999 (under the signature of Mr. von Sponeck), this matter was raised with our Mr. [redacted] Senior Vice President, during meetings in Baghdad with MOT (on 06 December 1999) and MOFA (on 08 December 1999).

We confirm that MOFA's allegations concern a shipment of instant milk powder, from Spain (OC50617), authenticated by Cotecna in Umm Qasr.

The vessel arrived at the port of Umm Qasr on 12 September 1999, with, among other commodities, 12 containers of instant milk powder (total weight of 250 MT). These containers were unloaded. Samples were collected and sent to analysis on 14 September to verify that these commodities were fit for human consumption.

The Iraqi authority (MOT – State Company for Foodstuff Trading), on the next day rejected the cargo, as "packing not in accordance with the contract specifications since no label marks were printed on the sachet and since the shape of same were not acceptable".

OIP was informed by phone.

Analyses, including radioactivity and heavy metals, indicated that these goods were fit for human consumption.

The consignment was authenticated by Cotecna on 29 September 1999 under instruction from OIP – Mr. Henriksen Torben. According to our information, it also seems that preshipment inspection was done by Bureau Veritas. Shape of sachet was not stipulated in the contract specifications.

HA012724

We, therefore, consider that this is a typical commercial dispute between a supplier and the Iraqi importer, totally outside of Cotecna's contract with UN-OIP.

We firmly reject MOFA's allegations and consider that we have duly fulfilled our contractual obligations and acted according to UN-OIP's instructions.

Finally, we understand that the milk has been standing in the port of Umm Qasr since its unloading.

We remain at the entire disposal of the UN-OIP services for any further additional information, including hard copies of related documents.

Yours sincerely,

Robert M. Masley
Managing Director and
Chief Executive Officer

André E. Pruniaux
Senior Vice President

SPECIMEN

HA012725

We do have a site across the border, and I will forward your suggestion. For suppliers/drivers who skip the border, we are starting to send them back for the stamp. This may take a while, but until a better solution is implemented. Thanks for the idea.

-----Original Message-----
From: A Coins [mailto:coins@un.org]
Sent: Friday, January 30, 2004 8:33 PM
To: Fennessy, Sean
Subject: passing thoughts on saving time

Hi again Sean,

I have an idea that I wanted to just run by you very informally. Hope you don't mind.

Since taking over this desk from Sammy, I have been noticing that there are a significant number of cases where the truckers bypass our office at the Syrian border ... and then both your office and ours are kept busy having to resolve the problem after the fact.

I have heard (admittedly 2nd and 3rd hand) that the Coordination Center has an office on the Iraqi side of the border.

If that rumor is indeed true, what would you think of having the people there start checking for our stamp on the trucker's CMR waybill. And sending them (or "suggesting strongly") back across the border if they don't.

I think that if something along these lines would be feasible, it would save both of us a lot of time that could be far better spent on more productive pursuits.

Food for thought ..

Ron

SPECIMEN

Pruniaux André

From: Pruniaux André
Sent: Thursday, October 30, 2003 3:51 PM
To: Amman (Global One)
Cc: Saliba Joe
Subject: RE: FYI

Milan,

Thanks. We should not fear Saybolt. They are not competing with Cotecna for CPA (future) arrangements. Cotecna is also being appointed (case by case) by WFP.

André E. Pruniaux

-----Original Message-----
From: Cotecna Inspection Jordan [mailto:cotecna@go.com.jo]
Sent: Thursday, October 30, 2003 3:55 PM
To: Pruniaux André; Saliba Joe
Subject: Re: FYI

Andre,

Saybolt lost original contract with OIP for oil spares monitoring and crude oil export reporting.
Meanwhile(at least in Jordan) and apparently in Iraq and Kuwait, Saybolt has acted as appointed agent for WFP for food-staff testing and inspection on behalf opd WFP. Employees were mainly locals(at least in Jordan).
Still in gulf countries GAC is the biggest WFP agent.
This is what I know for now.
Best regards,
Milan

----- Original Message -----
From: "Pruniaux André" <andre.pruniaux@cotecna.ch>
To: "Amman (Global One)" <[illegible]go.com.jo>; "Saliba Joe" <joe.saliba@cotecna.ch>
Sent: Thursday, October [illegible]
Subject: RE: FYI

Milan, Joe,

I am [illegible] Saybolt has no contract anymore with UN-OIP. Possibly, they are [illegible] serial inspectors for the supplier / importer.

What kind of goods are covered?

Please clarify.

Thanks.

André E. Pruniaux

-----Original Message-----
From: hamid araie [mailto:hamidaraie@hotmail.com]
Sent: Thursday, October 30, 2003 12:35 PM
To: cotecna@go.com.jo

SPECIMEN

Cc: joe.saliba@cotecna.ch; andre.pruniaux@cotecna.ch
Subject: FYI

Dear Milan

Please be advised that Karl from OIP has sent a email reagrding a ship that we did not inspect.
The ship was attended by Saybolt, and some other agents in Kuwait and UQ.

He is asking that I confirm some figures, or make comments on documents that

are done
by shippers. Also a request to call a company in Kuwait for verification, etc etc.

Needless to say, I will not comment on this, and am surprised that Karl asks

these kinds of questions.
I feel that Saybolt is doing inspections, and feel that they are an opposition to us, hence I will it a conflict of interest (Cotecna's interest) if I comment. The papers and figures look good, but do not feel comfortable comfirming their figures. etc.

will forward this email to you, but wanted to state from my private email that this is not in our interests, to help the opposition inspection company

based either in Kuwait or UQ.

Kind Regards,

Hamid Araie

Want to check if your PC is virus-infected? Get a FREE computer virus scan online from McAfee.
http://clinic.mcafee.com/clinic/buy/campaign.asp?cid=3963

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Please visit our website <http://www.cotecna.com>

SPECIMEN

Questions and Answers re: RFPS-204

Q1. **What will be duration of the mandate? Indeed it is understood that this mandate is directly linked to the current Oil for Food programme; what if this existing embargo is either modified or suspended in a near future?**

A. The mandate for any phase of the humanitarian programme is exactly 180-days. It is subject to renewal by the United Nations Security Council upon its expiration. It is the absolute prerogative of the Security Council to amend or modify the import / export restrictions (sanctions regime) as they currently apply to Iraq. It is not possible to forecast when the Security Council may modify or suspend the existing import / export arrangements or to predict the form such a modification or suspension may take. As a result it is difficult, if not impossible, at this stage to assess the implications for the Oil-for-Food programme and its operation on the ground. The relevant offices of the United Nations Secretariat will need to be prepared to make and implement the necessary arrangements in order to fulfill the relevant Security Council requirements in such an event.

Q2. **What is the implementation date foreseen for this programme?**

A. The implementation date for this programme is 1 July 2001, which represents the first day after the expiration of the contract between the United Nations and the current independent inspection agents for humanitarian supplies.

Q3. **Prices request seem to be on a per man/day rate, costs for hard/software, information technology, equipments and general facilities. Does this mean that housing accommodations at border points are provided by the UN?**

A. No. It is the responsibility of the contractor to make all the necessary arrangements and to provide all the necessary facilities for the fulfillment of its duties as indicated in the RFP.

Q4. **A company has been discussing with the Iraqi government about its quality concerns related to imports and the consequent lack of protection for both the Iraqi markets and the local consumers/users. Would this be considered by the UN as a conflict of interest or as reason for being disqualified if this company was mandated by the Iraqi government to perform a quality type pre-shipment inspection for all goods imported under the MOU?**

A. We have no position on discussions that any company may enter into with the Government of Iraq on issues or services that are outside of those contained in the RFP and the mandate of the independent inspection agents. Any arrangements that a company may or may not make with the Government of

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Iraq that pertain in any way to the issues or services contained in the RFP and the mandate of the independent inspection agents would have to be reviewed in order to determine whether a conflict of interests exists.

Q5. **How will the transition between the current contractor and the new contractor be done - will there for instance be a period of overlapping?**

A. There will indeed be an overlap period during which the current and new contractors will be working together very closely to ensure that the transition is seamless and that there is no interruption to the services provided by the independent inspection agents for humanitarian supplies. This overlap period may last from four to six weeks, as necessary.

Q6. **What are the official opening hours at the border points/duty stations -24 hours?**

A. The border entry points to Iraq are operational 24-hours per day, 7-days per week. Furthermore, as indicated in the RFP, "the contractor shall provide the services required on a 24-hour, 7-day per week basis."

Q7. **Is it possible or allowed to communicate via the internet in Iraq?**

A. Yes.

Q8. **Are inspectors of Jordanian, Syrian, Turkish and Egyptian nationality allowed?**

A. Although the United Nations seeks wide geographical representation, it is regrettable that the answer to this questions is no.

Q9. **Please provide schedule of goods, products, equipment likely to be imported at each duty station/border point annually under this Programme.**

A. A listing of the humanitarian supplies that are to be procured by the Government of Iraq and the United Nations agencies and programmes is included in the distribution plan for any given phase of the Oil-for-Food programme. The contents of the distributions plan are available by accessing the official website of the United Nations Office of the Iraq Programme (http://www.un.org/depts/oip). Under the heading "Information for companies and delegations", viewers will be able to click on any of the given distribution plans to review their content. The schedule of delivery is stipulated in the contract between the Government of Iraq and the supplier, a copy of which is made available to the independent inspection agents for humanitarian supplies

shortly after its approval by the Security Council Committee established by resolution 661 (1990).

Q10. **Please provide figures of estimated volume imported annually through each duty station/border point.**

A. The following represents a rough estimate of the annual volume of traffic at each border entry point:

Umm Qasr:	400 vessels
Trebil:	30,000 trucks
Zaxho:	20,000 trucks
Al Waleed:	15,000 trucks

Q11. **Please clarify how the contractor should act on imports that are not a part of the Oil for Food Programme.**

A. Imports to Iraq that are not part of the Oil-for-Food programme are not part of the mandate of the independent inspection agents for humanitarian supplies.

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CLARIFICATION FOR Q2:

Q2 What is the implementation date foreseen for this programme?

A **The implementation date for this programme is 1 August 2001 (not 1 July 2001 as earlier sent), which is the first day after the expiration of the contract between the United Nations and the current independent inspection agents for humanitarian supplies.**

ADDITIONAL QUESTIONS

Q12 Will the UN give permission for the export of the software and computer hardware which is necessary for the project (Microsoft for example does not allow the utilization of their software in Iraq unless authorization is given)?

A. **It should be noted that it is not the United Nations [illegible] i.e. not the Office of the Iraq Programme (OIP) or any office in the Secretariat) that authorizes the export of equipment and goods to Iraq. Such authorization is granted by the Security Council Committee established by resolution 661 (1990), also known as the '661 sanctions Committee'. The OIP cannot speak on behalf of that Committee or prejudge whether it will grant the necessary authorization.**

However, it should be noted that in the past, the Committee has generally looked favourably upon requests by the United Nations independent inspection agents for the import of equipment that is necessary for the independent inspection agents to fulfill their duties.

Q13 For the 62 inspection agents, does that mean 62 inspectors on duty all the time or are some of the inspectors relaxing/resting until it is their duty?

A. **As indicated in the RFP, 62 inspectors are to be present at the four border entry points at all times. These 62 inspectors will take turns in performing active duty.**

Q14 What is the anticipated duration of the contract?

A **The contract shall normally be in force for an initial one-year period, with options to renew for successive one-year periods, under the same terms and conditions (including price), unless earlier terminated in accordance with the terms of the contract. The UN shall have the right, at its sole option, to extend the contract on the same terms and conditions (including price), for additional periods of one-year each, or of such shorter duration as the UN may in its sole discretion determine, by giving the contractor written notice**

of its intention to do so not less than fifteen (15) days prior to the expiration of the then current term of the contract.

Q15 Will the contract automatically be extended if the contractor is performing his duties satisfactorily and if so, for how long before it must go in public tender?

A **Please see reply to Q14 which answers this question.**

Q16 When is the contract anticipated to begin?

A **The contract is to begin on 1 August 2001, which represents the first day after the expiration of the current contract.**

Q17 Will Annex E form the basis of the contract?

A **Annex E which is the UN General Conditions of Contract [illegible] form part of the contract.**

Q18 Is it possible to have a copy of the contract currently in force?

A **We regret that we cannot give out a copy of the current contract.**

Q19 Will there be a mobilization fee?

A **There is no mobilization fee. For the current contract, payment to the contractor is made monthly, against the contractor's written invoices and certification by the UN that the services represented by the invoice have been satisfactorily completed. All invoices are payable under the normal UN payment terms of thirty (30) days from the date of the UN's receipt of the invoice and all required supporting documentation.**

Q20 Would the UN accept individual CVs from each inspector made by himself or you prefer a standard CV with all details?

A **It does not matter as long as the contractor provides the UN with the CVs of all the nominated inspectors.**

Q21 Are the French, Kuwaiti, Iranian and Saudi Arabian nationalities excluded?

A **The French are not excluded, however the Kuwaiti, Iranian and Saudi Arabian nationalities or any other nationalities from that region are excluded.**

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A **There are no restrictions on the origins on the companies. There are restrictions on the personnel going to Iraq.**

Q23 For the price schedule, should the quoted price be per annum?

A **The period of the mandate for any phase of the Iraq humanitarian programme is 180 days, which is subject to renewal by the UN Security Council. However, the resulting contract from the Request for Proposal will be for an initial period of one year, with options to extend for successive one year periods.**

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ANNEX A

STATEMENT OF WORK

United Nations Security Council resolution 986 (1995), and subsequent related resolutions, direct the Security Council Committee established by resolution 661 (1990) (hereinafter referred to as "the Committee") to monitor the import into Iraq of essential humanitarian supplies by the Government of Iraq and the relevant United Nations agencies and programmes. Security Council resolution 1175 (1998) directed the Committee to monitor the import into Iraq of oil spare parts and equipment by the Government of Iraq.

The contractor will provide all services and supplies to verify and confirm that the description, value and quantity of humanitarian supplies and oil spare parts and equipment arriving in Iraq are in accordance with the requirements established by the Committee.

RESPONSIBILITIES OF THE CONTRACTOR

Scope of work

The contractor will provide independent inspection agents (hereinafter referred to as "the agents") as required to achieve the objectives set forth in the RFP and its proposal. In particular, the contractor shall provide all services and material set forth in the RFP and its proposal. The proposal should describe all procedures the inspectors are willing to use. The contractor shall provide the services required on a 24-hour, 7-day per week basis.

The contractor shall provide a total of sixty-two (62) agents, present at all times at the border entry points of Ad Trabeel, Trebil, Umm Qasr and Zakho, and, at no additional cost to the United Nations, one (1) field manager, one (1) senior liaison officer, and one (1) chemist, all of whom shall be posted as specified in the proposal.

The agents are to be selected by the United Nations from among candidates that the proposer will nominate in the proposal and that are deemed experienced and qualified to conduct the inspection work. The proposal must include the curricula of the candidates proposed and a wide geographical representation of candidates. There shall be no substitution of the contractor's personnel without the United Nations' prior written consent in each instance. The United Nations reserves the right, at its sole discretion, to increase or reduce the number of agents at any time. Bearing this in mind, the proposal should quote the contract price for additional inspectors, above the 62 indicated.

Without limiting the United Nations' rights of approval hereof, in addition to the sixty-two (62) agents selected by the United Nations, the United Nations shall designate

ten (10) additional persons from among the candidates who are acceptable to serve as replacement agents.

For these purposes, the United Nations is soliciting proposals for the services of independent inspection agents to perform, *inter alia*, the tasks detailed below:

Authenticated confirmation of the arrival of humanitarian supplies

(a) The agents shall confirm imports into Iraq, pursuant to Security Council resolutions 986 (1995), 1175 (1998) and subsequent related resolutions, of humanitarian supplies and oil spare parts and equipment, including without limitation, the verification, inspection and testing procedures to be set forth in the proposal.

(b) In doing so, the agents will cross-check and compare the appropriate documentation, such as bills of lading, other shipping documents or cargo manifests with the letter of approval and other documents issued by the Committee against humanitarian supplies and oil spare parts and equipment arriving in Iraq.

(c) The agents shall, among other matters, conduct quantity inspection by weight or count, including visual inspection, sampling, and when necessary, timely laboratory testing. If the shipment is in order, the agents will add their authenticated confirmation of arrival, stating that the exporter is eligible for payment, to a copy of the letter of approval issued by the Committee. The agents will immediately report any irregularities to the Secretary-General and the Committee. If the problem is related to normal commercial practices (i.e., short-laden goods), the Committee and the Government of Iraq shall be informed but normal commercial practices (i.e., claims) shall not apply. If the agents determine that it is of serious concern, they will hold the shipment in question, or will withhold authentication, pending guidance from the United Nations.

(d) The agents will submit electronically to the Secretary-General daily shipment inspection reports authenticating the delivery of supplies, d written weekly reports via facsimile describing in detail the services performed. The exact format of these reports will be agreed upon between the parties.

Special inspection and authentication procedures

On certain occasions, the Committee will identify an item(s) as being of a sensitive nature and make their approval conditional upon end-use / end-user observation and monitoring and reporting by the United Nations. In addition to the tasks outlined above, the agents will be required to undertake special inspection and

authentication procedures. In this regard, the duties of the agents will include, *inter alia*, the following:

(a) The United Nations will notify the agents, through a monthly update, of the relevant item(s) by Comm. number that require special inspection and authentication procedures. Separate lists will be prepared for humanitarian supplies and oil spare parts and equipment. This monthly update will also be provided to the United Nations and the independent oil inspection agents contracted separately by the United Nations.

(b) The item(s) in question will be inspected and authenticated by the agents upon arrival at the border entry point to Iraq. The agents will report on a weekly basis to the United Nations on the arrival of the designated humanitarian supplies and, with regard to oil spare parts and equipment, also to the oil inspection agents, until delivery of that Comm. number is fully completed. This will constitute an attachment to the reporting obligations outlined above.

(c) As required, the agents may be requested to affix a Unique Reference Number (URN) seal on a specified item(s) upon their arrival at the relevant border crossing point to Iraq. In this regard, the item(s) in question will be inspected and authenticated by the agents upon arrival at the border crossing point to Iraq. The agents will then affix a URN seal to the consignment and annotate the relevant documentation with that number accordingly. This seal may only be removed by the United Nations at the time of the visit to the end-user facility. Subsequent to the inspection and authentication of this consignment, the agents will inform the United Nations and, with regard to oil spare parts and equipment, the oil inspection agents, of the arrival at the border of the item(s) in question and also transmit details of the warehouse or storage location and, where available, details regarding end-use or the end-user facility.

Monitoring of defective commodities transported from Iraq

Should the Government of Iraq consider certain commodities to be defective upon receipt and not in accordance with contractual specifications, it may make arrangements for the export of an item(s) from Iraq back to the supplier (or other approved destination). On such occasions, the supplies will also be subject to special inspection procedures by the agents to ensure the appropriate export of the item(s) in question. This will involve the same measures as indicated above but in reverse order. In this regard, the duties of the agents will be, *inter alia*, as follows:

(a) Upon being informed by the Government of Iraq that an item(s) is to be exported from Iraq, the agents will liaise with the Government of Iraq, locate the item(s) in question and apply a URN seal prior to shipment.

(b) As the item(s) in question exits Iraq from the relevant border crossing point, the agents will verify the export of the item(s) by undertaking the necessary procedures, including a check on the status of the seal.

(c) The agents will then report to the United Nations and, with regard to oil spare parts and equipment, also to the oil inspection agents, the details of the procedures undertaken.

On certain occasions, the Government of Iraq may make arrangements for the transport of an item(s) solely for the purposes of repair abroad and to which special inspection procedures may also be required. On such occasions, the agents will inspect and verify the pre-shipment packing, preparation and exportation of the item(s) in question. With regard to humanitarian supplies, the duties of the agents will be, *inter alia*, as follows:

(a) Upon being informed by the Government of Iraq that an item is to be exported for the purposes of repair, the agents will liaise with the Government of Iraq and locate the item(s) in question.

(b) The agents will undertake a visit to that location to document the identifying data, witness the packaging of the equipment for shipment and affix a URN seal to ensure that it is transported in a secure manner.

(c) As the item(s) exit Iraq from the relevant border crossing point, the agents will verify the export of the item(s) by undertaking the necessary procedures, including a check on the status of the seal.

(d) The agents will then report to the United Nations and, with regard to oil spare parts and equipment, also to the oil inspection agents, the details of the procedures undertaken.

(e) The agents will liaise with UNOHCI and, if necessary, the supplier and the Government of Iraq, to obtain the shipping schedule for the return of the equipment to Iraq and inspect the re-entry of the item(s) in question.

On occasion, special inspection and authentication procedures may be necessary for service-based contracts. In this regard, the duties of the agents will be, *inter alia*, the following:

(a) Obtain from the Government of Iraq the location and schedule of delivery for the service to be provided.

(b) Verify that the service is commensurate with the conditions of approval by the Committee.

(c) Report on a regular basis to the United Nations during the provision of the service, and also upon completion with full details of implementation.

The United Nations shall have the right to expand the responsibilities of the contractor at any point, subject to the United Nations' obligation to pay for any additional agents that may be required as a result thereof.

The contractor shall be responsible for making the necessary arrangements to ensure the fulfillment of its obligations. The contractor shall perform its obligations in accordance with the highest professional standards.

Contractor's personnel

The United Nations may request at any time the withdrawal or replacement of any of the agents. The contractor shall, at its own cost and expense, withdraw or replace such personnel forthwith. The assignment of any replacement personnel shall be subject to the prior approval of the United Nations.

No agent shall be assigned to provide the services indicated in the RFP unless the United Nations has approved in advance the selection of such person in writing.

The contractor's personnel shall be fully responsible for all work and services provided by its employees, agents, servants and sub-contractors. The contractor and its personnel shall take all reasonable measures to ensure that all personnel assigned to provide the services indicated in the RFP conform to the highest standards of moral and ethical conduct and respect local customs which are not otherwise inconsistent with the requirements of the RFP.

The contractor shall ensure that all personnel used to perform services are adequately covered by insurance for any service-related illness, injury, death or disability. The contractor shall submit proof of such insurance satisfactory to the United Nations before commencing any work.

The United Nations shall not be liable for any action, omission, negligence or misconduct of the contractor's employees, agents, servants or sub-contractors nor for any insurance coverage which may be necessary or desirable, nor for any costs,

expenses or claims associated with any illness, death, injury, death or disability of the contractor's employees agents, servants or sub-contractors.

The number of agents and the duty stations to which they will be deployed is as follows, bearing in mind that the proposers are requested to suggest the shift structure:

Table 1
Number of inspection agents

AL WALEED	TREBIL	UMM QASR	ZAKHO
10	18	22	12

This table sets out the number of inspection agents to be on duty daily. The number of agents assigned to each site may be adjusted by the United Nations. A shift structure will be devised for each individual site to meet the local requirements and workload and to ensure 24-hour, 7-day a week coverage. The shift structure is subject to change, as determined by the United Nations based on planning requirements. This group must include one information technology specialist capable of undertaking routine support tasks on hardware and software.

Table 2
Managerial and technical agents[1] (non-chargeable)

AMMAN	BAGHDAD	LABORATORY
1 field manager	1 coordination officer	1 Chemist

This table sets out the number of managerial and technical agents to be on duty daily.

The contractor and its personnel will provide the services indicated in the RFP with the highest professional standards. All agents are to possess the necessary experience and knowledge in the relevant field of activity and a proven record in terms of performance, qualifications and integrity.

The contractor and its personnel shall supply all equipment, materials and facilities necessary to perform the services, including without limitation all equipment for taking and storing samples, all vehicles for transporting the agents, all equipment for transmitting authentication confirmation and other reports, and all other equipment, materials and facilities set forth in the proposal. The communications and electronic data processing equipment and software supplied and utilized by the contractor in performing its obligations shall be of the highest quality and be fully compatible with the equipment and software utilized by the United Nations in connection with this

[1] To be provided by the Contractor as management and support at no charge to the United Nations.

COTECNA INSPECTION S.A.

Trebil Site

STANDARD OPERATING PROCEDURES

REFERENCES:

United Nations Security Council resolution 986 dated 14th April 1995

Memorandum of Understanding between the United Nations and the Government of Iraq on the implementation of Security Council Resolution 986 of 1995.

Contract between the United Nations and COTECNA Inspection S.A.

BACKGROUND:

The UN SCR 986, known as Oil-For-Food Programme, is a resolution adopted by the Security Council which authorises states to permit the import of petroleum and petroleum products originating in Iraq in order to produce a sum sufficient to finance the export to Iraq of medicines, health supplies, foodstuffs, material and supplies for essential civilian needs.

Relative to this, the Secretariat of the United Nations and the Government of Iraq signed a **Memorandum of Understanding (MOU)** to effectively guarantee the equitable distribution to the Iraqi population throughout the country of the above stated products of Iraqi petroleum and petroleum products.

Among the provisions of the MOU is for the Secretary-General to appoint an independent **inspection agent** represented by COTECNA Inspection S.A. to be stationed at relevant Iraqi entry points, customs areas to confirm the arrival of goods in Iraq purchased under the plan.

PURPOSE:

The purpose of this document is to establish standardised operational procedures in carrying out both the team as well as individual inspector's duties in the different areas of work in Iraq.

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PROCEDURES

I. GENERAL

In order to ensure that the role of COTECNA INSPECTION S.A., Trebil site in the Implementation of the UNSCR 986 Oil-for-Food Programme inspection is carried out in the most efficient manner the area of work is divided into different job responsibilities as follows.

Since all UNSCR 986 goods coming from the Jordanian Border are loaded on trucks, the job responsibility of this site is concerned mainly with truck inspections.

At the border office, normally the truck driver will submit the necessary paperwork for his truck cargo e.g.:

- **Iraqi manifest**
- **OC letter / Committee letter**
- **commercial invoice**
- **packing list**
- **CMR or Truck Bill of Lading**

II. ROSTER

The duty of inspection at the border is divided into 4 shifts i.e.,

A Shift 0900 -1300
B Shift 1300 -1700
C Shift 1700 - 21000
D Shift 2100 – until last truck

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III. INSPECTION

For the purpose of achieving uniformity in application of procedures and of reaching the highest standard of efficiency, detailed procedures for inspection are specified as follows :

(1) For Regular 986 Commodities and Oil-for-Spares

The inspectors on duty will(enclosed general tutorial for quick distinction of the cargo groups)

(a) check the Iraqi manifest for Iraqi customs stamp #986. If there is no stamp on the manifest, the driver will be sent back to the Iraqi Customs to obtain the stamp.

(b) examine the paperwork accompanying it with the contract:

- check that applicable OC letter is attached (except for bulk consignments already in progress)
- check that port of entry is Trebil.
- check if the correct OC no. is entered on the manifest
- check the rest of the documents:

(c) for bulk consignments - the CMR and weigh-bridge ticket

(d) for deliveries (detergent powder, soap, machinery etc.) - Packing List, Consignment Note, Invoice, Bill of Lading, CMR, Copy of Contract, Certificate of Origin

(e) for medicaments – the Analytical Report

(f) (f) check and correlate the figures (truck #, manifest #, CMR#, weights, quantity etc.) on the documents

(g) If satisfied, inspectors will carry out physical examination of the goods, which without limitation, will include inspection of marking, numbering, count and weight, number of collies, batch details, shelf life(where applicable),sampling according to the sampling procedure; containers are checked starting from seal status, condition of container and load, including opening of selected collies, or full check and

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count, depending on type of commodity in case and authenticating procedure required in the approval letter (engines and machines are identified including serial numbers and clear purpose of use). Any irregularities encountered during inspection of cargo which constitute deviation from approval letter will be reported to the OIP and obvious cases will be supported by photos taken by digital camera.

For foodstuff, medicaments, toilet soaps and detergent powder samples will be drawn. (Please refer to sampling procedures at ***Enclosure 2***).

Samples are handed over to the sampling inspector in charge for onward processing and testing.

(h) (h) if paperwork is acceptable and the inspection of the goods proves satisfactory, the inspector will enter the necessary data on the inspection form (***Enclosure 1***) and attach the necessary documents such as invoice, packing list, committee letter, etc. He will stamp all the CMR's and all the copies of the manifest and retain one copy of all the documents for his file.

Inspectors will immediately inform UNOCHI Baghdad by E-mail or Fax in case of end-use humanitarian supplies and Saybolt for oil-spare-parts deliveries and end –use monitoring oil spares.

(2) For Agriculture Goods

The inspectors on duty will

(a) apply the same procedures for Phases 3, 4, 5, 6, 7,8...

(b) apply the same procedures for Phases 1 & 2 with the exception of (g) above. Inspectors will not carry out a physical inspection of the goods.

(c) For commodities inherent to the 661 OC letter or 2.2 % account inspectors will not carry out physical inspection of the goods, neither will retain copies of the shipping documents.

(3) Discrepancies

In case of any discrepancy on the documentation and/or with the commodity, the paperwork will be brought to the (Dep)Team Leader for consultation, verification and his further action.

(4) Hold

If documents are showing: (out-of date OC letter or wrong port of entry) the inspectors will put cargo on hold, instructing driver to wait pending further clearance from the OIP. In such case physical examination of the cargo will take place, and copies of the submitted documents will be retained. Verbal advise to the OIP have to be followed by written notice describing cargo examined, status of delivery ,OC number details and problem (if case).

(5) Completion of Inspections

Inspectors will remain responsible for the completion of any unfinished inspections commenced during their respective shifts.

IV. DATA SHIFT

See : **"Email authentication procedure" a simple step by step guide**
Inspector on Data Shift will carry out the following preliminary functions:

(a) collect truck inspection records from front desk.

b) verify details and accuracy of inspection reports against documents attached (This is second check, as inspector in charge has done initial verification during or immediately after the shift he was in charge of).

(c) Notify authenticating official and upon his instruction:

- report to the OIP Authentication Team any anomaly encountered (OC not entered into database, discrepancies between contract hard copy and database lines, description, prices, quantities, omissions and similar)
- Copy OIP Authentication Team with all correspondence made to the suppliers for additional documentation/clarification(copies signed by authenticating official on site)

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(1) Data Input :

Conditions: Server and data workstations separated and isolated from other offices.

Access to the server and to the workstations allowed to the authentication/data entry and IT officials only, with graduated access level. Data entry inspectors use user ID as starting level.

IT personnel in charge has exclusive access to the server. No modifications of the settings allowed unless strictly instructed by OIP/IT Section.

The inspector will then

(a) enter details in Lotus Notes database :

- produce Shipment Inspection Sheets for each input, and Authentication Sheet per respective line item, and store authentication sheets in temporary file.
- all inspection record sheets (truck sheets) will be signed by data shift inspector, upon input in database.
- active inspection record sheets (for still active comms) will be returned to the front desk for further inputs.
- produce 'Daily Summary Report' for MDOU Baghdad .
- produce report to UNOCHI Baghdad –notification of end-use monitoring humanitarian supplies(if any)
- produce report for Saybolt Iraq - Notification of oil spare shipments (if any) ,Notification of end-use monitoring oil spares.

(2) Authentication

The authenticating official (TL or DTL) will perform the following duties:

(a) check 'Shipment Inspection' sheets hard copies and 'Authentication' sheets(working copies or "on screen" copies and verify against contract). Incorrect inputs will be corrected and respective sheets will be returned for verification.

(b) authenticating official will then give final instruction for storing all authentication sheets in master file. All data have to be ready before automatic replication will start.

(c) No modification of entered data will be allowed after replication from the site and pending strict consent from the OIP.

(3) E - Mail and Data Replication.

Transmission of the authentication sheets takes place DAILY.

Procedure in brief is as follows:

(a) All Authentication Sheets already stored in master file (after being checked and verified by the authenticating official, with electronic signature on each respective sheet)- now are paginated and file is zipped.

(b) Zipped file is named : T :Year2001MMDD.

(c) Authentication cover pages are produced, presented to the authenticating official, and signed and correct, stamped by site date stamp(set on current date) and signed by authenticating official himself. Cover page should bear the Subject of e-mail file : T2001MMDD.

(d) The same authentication cover page file is send via e-mail and via fax to the OIP Authentication Team, together with zipped master file.

(e) On a weekly basis, on Mondays, a pending authentication/pending comm list (PA/PCL) is produced with brief description of the reasons for delay and list is transmitted via e-mail or by fax to the OIP Authentication Team.

(f) Zipped e-mail file is printed out (all pages) ,stamped and additionally signed by the authenticating official. Hard copies (fully identical) serve as back-up for any future reference.

(g) Note: Hard copies of the authentication sheets are to be signed with authentication official whose name appears on the shipment inspection ("Inspector" in Shipment inspection screen) and whose scanned signature is accurately allocated to the respective authentication sheet. Any working copy of the authentication sheet should be discarded and removed from the

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authentic back-up copies, which are the print-outs of the zipped file.

(h) All respective inspection / input documents are filed by Data shift.

(i) Completed comms are double-checked to verify if the "date of completion"is entered in one of the shipment inspections for the respective comm(and if all line items are completed and data entered). Complete comm is entered into "Completed comms list" for Trebil.

Completed comms are given to the inspector on arriving duty.

V. Other Duties and Reports

The following reports are produced and functions carried out:

(1) Reports

(a) daily staff movement and deployment report to Amman

(b) weekly report to Amman and Geneva

d) monthly updated list of completed comms – produced and sent to the OIR Authentication Team at the beginning of each month for the previous month.

(c) monthly account statements

(d)monthly inventory and car report

(2) Functions

(a) Daily, weekly and monthly back-up of the database

(b) statistics are compiled in respect to the following

- number of completed comms (Note:Comm is not complete unless confirmed from the IT OIP as complete)
- Agency Goods Phase 1&2 (once a week, each Friday)
- statistics for 'Weekly Report', based on 'Daily Summary Report'

3.4.1 E

ATTACHMENT "4"

SITE PROCEDURES

UMM QASR

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COTECNA INSPECTION S.A.

Standard Operating Procedures
for
COTECNA Inspectors
in
UN SCR 986 Programme in Iraq

Standard Operating Procedures at Umm Qasr

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COTECNA INSPECTION S.A.
Geneva
11/04/01

COTECNA INSPECTION S.A.

Umm Qasr Site

STANDARD OPERATING PROCEDURES

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The UN SCR 986, known as Oil-For-Food Programme, is a resolution adopted by the Security Council which authorises states to permit the import of petroleum and petroleum products originating in Iraq, in order to produce a sum sufficient to finance the export to Iraq of medicine, health supplies, foodstuffs, material and supplies for essential civilian needs.

Relative to this, the Secretariat of the United Nations and the Government of Iraq signed a **Memorandum of Understanding (MOU)** to effectively guarantee the equitable distribution to the Iraqi population throughout the country of the above stated proceeds of the petroleum and petroleum products.

Among the provisions of the MOU is for the Secretary-General to appoint an independent **inspection agent** represented by COTECNA Inspection S.A. to be stationed at relevant Iraqi entry points, customs areas to confirm the arrival of goods in Iraq purchased under the plan.

PURPOSE :

The purpose of this document is to establish standardised operational procedures in carrying out both the team as well as individual inspector's duties in the different areas of work in Iraq.

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PROCEDURES

I. GENERAL

In order to ensure that the role of COTECNA INSPECTION S.A., Umm Qasr port in the implementation of the UNSCR 986 Oil-for-Food Programme inspection is carried out in the most efficient manner the area of work is divided into different job responsibilities as follows.

Since all UN SCR 986 goods coming into Umm Qasr are transported by ship the job responsibility of this site is concerned mainly with ship control inspections

II. ROSTER

The inspectors at the port of Umm Qasr do not work in shifts as on the other stations. A team of inspectors is allocated a ship before it docks and the team of inspectors holds the responsibility of monitoring and recording all activities of that ship while it remains in port, including its time of completion of discharge and the time of departure from Umm Qasr.

III. INSPECTION

For the purpose of achieving uniformity in application of procedures and of reaching the highest standard of efficiency, detailed procedures for inspection are specified as follows:

1. Allocation of ship-inspection duties

Allocation of vessels is done by whoever is in charge of the site at the time (TL, DTL or ADTL).

Each team takes turns in being on duty and monitoring the movement of ships. Twice daily the team on duty will visit all sections of the port and make contact with port supervisors, foremen in sheds and the manager at the operations office. They will obtain all the necessary and relevant information on times of arrival/departure of ships and information on the port from whence the ships arrived, type of cargo being carried and the number of the berth at which it is docked. They will also collect weighbridge tickets for the previous 24 hrs discharge for distribution to the respective teams.

On return to the office the duty team will enter all information on the notice board in the inspectors' office. At that time the TL, DTL or ADTL will assign any new ship to one of the teams of inspectors. This team will then take reporting responsibility for that ship.

2. Duties of Inspectors

(A) Procedure on arrival of a vessel :

When a team of inspectors is assigned to a newly arrived ship the team will carry out the following procedures:

(a) board the ship as soon as possible after it docks

(b) visit the master and identify themselves as Cotecna Inspectors under UN control

(c) collect the following documents:

for bagged & bulk cargo shipments
- UN Committee letters
- cargo manifest
- stowage plan
- bill of lading
- if available, commercial invoice
- fumigation certificate

for container shipment
- UN Committee letters
- cargo manifest
- bill of lading
- stowage plan
- commercial invoices
- packing lists

(d) check all documents carefully while on board ship

(e) if documents are missing, the team will immediately make a request for the missing documents

(f) Collect samples together with the relevant authorities

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(B) Procedure at the office

On return to the office the team will:

(a) examine all documents again

(b) in case of any missing documents immediately contact the supplier to obtain the missing documents or get clarification. At the same time copy OIP for regular update.
2 Copies of the fax to be printed – 1 for the file and 1 for OIP update . All correspondence to be signed by TC or DTL and standardised fax cover sheet to be used.

(c) highlight all **essential** figures as Comm No, description of goods, manifested cargo weight, (gross kilos and net kilos), number of bags, etc.

(d) Advise datashift of arrived Comm No. datashift to check validity, check all lines are tagged, check end-use and whether all lines are approved. Any problems should be reported to OIP immediately by e-mail.

(e) complete the general details form for each Comm No.

(f) enter all details on the vessels' arrival / report on the notice board in inspectors' office

(g) hand over collected samples to sample team for processing and dispatch

(h) **for bagged & bulk shipments** -open weigh-bridge ticket file in computer, for each shipment

(i) **for container shipments** - make a list of containers selected for inspection for each Comm No.

(j) **for spare parts** - immediately inform Saybolt of arrival by e-mail according to Saybolt procedures.

(k) **for end-use monitoring** – datashift to advise UNOHCI by e-mail.

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(C) Procedure during discharging :

At the port the team of inspectors will:

(a) visit their assigned ship at least twice a day(first visit 09h30 at the latest)

(b) contact the master, port supervisor, foremen and agents to get information on how discharging is proceeding

(c) inspect cargo in all holds and view the work of the cargo handlers

(d) monitor all activity relative to the unloading of the ship. In the event of any difficulties arising they will be aware of the problem and will be in a position to produce a report on the matter

(e) inspect the sheds regularly to identify any cargo waiting to be re-bagged

(f) give a copy of lists of containers selected for examination to manager or foreman at the container office They will get copy signed by manager or foreman for office use. The copy is filed in the appropriate ship's file.

The selected containers will be inspected as soon as possible after discharging. The team will record its observations/remarks regarding discharging.

In the office the inspectors will

(a) enter all daily figures and weigh-bridge tickets into the computer

(b) file a printout with the ships documents.

(c) record the quantity discharged on the weekly status report which is pinned to the board in the inspectors' room.

(D) Procedure when discharging has finished :

In port the team will

(a) be aware of the time when discharging has finished

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(b) board the ship and check in all holds and on the deck for damaged cargo and sweepings

(c) count all damaged bags and estimate the total quantity of damaged cargo and sweepings

(d) check if good cargo is remaining on board and find out the reason for this

(e) check/estimate quantity of good cargo remaining in the ship

The team has to be present on board when the master and the receiver are signing the 'Final Statement of Fact'. They will not enter into any discussions with the parties but they will collect all available information (copy of statement of facts with all the comments and also any protest notes from master or receiver).

The team will not sign any document but will inform the parties concerned that they will submit their own independent report.

The team will check the departure draft of the ship and record it.

Within 2 days of the completion of the discharging, the team will obtain final computer-printout figures of discharged cargo from GBI/MOT.

At the office the team will perform the following functions :

for bagged / bulk cargo shipments

(a) make final report on vessel

(b) check all documents once again for accuracy

(c) hand over report with supporting documents to Team Leader for further action

for container shipments

(a) make container vessel report

(b) check all documents once again for accuracy

(c) hand over report with all documents to Team Leader for checking and verification

(1) IV. DATA SHIFT

Conditions: Server and data workstations separated and isolated from other offices.
Access to the server and to the data workstations allowed to the authentication/data entry and IT officials only, with graduated access level. Data entry inspectors use user ID as starting level.
IT personnel in charge has exclusive access to the settings. No modifications of the settings allowed unless strictly instructed from the IT Section.

The inspector will then

(a) enter details in Lotus Notes database:

- produce Shipment Inspection sheets for each input, and Authentication Sheet per inspective line item, and store authentication sheets in master file.
- all inspection record sheets will be signed by data shift inspector, upon filing in database.
- active inspection record sheets (for still active comms) will be returned in active files for further inputs.
- produce 'Daily Summary Report' for MDOU Baghdad .
- produce report to UNOCHI Baghdad –notification of end-use monitoring humanitarian supplies(if any)
- produce report for Saybolt Iraq - Notification of oil spare shipments (if any) ,Notification of end-use monitoring oil spares.

(2) Authentication

The authenticating official (TL or DTL) will perform the following duties:

(a) check 'Shipment Inspection' sheets hard copies and 'Authentication' sheets(working copies or "on screen" copies and verify against contract). Incorrect inputs will be corrected and respective sheets will be returned for verification.

(b) authenticating official will then give final instruction for storing all authentication sheets in master file. All data have to be ready before automatic replication will start.

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(c) No modification of entered data will be allowed after replication from the site and pending strict consent from the OIP.

(3) E - Mail and Data Replication.

Transmission of the authentication sheets takes place DAILY.

Procedure in brief is as follows:

(a) All Authentication Sheets already stored in master file (after being checked and verified by the authenticating official, with electronic signature affixed on respective sheet)- now are paginated and file is zipped.

(b) Zipped file is named : UYear2001MMDD.

(c) Authentication cover page is produced, presented to the authenticating official to be found correct, stamped by site data stamp(set to currentdate) and signed by authenticating official himself. Cover page should bear the Subject of e-mail as: U2001MMDD.

(d) The same authentication cover page file is send via e-mail and via fax to the OIP Authentication Team, together with zipped master file.

(e) Once a week, on Mondays, a pending authentication/pending comm list (PA/PCL) is produced with brief description of the reasons for delay and list is transmitted via e-mail or by fax to the OIP Authentication Team.

(f) Zipped e-mail file is printed out (all pages) ,stamped and additionally signed by the authenticating official. Hard copies (fully identical) serve as back-up for any future reference.

(g) Note: Hard copies of the authentication sheets are to be signed with authentication official whose name appears on the shipment inspection ("Inspector" in Shipment inspection screen) and whose scanned signature is accurately allocated to the respective authentication sheet. Any working copy of the authentication sheet should be discarded and removed from the authentic

back-up copies, which are the print-outs of the zipped file.

(h) All respective inspection / input documents are filed by Data shift.

(i) Completed comms are double-checked to verify if the "date of completion" is entered in one of the shipment inspections for respective comm(and if all line items are completed and data entered). Complete comm is shifted to "Completed comms list" for Umm Qasr.

Completed comms are given to the inspector on following day

V. Other Duties and Reports

The following reports are produced and forwarded out:

(1) Reports

(a) Daily Summary Report to UNOU Baghdad

(b) Daily staff movement and car location report to Amman

(c) Vessels arrival and departure report to Baghdad

(d) Update of vessel status report

(e) Weekly report on Thursdays.

(f) Pending /authentication comms list and completed comms list.

(2) Duties

(a) Data entry

(b) Daily, weekly and monthly back-up

(c) Data and e-mail replication daily

(d) Check for updates (OC extensions etc.) daily after auto database replication.

(e) Keep vessel board updated.

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PRUNIAUX Andre

From: FERNANDEZ Lucien
Sent: mardi, 27. avril 1999 12:32
To: PRUNIAUX Andre
Subject: RE: G2 02 / G2 01 Incidents - Githinji - 26

Andre,
I think we should ask OIP to complain to the Iraqi Mission in NY, because it is becoming abusive.
Lucien

From: PRUNIAUX Andre
Sent: 27 April 1999 09:39
To: FERNANDEZ Lucien
Subject: RE: G2 02 / G2 01 Incidents - Githinji - 26

Lucien,

I am willing to issue a request to UN-OIP. Please advise.

André E. Pruniaux

From: FERNANDEZ Lucien
Sent: lundi, 26. avril 1999 11:40
To: PRUNIAUX Andre
Cc: POITEVIN Alexis
Subject: FW: G2 02 / G2 01 Incidents - Githinji - 26

From: cotecna [SMTP:cotecna@index.com.jo]
Sent: 26 April 1999 11:00
To: LUCIEN
Subject: G2 02 / G2 01 Incidents - Githinji - 26
From: **"Cotecna Inspection" <cotecna@index.com.jo>**
Date: Mon, 26 Apr 1999 10:10:13 +0300
To: "Geneva M. Fernandez" <Lucien_Fernandez@cotecna.com>
'Station Baghdad' <cotecna@un.org>
Subject: G2 02 / G2 01 Incidents - Githinji - 26

Mr. Githinji's luggage was once more thoroughly searched both by Iraqi and by Jordanian customs, him brandishing his U.N. identity tag notwithstanding.
I understand the concern from the Jordanian side, taking into account the smuggling detected on board of the Jordanian tanks and this although I had issued strict instructions to our staff to clean the cars in which they are driven.
But from the Iraqi side, this must stop. Trebil site is obviously not able to impose itself with their Iraqi counterparts. I suggest Baghdad stepping up the pressure, and Geneva approaching the Iraqi Mission in New York, or lodging a formal complaint with OIP. Baghdad could perhaps organise a meeting with the Foreign Office during our next stay. I would also like to meet the Superior Officer in charge of the Customs in Trebil. I was told by our Trebil team that he was hard to reach.

Regards,

C. de Weldon

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OK. Mais comme discuté ce matin, merci de me fournir un budget sur le coût de l'intervention de J.L. Clayes qui sera donc revendu par le Département Commercial au projet IRAK du 01 avril 1999 au 15 mai 1999.

André E. Pruniaux

From: DUBOIS Maurice
Sent: jeudi, 22. avril 1999 08:34
To: PRUNIAUX Andre
Cc: FERNANDEZ Lucien
Subject: RE: URGENT - FW: INSPECTION, SAMPLING AND TESTING EQUIPMENT

André,

J.L. Clayes est engagé par la div. Com. Comme directeur technique, basé en France à Rouen dès 01.04.99.

Il est « employé » par Lucien pour 1 mois et demi dès la semaine prochaine dans le cadre du contrat Irak 15 jours en France et 1 mois en Irak. Ceci a été décidé hier [illegible]

Meilleures salutations,

Maurice

From: PRUNIAUX Andre
Sent: jeudi, 22. avril 1999 08:29
To: DUBOIS Maurice
Cc: SIEGWART Pierre; FERNANDEZ Lucien; POITEVIN Alexis
Subject: URGENT - FW: INSPECTION, SAMPLING AND TESTING EQUIPMENT
Importance: High

Maurice,

Quel est l'arrangement avec J.P. Clayes? L'as-tu embauché? Est-il disponible selon les besoins exprimés ci-dessous par Lucien?

Merci.

André E. Pruniaux

From: FERNANDEZ Lucien
Sent: mercredi, 21. avril 1999 15:33
To: PRUNIAUX Andre
Cc: POITEVIN Alexis
Subject: INSPECTION, SAMPLING AND TESTING EQUIPMENT
Importance: High

Andre,

Now that our testing and sampling equipment and supplies have finally been approved by the Iraqis, we can start ordering, applying for export licenses and shipping the required items to Amman, in transit to Iraq. All the material is coming from France, due to unavailability of same in Switzerland and, when available, prices being too expensive. Since the definition of the items and the identification of the suppliers was done by Jean-Louis Clayes, I will use him to do the purchasing, the applications for export licenses and the actual shipping to Amman; I need him to come to Geneva for two days next week to agree on the equipment, suppliers and administrative procedure. When all the previous tasks are completed, Clayes should travel to Iraq in order to amend the site procedures according to the new means available and train the inspectors accordingly; if by then we have been able to erect the new cabins in Umm Qasr, he may then re-formulate the site's procedures.

Please let me know if you have reservations regarding the above.

Thanks and best regards,
Lucien

SPECIMEN

AUX Andre

Puis-je envoyer cet E-M ail à [redacted] ?

JD / 23 490

From: cotecna
Sent: mercredi, 7. avril 1999 10:06
To: ANDRE
Subject: RE: Confidential

From: "Cotecna Inspection" <cotecna@index.com.jo>
Date: Wed, 7 Apr 1999 09:30:36 +0300
To: "'Andre_PRUNIAUX@Cotecna.com'" <Andre_PRUNIAUX@Cotecna.com>

Roger that, Sir.

No problem with me. But he has to stay out of any further commercial matter, because it is prejudicing us. Each and every supplier he has introduced gave us bad quality or service for prices I find out to have been excessive.

You have read my last fax to him regarding his February disbursement account, showing by some 20.000 $ pending producing evidence (invoices, for instance).
I am now starting to check his March disbursement accounts. He should not be a[redacted] will be reimbursed what is really due, but, as I said in a
previous message to Mr. Siegwart, I have warned him that it is not because [redacted] has paid an invoice without me approving it first, that I shall cover his disbursement.

I do not believe in so many and repeated involuntary errors. Cf. [redacted] issue, the claim from Andalous for rented cars, I now found out that Madanat has received 1.000 JD from Madanat before the feast of Aid, and that notwithstanding my warning him. Madanat did not tell me about his payment to Andalous, neither did he mention it in his two invoices to us. I cannot
believe he forgot it. As I cannot believe he did not check the addition made by Thrifty, with a 1.000 $ error. He checks and rechecks each and every dime he has to pay.

On the car insurances, Madanat came up with a proposal he had secured from a Jordanian insurance company, amounting to 1.750 JD per car per year. The high premium was justified by the fact that the cars had to be insured in Iraq as well. I can understand that.

Mrs. Twal, acting on my request, came up with a an offer from another company, for a similar coverage for 600 JDs. I have my personal introductions with the National Insurance Director, who showed me the law on the subject.

For the non-commercial business (Director, airport) Madanat is obviously not willing to help any more, and this has become irrelevant, as I have now my personal introductions everywhere and at any time.

As a matter of fact, he does not show up in the office any more, except for sitting in front of [redacted] waiting for his outstanding 24.000 $, or with the offer to take all the invoices with him and pay them on our behalf. No thank you. I will control each and every invoice and I invited him to start with producing his own [redacted] for fees and rent, which he still has not done.

As to [redacted] to send Mr. Siegwart, thanks, but, for the time being, not necessary. Mr. Siegwart mailed your Excel accounts software, which will be implemented later. I also received from him kind recommendations and helpful hints. This should speed up things.

Where we could use some help from you is your approval for having this office equipped with something more than a laptop and a XIX century photocopier. I have obtained some new offers on PC, will fax them. We definitely need two. As to the photocopier, I was offered - trough Madanat - a Canon second hand copier heavy duty, which I had to throw out after 10 days of unsuccessful trial. Of course I did not pay. Photocopiers are horribly expensive. The one which would suit us best goes as high as 5.000 $. I am looking for alternatives.

Do not worry, I can manage.

HA015400

Regards

CdH

From: Andre_PRUNIAUX@Cotecna.com[SMTP:Andre_PRUNIAUX@Cotecna.com]
Sent: mardi, 6. avril 1999 19:17
To: cotecna@index.com.jo
Subject: Confidential

From: PRUNIAUX Andre <Andre_PRUNIAUX@Cotecna.com>
Date: 1999-04-06 16:11
TO: 'CarloDeHenninAmman' <cotecna@index.com.jo>

Carlo,

I have now received several messages from you on G. Madanat's mishandling of invoices, inaccuracies, discrepancies, excessive billing, etc. I am of course extremely concerned by the gravity of this situation and I do appreciate your complete and frank reporting. I have also received some distressed messages from G. Madanat. It is impossible for me to fully and fairly judge the overall situation (financial, political, etc.) from here.

In any case, and until we have received further official news from both the Jordanian mission to the UN in New York and the UN-OIP, I do not think that it is wise and possible to break links with G. Madanat. We have to maintain a working arrangement with him and his contribution will be substantially reduced. We have known him for a long time and his personal connections with our shareholders should enable us, if necessary, to have him accept our reduced conditions.

It is also impossible for me (unless I go to Amman to study in details the files and talk to both of you) to understand clearly the various modified arrangements on the rented cars, telecoms, etc. It is, therefore, difficult to take drastic decisions.

I am not surprised by George's voluntary or involuntary (for lack of organisation) financial discrepancies. This is a game played all over Middle East. These should be checked and corrected as you have done. It is time consuming and irritating but difficult to avoid. For the major mishandlings, leading to negative (personal) commercial (and political) arrangements (Kevser, etc.), I propose to have an overall view of our financial and political situation as indicated above.

As Madanat's role [redacted] Fernandez will go to Amman within approx. 2 weeks and will review this whole matter with you (I am unable to travel [redacted] since we are starting our new - and important - Nigerian contract [redacted] at May in Lagos).

In the meantime, if you have to take immediate decisions on some outstanding invoices, kindly let them in a simplified form with your comments/recommendations for each outstanding item. In any case, I need a copy of all the invoices so far retained by you.

Best regards.

Andr, E. Pruniaux

P.S.:
I am also willing to ask Pierre Siegwart to travel to Amman before end of April to help you and Mrs Twal to simplify and speed up accounting, payments and reporting to Geneva.

HA015401

405

File Iraq - UN

UNITED NATIONS NATIONS UNIES

OFFICE OF THE IRAQ PROGRAMME

FACSIMILE

Ref: JO/LEL

To: Cotecna Inspection S.A. Attn: [illegible] Senior Vice President AP	Fax: 011-41-22-849-6939 Tel:
From: Jeremy Owen Chief Customs Expert, OIP	Fax: + 1 212 963 [illegible] Tel: + 1 212 [illegible]
Subject: Provision of Independent Inspection Agents	
Date: 26 January, 1999	Number of pages (including cover page): 1

Dear André:

Thank you for your facsimile message dated the above subject attaching curriculum vitae for the following:

Mr. T. Zakrzewski
Mr. S. Zak
Mr. A. Bin Hadi
Mr. N. Hag[illegible]
Mr. L. [illegible]

In my fax dated [illegible] 1999, I raised concerns regarding the number of inspectors with relevant [illegible] experience. I was therefore expecting subsequent inspectors proposed by Cotecna to address this fact. I would be pleased to hear of any progress that you have made in relation to this matter.

In lieu of such an update, I would like to inform you that OIP will have to postpone the [illegible] the above mentioned inspectors.

Regards.

cc: Ms. Stephani Scheer
Mr. John Almstrom
Mr. Didier Sabroux

Room S-3055-K, New York, NY 10021 • Tel:+1 212 963 5287 • Fax: +1 212 963 8063 • www.un.org/Depts/oip

SPECIMEN

CONTRACT PD/CON/324/98
between
THE UNITED NATIONS
and
COTECNA INSPECTION S.A.
FOR THE PROVISION OF INDEPENDENT INSPECTION AGENTS

This Contract is entered into by and between the **UNITED NATIONS**, an international inter-governmental organization, with its headquarters in New York, N.Y. 10017, U.S.A. (hereinafter referred to as the "United Nations" or "UN"), and **COTECNA INSPECTION S.A.**, a corporation organized under the laws of Switzerland, having its headquarters at 58, Rue de la Terrassière, Geneva, Switzerland (hereinafter referred to as the "Contractor"). The United Nations and the Contractor are collectively hereinafter referred to as the "Parties".

W I T N E S S E T H

WHEREAS the UN, in furtherance of the mandate of certain United Nations Security Council resolutions, wishes to engage the Contractor to provide services of individuals employed by the Contractor with particular experience and qualifications to assist in monitoring (i) the import into Iraq of humanitarian supplies and of parts and equipment for the petroleum industry and (ii) the performance of services ancillary to the import of such goods, all on the terms and conditions set forth in this Contract;

WHEREAS, the Contractor represents that it is qualified, ready, able and willing to provide these services on the terms and conditions set forth in this Contract;

NOW, THEREFORE, the Parties hereto mutually agree as follows:

A. GENERAL

Article 1. Contract Documents

1.1 This document and all annexes hereto, together with the following named documents, which are incorporated herein by reference, constitute the entire Contract (herein referred to as the "Contract" or this "Contract") between the UN and the Contractor:

(a) The Request for Proposal issued by the UN and dated 9 October 1998, under reference "Request for Proposal for Provision of Independent Agents in International Authentication of Goods/AY", as modified or supplemented by

the answers to queries dated 20 October 1998, (hereinafter referred to as the "RFP"); and

(b) The Contractor's Proposal dated 2 November 1998, as modified or supplemented by the undated document titled "Questions Related to Personnel/Procedures - Cotecna's Position" (consisting of eleven (11) pages numbered 1 through 11), (hereinafter referred to as the "Proposal").

1.2 The following Annexes shall form an integral part of this Contract:

Annex I: UN General Conditions of Contract;

Annex II: Security Council Resolutions 986 (1995), 1111 (1997), 1143 (1997), 1153 (1998), and 1175 (1998) (as such Resolutions may be modified or supplemented after the date hereof, hereinafter referred to as the "Resolutions");

Annex III: Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995) (hereinafter referred to as the "MOU");

Annex IV: The Procedures to be Employed by the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation between Iraq and Kuwait in the Discharge of its Responsibilities as Required by Paragraph 12 of Security Council Resolution 986 (1995) (as such Procedures may be modified or supplemented after the date hereof, hereinafter referred to as the "Procedures");

Annex V: Transportation Release Form;

Annex VI: Medical Release Form;

Annex VII: Form of Performance Bond/Guarantee.

1.3 In the case of any inconsistency among the documents constituting this Contract, the following order of priority shall apply:

(a) this document and Annexes I - VII hereto;

UNITED NATIONS

S

Security Council

Distr.
GENERAL

S/1996/636*
12 August 1996

ORIGINAL: ENGLISH

LETTER DATED 8 AUGUST 1996 FROM THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On behalf of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, I have the honour to co-municate to you the following:

Pursuant to paragraph 12 of Security Council resolution 986 (1995), the Committee was requested to develop, in close coordination with the Secretary-General, expedited procedures as necessary to implement the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of that resolution. I am pleased to inform you that after several weeks of intensive deliberations the Committee, at its 142nd meeting held on 8 August 1996, adopted the procedures to be employed by it in the discharge of its responsibilities as required by paragraph 12 of resolution 986 (1995). A copy of the procedures is attached herewith for the information of the members of the Council.

(Signed) Tono EITEL
Chairman
Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

SPECIMEN

* Reissued for technical reasons.

96-20488 (E) 120896 130896

/...

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)

SECTION I

Sale of petroleum and petroleum products originating in Iraq

1. The Committee will select, upon recommendation by the Secretariat of the Committee, at least four independent experts in international oil trade, to be appointed by the Secretary-General as "overseers" at the United Nations Headquarters. The number of the overseers will be reviewed depending on the volume of transactions to be processed. The overseers will have the authority and responsibilities set forth in this section.

2. Notwithstanding the obligations of States under the relevant Security Council resolutions, States may, if they so wish, forward to the Committee a list of national oil purchasers (private companies, State-owned companies, State agencies, ministries, etc.) authorized to communicate with the overseers. States may present changes to the list at any time. Once the Committee has taken note of these lists or the changes thereto and passed them on to the overseers, these purchasers are entitled to communicate directly with the overseers. If States do not submit such a list, or if a certain purchaser is not included in the list, the communication with the overseers shall be submitted through the Permanent Mission of the State of purchase.

3. A contract for the purchase of petroleum and petroleum products will only be considered for approval if it has been endorsed by the Government of Iraq, or the Iraqi State Oil Marketing Organization (hereinafter SOMO) on behalf of the Government. The submission by the Government of Iraq or SOMO of a copy of a contract is acceptable as an endorsement.

4. SOMO's contracts with purchasers will include all the details specified in paragraph 1 (a) of resolution 986 (1995). In particular, the contract shall indicate the export route, the payment by way of a confirmed letter of credit consistent with paragraph 9 below, quantity and quality of petroleum or petroleum products purchased, duration of contract, credit and payment terms and pricing mechanism. The pricing mechanism for petroleum should include the marker crude oil and type of quotations to be used, adjustments for transportation and quality, and pricing dates.

5. The Government of Iraq or SOMO may submit at any time pricing mechanisms for sales of petroleum for review by the Committee. The overseers will assess these pricing mechanisms, in particular whether they reflect fair market value and will provide analysis and recommendations to the Committee. The Committee will then review the pricing mechanism according to its no-objection procedure within two business days. The pricing mechanism should include the elements listed in paragraph 4 above. In

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order to facilitate this process, regular consultations between the overseers and representatives of SOMO will take place consistent with paragraph 6 of annex II of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of resolution 986 (1995) dated 20 May 1996 (hereinafter Memorandum of Understanding).

6. When market conditions so require, and in particular during the first month of the implementation of resolution 986 (1995) adjustments to pricing mechanisms may be submitted by the Government of Iraq or SOMO for review by the Committee in accordance with paragraph 5 above. The pricing mechanisms will in any case be reviewed in accordance with paragraph 5 above whenever the Government of Iraq or SOMO submits a revision. Current approved price mechanisms will remain in effect until new ones are approved by the Committee.

7. The Secretariat of the Committee will set up a new fax line to be used exclusively for correspondence with regard to the petroleum and petroleum products transactions. The national oil purchaser or the Permanent Mission of the State of purchase shall forward by fax to the overseers an application for approval, together with a copy of the contract and, if necessary, other supporting documents. States and national oil purchasers shall use only the Standard Application Form annexed to the present procedures. Other correspondence with the Committee shall go through the already existing channels.

8. A contract for the sale of petroleum which employs a pricing mechanism approved by the Committee under paragraph 5 above, will be reviewed by two overseers on behalf of the Committee to determine whether the contract meets the criteria set forth in paragraph 9 below. Such review should be completed within 24 hours. No overseer shall review a contract submitted by or on behalf of an oil purchaser with the same nationality as the overseer or which employs him or her within the last two years.

9. To ensure that all contracts comply with the provisions of resolution 986 (1995) and to [illegible] any attempt at fraud or deception, the overseers shall carefully review the contracts and supporting documents to determine that:

- the contract and the documents comply with the requirements provided for in resolution 986 (1995) and in the present procedures, including the opening of a confirmed irrevocable letter of credit to be opened, with [illegible] irrevocable undertaking that the proceeds of the letter of credit will be paid directly to the escrow account established by the Secretary-General under paragraph 7 of resolution 986 (1995) (hereinafter Iraq account). The letter of credit should contain the information as set out in Annex II to this document.

- the conditions of payment envisaged in the letters of credit are in conformity with the existing market practices;

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- the contract price is fair in view of all relevant circumstances, in particular that it is consistent with a currently approved pricing mechanism, and competitive given world prices and market trends and taking into consideration the provisions of paragraph 6 of annex II of the Memorandum of Understanding;

- the transaction does not exceed the limits established by resolution 986 (1995), including the requirements set out in paragraph 6 of the resolution.

10. If the contract and supporting documents reviewed under paragraph 9 above are found to be in order, the overseers, on behalf of the Committee, shall immediately approve the contract and inform by fax the national oil purchaser or the Permanent Mission concerned, as well as SOMO and the bank holding the Iraq account. The Committee and the parties concerned shall be informed immediately upon rejection of any contract by an overseer. In circumstances other than rejection for technical reasons the overseers will make a full report to the Committee for appropriate action.

11. Contracts for the sale of petroleum or petroleum products which do not employ a pricing mechanism approved by the Committee under paragraph 5 above will be reviewed by the overseers who will provide their analysis and recommendations to the Committee. In addition to the factors in paragraph 9 above, the overseers shall consider whether the contract's pricing mechanism reflects fair market value. Such review should be completed within 24 hours. Upon receipt of the analysis and recommendations from the overseers, the Committee will consider the contracts under its expedited no-objection procedure within two business days.

12. Once a contract is approved pursuant to these procedures, the national oil purchaser shall cause a letter of credit consistent with paragraph 9 above to be opened and transmitted to the bank holding the Iraq account. The bank transmits the letter of credit to the overseers. The overseers immediately review the opened letter of credit in order to determine whether it complies with the information given in the application.

13. If the opened letter of credit complies with the information given in the application, the overseers inform the bank holding the Iraq account which adds its confirmation to the letter of credit and, for information purposes only, forwards the letter of credit to the Central Bank of Iraq for the purpose of advising SOMO. Furthermore, the overseers send notification of sales approval, together with a copy of the contract and, if necessary, supporting documents to the inspectors at Ceyhan and at the metering station at the Iraq-Turkey border, or at Mina-al-Bakr. If the opened letter of credit does not comply with the information given in the application the overseers shall immediately inform the Committee.

14. The overseers will submit a substantive report to the Committee, in a standardized format, at least once a week on the contracts considered by them, including the cumulative quantity and approximate value of petroleum authorized for export, and inform the Secretary-General accordingly. In

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the light of this report, any document submitted as part of an application to the Committee will be available for consultation by Committee members in the Secretariat.

15. The export of petroleum and petroleum products will be monitored by United Nations independent inspection agents, appointed by the Secretary-General, who will be stationed at the loading facilities at Ceyhan and Mina-al-Bakr and at the metering station at the Iraq-Turkey border. Such on-site monitoring will make use of the documents received from the overseers, direct observation, as well as quality and quantity verification. The independent inspection agents will authorize the loading, after they receive the information from the overseers that the relevant contract has been approved, and inform the overseers accordingly. The independent inspection agents will also have the authority to stop the loading of petroleum if there is any evidence of irregularity. They will immediately report any irregularity to the Committee and the Secretary-General.

16. In accordance with paragraph 3 of resolution 661 (1990) and the provisions of resolution 665 (1990), shipments of Iraqi oil must not be performed by Iraqi vessels. In order to facilitate the efficient maritime export of oil under resolution 986 (1995) oil purchasers will communicate to the Secretariat information when available concerning vessels contracted for shipping approved oil exports.

17. The Committee will be informed of the appointments of the independent inspection agents made by the Secretary-General under paragraph 6 of resolution 986 (1995).

18. The independent inspection agents shall report weekly to the Committee, through the overseers, on their assessment of the export operations. When the loading of oil under a contract is completed, they shall inform the overseers on the details for comparison with the original approved contract.

19. Payment of the full amount of each purchase of petroleum and petroleum products shall be made into the Iraq account as provided for in paragraph 8 (a) of resolution 986 (1995).

20. Once each month the Secretary-General forwards to the Committee and to the Government of Iraq statements of the Iraq account, including outlines of anticipated future payments to and from that account.

21. The regime for the sale of petroleum products will be broadly similar to that described above, and the precise arrangements, consistent with paragraph 6 of resolution 986 (1995), can be elaborated at a later stage, as and when the need arises.

22. The overseers will receive monthly reports from SOMO on the actual volume and type of petroleum and petroleum products exported under the relevant sales contracts.

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23. At a meeting, the Committee may provide additional guidance to be followed by the overseers.

24. If any Committee member judges the circumstances to be serious enough, that member may call for a review by the Committee of the system for approving oil contracts established in this section. At an urgent meeting, the Committee will decide, according to its normal procedures, whether to continue or revise the system. In the meantime, decisions on oil contracts can only be made in accordance with paragraph 11 above.

SECTION II

Import by Turkey of petroleum and petroleum products originating in Iraq pursuant to paragraph 2 of resolution 986 (1995)

25. The import by Turkey of petroleum and petroleum products originating in Iraq will be undertaken in accordance with the requirements of paragraphs 2 and 6 of resolution 986 (1995), so as to meet the pipeline tariff charges, verified as reasonable by the independent inspection agents, after the deduction of the percentage referred to in paragraph 8 of resolution 705 (1991) for the Compensation Fund. The import of petroleum and petroleum products will be authorized and monitored in accordance with the relevant provisions of section I of the present procedures.

SECTION III

Export to Iraq of humanitarian supplies

26. The Government of Iraq will prepare a categorized list of humanitarian supplies which it intends to purchase and import pursuant to resolution 986 (1995). This list will be submitted to the Secretary-General together with the distribution plan referred to in paragraph 8 (a) (ii) of the resolution.

27. After approving the distribution plan, the Secretary-General will forward the list, which constitutes a part of the plan, to the Committee, and will make it known to all States.

28. The Government of Iraq or the United Nations Inter-Agency Humanitarian Programme will contract directly with suppliers to arrange the purchase of humanitarian supplies, and will conclude the appropriate contractual arrangements.

29. Export to Iraq of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs (hereinafter humanitarian supplies) financed from the Iraq account shall be undertaken in accordance with the following provisions.

30. Applications for each export of humanitarian supplies, to be financed from the Iraq account consistent with paragraph 22 of the Memorandum of Understanding, shall be submitted to the Committee at the request of the Government of Iraq by the exporting States with all relevant documentation,

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including the concluded contractual arrangements. Payment from the Iraq account can take place only for items included in the categorized list, unless the Committee exceptionally decides otherwise on a case-by-case basis.

31. The Committee will take action on such applications in accordance with paragraph 20 of resolution 687 (1991), its existing procedures and the provisions of this section. The Committee will inform the Government of Iraq, the requesting States, the Secretary-General and, if appropriate, the independent inspection agents at the intended point(s) of entry into Iraq of the actions taken on the applications submitted.

32. Such applications shall be submitted as follows:

(a) Medicines and Health Supplies

The exporting State informs the Committee that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to this communication.

(b) Foodstuffs

The exporting State notifies the Committee. The notification must indicate that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to the notification.

(c) Other Materiels and Supplies for Essential Civilian Needs

The exporting State submits an application for approval by the Committee under its no-objection procedure. The application must indicate that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to the application.

33. Experts in the secretariat examine each contract, in particular the details of price and value, and whether the items to be exported are on the categorized list referred to above. They will also take into consideration the reports of the Secretary-General provided for in paragraph 20 above, in order to check availability of funds in the Iraq account for the contract. They will inform the Committee of their findings.

34. The Committee acts upon the findings of the experts as set forth below:

(a) Medicines and Health Supplies

If the Committee finds, under its expedited no-objection procedure within two business days from the circulation of the application, that the contract is in order, it immediately informs the parties concerned that the exporter is eligible for payment from the Iraq account. If the contract is

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not found in order, the Committee informs the parties concerned that payment cannot be made from the Iraq account, but the medicines and health supplies can be shipped anyway if the exporter so desires.

(b) Foodstuffs

If the Committee finds, under its expedited no-objection procedure within two business days from the circulation of the application, that the contract is in order, it immediately informs the parties concerned that the exporter is eligible for payment from the Iraq account. If the contract is not found in order, the Committee informs the parties concerned that payment cannot be made from the Iraq account, but the foodstuffs can be shipped anyway if the exporter so desires.

(c) Other Materials and Supplies for Essential Civilian Needs

If the Committee approves the supplies, under its no-objection procedure within seven days, and if the contract is found in order, the Committee informs the parties concerned of the approval and that the exporter is eligible for payment from the Iraq account. If the contract is not found in order, but the Committee approves the supplies under its no-objection procedure, it informs the parties concerned that payment cannot be made from the Iraq account, but that the supplies are approved and can be shipped anyway if the exporter so desires. If the Committee cannot approve the supplies, whether or not the contract is found in order, it informs the parties concerned that the supplies cannot be shipped.

35. When the Committee has informed the parties concerned that the exporter is eligible for payment from the Iraq account, the Central Bank of Iraq will request the bank holding the Iraq account to open an irrevocable, non-transferable, non-negotiable (except to the supplier's bank for the repayment of financing for the purchase of the humanitarian supplies) letter of credit in the amount of the Iraqi purchases in favour of the supplier, which will be available only at the bank holding the Iraq account, and providing for payment from the Iraq account. Such requests shall be submitted by the bank holding the Iraq account to the Secretary-General for expeditious approval, so that payment from the Iraq account can be made without delay. The letter of credit will require as condition of payment the submission to the bank holding the Iraq account of the usual commercial documentation, and of the following documents: a copy of the Committee's letter stating that the exporter is eligible for payment from the Iraq account, and a standardized confirmation by the Secretary-General of the arrival of the humanitarian supplies in Iraq.

36. The arrival of the humanitarian supplies in Iraq will be confirmed by independent inspection agents appointed by the Secretary-General pursuant to resolution 986 (1995) and stationed at relevant entry points and other locations in Iraq as referred to in paragraph 26 of the Memorandum of Understanding. The independent inspection agents will add their authenticated confirmation of arrival to a copy of the Committee's letter stating that the exporter is eligible for payment from the Iraq account and to a copy of the invoice, and will inform the Secretary-General in

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accordance with paragraph 8 (a) (iii) of Security Council resolution 986 (1995). This information should be given without delay and in any case within 24 hours. The inspection agents will report all irregularities to the Secretary-General and to the Committee. If the problem is related to normal commercial practice, the Committee and the Government of Iraq will be informed but normal commercial resolution practices will go forth. Performance bonds may not be opened. Payments in favour of the purchaser resulting from normal commercial resolution practices should be made to the Iraq account. If the matter is of serious concern, the independent inspection agents will hold the shipment in question, pending guidance from the Committee. The Committee will make every effort to provide such guidance in the most expeditious manner.

37. The bank holding the Iraq account shall effect payment under any letter of credit only if all documents (listed in para. 35 above) stipulated in the letter of credit are presented to it and the terms and conditions of any such letter of credit are complied with. When specified in the contract and the supporting documents, payment can be made in several instalments corresponding to actual deliveries to Iraq. Documentary discrepancies can only be waived by the Secretary-General.

38. The provisions of this section are without prejudice to the application of the existing procedures of the Committee for goods which are not supplied pursuant to resolution 986 (1995).

SECTION IV

Export to Iraq of parts and equipment, and financial transactions related thereto, pursuant to paragraphs 9 and 10 of resolution 986 (1995)

39. The export to Iraq of the parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq will be undertaken in accordance with the procedures set out in section III of the present procedures. Requests for such exports to Iraq will be approved by the Committee on a case-by-case basis under its no-objection procedure. The Committee may request relevant United Nations personnel in Iraq to verify that the equipment exported to Iraq pursuant to paragraph 9 of resolution 986 (1995) is used only for the purposes permitted.

40. In accordance with paragraph 10 of resolution 986 (1995), until proceeds from the sale of petroleum and petroleum products are deposited into the Iraq account, the Committee may approve, on a case-by-case basis, the arrangements for financing of the export of parts and equipment by letters of credit drawn against future oil sales. The Committee will seek, if necessary, the advice of the overseers in considering such requests. In this case the provisions of paragraph 35 above shall apply.

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SECTION V

Approval of reasonable expenses other than expenses payable in Iraq

41. Pursuant to paragraph 8 (f) of resolution 986 (1995), the Committee can approve, under its no-objection procedure, the financing from the Iraq account of reasonable expenses, other than expenses payable in Iraq, which are determined by it to be directly related to the export by Iraq of petroleum and petroleum products permitted under paragraph 1 of resolution 986 (1995) or to the export to Iraq of the parts and equipment referred to in paragraph 9 of resolution 986 (1995), and of activities directly necessary therefor.

42. Requests for meeting the expenses referred to in the previous paragraph will be submitted by the Government of Iraq together with all necessary documentation, and will be approved on a case-by-case basis by the Committee under its no-objection procedure. The Committee will seek, if necessary, the advice of the overseers or the independent inspection agents in reaching a decision.

SECTION VI

General provisions

43. The Secretariat will arrange for the establishment of the appropriate communication links to permit immediate communication among the overseers, the independent inspection agents, the bank holding the Iraq account and the coordinator of the Multinational Interception Forces operating in the area under resolution 665 (1990), as well as with the Central Bank of Iraq and SOMO.

44. The Secretary-General reports regularly to the Committee on the details of the disbursements made pursuant to paragraph 8 of resolution 986 (1995).

45. Letters of credit mentioned in these procedures should conform with the Uniform Customs and Practice for Documentary Credit.

46. The Committee will amend or revise the present procedures, if necessary, in the light of future developments.

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Annex I

Standard application form to request approval of contracts for sale of Iraqi petroleum and/or petroleum products

The attached contract with the Iraqi State Oil Marketing Organization (SOMO) for the purchase of petroleum and/or petroleum products is submitted for approval in accordance with paragraph 1 (a) of Security Council resolution 986 (1995) and the procedures of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, adopted at its ... meeting held on ... (S/....).

Information about the purchaser

Name of purchasing entity:

Place of registration:

Address:

Contact person:

Telephone: Telefax: Telex:

Summary of contract terms

Quantity of crude petroleum and/or petroleum products:

Quality of crude petroleum and/or petroleum products:

Pricing formula and/or price per U.S. barrel:

Date(s) of loading at Ceyhan:

Date(s) of loading at Mina al-Bakr:

Name of vessel(s) and destination (if available):

Payment details (draft irrevocable letter of credit, etc.)

Please find attached a copy of the contract, draft irrevocable letter of credit to be opened and all supporting documents.

Signature
Name of signatory
Title

/...

Annex II

Information to be included in the letter of credit

1. As provided for in paragraph 2 of Annex II of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995), signed on 20 May 1996, the following clauses will have to be inserted in each letter of credit:

"- Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be irrevocably paid into the 'Iraq Account' with .... Bank."

"- All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the purchaser."

2. Other information to be included:

- nature of the petroleum or petroleum product
- forecast quantity of petroleum or petroleum product
- date of loading
- unit price
- forecast amount of the transaction

SPECIMEN

ANNEX V

GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF USE OF UN-PROVIDED TRANSPORT

I, the undersigned, hereby recognize that all my travel on the UN-provided transport, pursuant to Contract No. PD/CON/324/98 between the United Nations and Cotecna Inspection S.A., is solely for my own convenience and benefit and may take place in areas or under conditions of special risk. In consideration of being permitted to travel on such means of transport, I hereby:

(a) Assume all risks and liabilities during such travel;

(b) Recognize that neither the United Nations nor any of its officials, employees or agents are liable for any loss, damage, injury or death that may be sustained by me during such travel;

(c) Agree, for myself as well as for my dependents, heirs and estate, to hold harmless the United Nations and all its officials, employees and agents from any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this Release shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

_____
Passenger

_____
Date

_____
Witness

SPECIMEN

ANNEX VI

GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF PROVISION BY UN OF EMERGENCY MEDICAL CARE

I, the undersigned, hereby recognize that all emergency medical care provided to me at UN medical facilities, pursuant to Contract No. PD/CON/324/98 between the United Nations and Cotecna Inspection S.A., is solely for my own convenience and benefit and may take place in areas or under conditions of special risk. In consideration of receiving such medical care, I hereby:

(a) Assume all risks and liabilities in connection with the provision of such medical care;

(b) Recognize that neither the United Nations nor any of its officials, employees or agents are liable for any loss, damage, injury or death that may be sustained by me during the provision of such medical care;

(c) Agree, for myself as well as for my dependents, heirs and estate, to hold harmless the United Nations and all its officials, employees and agents from any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this Release shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

_____
Employee

_____
Date

_____
Witness

37/42

FORM OF PERFORMANCE BOND

Know all men by these presents, that we, ... a company incorporated in and under the laws of ....., the principal shareholders of which are .... as Principal (hereinafter called "the Supplier") and the ..... a corporation organized under the laws of ..... and duly organized to transact business in ..... as Surety (hereinafter called "the Surety") are held and firmly bound unto the United Nations, an international intergovernmental organization with its headquarters at New York, New York, USA, as Obligee (hereinafter called "the Employer") in the amount of ..... (USD), for the payment whereof which sum, well and truly to be made, the Supplier and the Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Whereas the Supplier has entered into a written contract with the Employer dated the ..... day of ....., 19..... for the ..... said Contract being by reference made part hereof and hereinafter referred to as "the Contract".

Now, therefore, for valuable consideration, the receipt whereof is hereby acknowledged by the Surety, the Surety hereby irrevocably undertakes to, whenever Supplier shall be declared by Employer to be in default under the Contract, without any objection, opposition or recourse, promptly pay the Employer the amount required by Employer to remedy the default and completes the Contract in accordance with its terms and conditions, any amount up to a total not exceeding the amount of the Bond, or remedy the default and complete the Contract in accordance with its terms and conditions.

The Surety shall not be liable for a greater sum than the specified amount of the Bond.

The Condition of this obligation is such that if the Employer shall notify the Surety in writing that the Supplier has expressly and faithfully performed the said Contract (including any amendment thereto) then this obligation shall be null and void, otherwise it shall remain in full force and effect. Until the Employer shall by written instrument declare the obligation discharged, except that the obligation shall continue for at least three months following termination of the Contract.

This Bond shall be enforceable without the need to have recourse to any judicial or other proceedings.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators or successors of the Employer.

ANNEX D (cont.) 30/42

Nothing herein or related hereto shall be deemed a waiver or an agreement to waive any of the privileges or immunities of the United Nations.

Signed on

Signed on

on behalf of

on behalf of

by

by

in the capacity of

in the capacity of

in the presence of

in the presence of

SPECIMEN

CO·INS
COTECNA INSPECTION S.A.
TEL.: (41-22) 849 99 00
FAX: (41-22) 849 99 99
TELEX: 413107 COT CH
CABLES: COTECNA GENEVA
CORRESPONDENCE:
P.O. BOX 6156 - 1211 GENEVA 6
SWITZERLAND
YOUR REF. OUR REF.
55, RUE DE LA TERRASSIERE

officer in charge
Procurement Division
OCSS/D.M.
United Nations
New York (N.Y.

~~Geneva~~ New York, December 30th 1988.

Power of Attorney

I, the undersigned E.G. MASSEY, in my capacity of Chairman of COTECNA INSPECTION S.A. Geneva, hereby gives full and complete Power of Attorney to Mr. André PRUNIAUX to sign on behalf of our Company a contract under Reference PD/CON/324/88, with the United Nations, New York (U.S.A.) relating to work & Services to be made in IRAQ within the Programme of "OIL FOR FOOD".

Made in one Original this 30th day of December 1988.

E.G. MASSEY
Chairman of
COTECNA INSPECTION S.

(b) the RFP; and

(c) the Proposal.

1.4 It is expressly agreed that this Contract embodies the entire agreement of the Parties with regard to the subject matter hereof, and that no promises, understandings, obligations or agreements, verbal or otherwise, exist between the Parties except as herein expressly set forth.

Article 2. Term of Contract

This Contract shall be in force for an initial term of six (6) months, from 1 February 1999 through 31 July 1999, unless earlier terminated in accordance with the terms of this Contract. The UN shall have the right, at its sole option, to extend this Contract on the same terms and conditions (including price) for additional periods of six (6) months each, or of such shorter duration as the UN may in its sole discretion determine, by giving the Contractor written notice of its intention to do so not less than fifteen (15) days prior to the expiration of the then current term of the Contract; provided, however, that any extension of this Contract after the first such extension shall be subject to mutual agreement by the UN and the Contractor to a reasonable adjustment to the contract price to reflect any increase or decrease in the Contractor's costs.

Article 3. Objective of Contract

The Resolutions direct the Security Council Committee established by UN Security Council Resolution 661 (1990) (hereinafter referred to as the "Committee"), inter alia, to monitor the import into Iraq of certain humanitarian supplies and parts and equipment for the petroleum industry (such supplies, parts, and equipment hereinafter referred to as "Supplies"). Under this Contract, the Contractor will provide all services, equipment and materials to verify and confirm (i) that the description, value, quantity, and quality of Supplies arriving in Iraq (including those imported in connection with the United Nations Inter-Agency Humanitarian Programme) are in accordance with the requirements established by the Committee and (ii) that services ancillary to the import of Supplies (hereinafter referred to as "Ancillary Services") are performed in accordance with the requirements established by the Committee. The activities referred to in clauses (i) and (ii) above are hereinafter together referred to as the "Services".

B. RESPONSIBILITIES OF THE CONTRACTOR

Article 4. Scope of Work; Representations

4.1 The Contractor undertakes to provide independent inspection agents and related personnel (hereinafter referred to as the "Agents") as required to perform the Services. The Contractor shall perform the Services on a 24-hour, 7-day per week basis and in accordance with the specifications and procedures set forth in the RFP and the Proposal.

4.2 The Contractor shall provide a total of sixty-three (63) Agents, to be comprised of fifty-four (54) inspection agents and, at no additional cost to the UN, six (6) alternate inspection agents, one (1) field manager, one (1) senior liaison officer, and one (1) chemist, all of whom shall be posted as specified in the Proposal. At the request of the UN, the Contractor shall also provide a Coordinator acceptable to the UN, who will be posted at UN Headquarters in New York, in accordance with the Proposal and at no additional cost to the UN. The Agents assigned to perform the Services (other than the Coordinator referred to above) shall be selected by the UN from among individuals identified by the Contractor as experienced and qualified to perform their duties. There shall be no substitution of the Contractor's personnel without the UN's prior written consent in each instance. The UN reserves the right, in its sole discretion, to increase or reduce the number of Agents at any time, in which event the contract price set forth in Article 7.1 hereof shall be proportionately adjusted based on the labour cost per man/day differentials set forth in Section 1.2 of the Proposal. Notwithstanding anything in the Proposal to the contrary, any adjustment in the contract price arising from an increase in the number of Agents shall be based on the actual number of days worked by such additional Agents.

4.3 The Agents shall confirm imports of Supplies into Iraq in accordance with Article 4.8 hereof, the RFP, and the Proposal, including without limitation the verification, inspection, and testing procedures set forth in the Proposal. In particular, the Agents shall compare the appropriate documentation, such as bills of lading, other shipping documents or cargo manifests, and the documents issued by the Committee against Supplies actually arriving in Iraq. They shall, among other matters, conduct quantity inspection by weight or count, quality inspection including visual inspection, sampling, and, when necessary, laboratory testing. The Contractor shall (i) deliver any samples to its laboratory facilities within forty-eight (48) hours of taking such samples, (ii) retain all samples for at least three (3)

months after the last shipment under the purchase contract to which the sample relates arrives in Iraq, and (iii) complete all testing within the timeframes set forth in the Proposal. In the case of shipments other than those in connection with the United Nations Inter-Agency Humanitarian Programme, if the shipment is in order, the Agents will add their authenticated confirmation of arrival to a copy of the Committee's letter stating that the exporter of the goods is eligible for payment from the escrow account referred to in the Resolutions and to a copy of the invoice, and will inform the UN Secretary-General within twenty-four (24) hours of such confirmation by electronic transmission and by signed facsimile in accordance with paragraph 8(a)(iii) of Security Council Resolution 986 (1995). In the case of shipments in connection with the United Nations Inter-Agency Humanitarian Programme, if the shipment is in order, the Agents will inform the UN Secretary-General of their confirmation of arrival within twenty-four (24) hours of such confirmation by electronic transmission and by signed facsimile.

4.4 (a) On a case-by-case basis, the Agents shall confirm the performance of Ancillary Services at sites away from their designated duty stations in accordance with Article 4.8 hereof and with the instructions of the UN relating to each such inspection. If the UN determines in its sole discretion that none of the Agents then appointed under this Contract has the necessary qualifications to conduct any such inspection of Ancillary Services or that any such inspection cannot be conducted by an Agent then appointed under this Contract without disrupting performance of the Services, then, within one (1) week of the UN's request, the Contractor shall identify at least three (3) candidates experienced and qualified to perform the inspection and the UN shall designate one (1) or more of such candidates to serve as temporary additional Agents for purposes of the inspection as contemplated in Article 4.2 hereof. Such additional Agents shall perform the inspection in accordance with a schedule to be determined by the UN.

(b) The terms of the RFP and the Proposal relating to confirmation of imports of Supplies shall also apply, mutatis mutandis, to the confirmation of the performance of Ancillary Services. If the Ancillary Services have been duly performed, the Agents will add their authenticated confirmation of performance to a copy of the Committee's letter stating that the provider of the services is eligible for payment from the escrow account referred to in the Resolutions and to a copy of the invoice, and will inform the UN Secretary-General within twenty-four (24) hours of such confirmation by electronic transmission and by signed facsimile in accordance with paragraph 8(a)(iii) of Security Council Resolution 986 (1995).

4.5 The Agents will immediately report all irregularities to the UN Secretary-General and the Committee. In the case of shipments other than those in connection with the United Nations Inter-Agency Humanitarian Programme, if the problem is related to normal commercial practice (e.g., some shortlanded goods), the Committee and the Government of Iraq shall be informed, but normal commercial resolution practices (e.g., claims) shall go forth. If the Agents determine that the matter is of serious concern, they will hold the shipment in question pending guidance from the Committee. The Contractor shall have no liability in respect of any disputes arising between the buyer and seller of the Supplies and Ancillary Services for which the Contractor is not responsible; provided, however, that the Contractor shall cooperate with any requests by the UN to provide assistance in connection with the resolution of any such disputes.

4.6 The Contractor shall also be responsible for operating the convoy control system at the Zakho/Faida border crossing, including without limitation, preparing convoy lists, collecting passports, and providing such documents to the relevant authorities.

4.7 The Contractor shall be responsible for making all necessary arrangements to ensure the fulfilment of its obligations under this Contract. The Contractor shall perform its obligations under this Contract in accordance with the highest professional standards.

4.8 In performing their obligations under this Contract, the Contractor and its personnel shall comply with all relevant aspects of applicable UN documents and procedures, including without limitation, the Resolutions, the MOU, the Procedures, any other procedures and decisions approved by the Committee, and instructions and applicable reports of the UN Secretary-General.

4.9 The Contractor acknowledges that (i) the UN shall have no obligation to provide any assistance to the Contractor in performing the Services other than as expressly set forth herein and (ii) the UN makes no representations as to the availability of any facilities or equipment in Iraq or the conduct of Iraqi authorities. The Contractor represents and warrants that all information in the Proposal is true and correct.

4.10 The UN reserves the right at any time, including during the term of this Contract or any extension thereof, to enter into any agreements or arrangements with any other entities or persons for performance of all or any part of the Services. The UN shall incur no liability to the Contractor by virtue of its entry into such agreements or arrangements. The UN may at any time expand or reduce the Services to be performed by the Contractor under this

Contract, including without limitation the establishment of new duty stations, in which event the number of Agents shall be increased or decreased, as may be reasonably necessary in the UN's sole discretion, in accordance with Article 4.2 hereof. In the event such a modification in the Contractor's responsibilities shall reasonably cause the Contractor's expenses (other than those included in the cost per man/day set forth in the Proposal) to increase or decrease, the Parties shall mutually agree on a corresponding change to the contract price payable to the Contractor.

4.11 The Contractor shall supply all equipment, materials, and facilities necessary to perform the Services, including without limitation all equipment for taking and storing samples, all vehicles for transporting the Agents, all equipment for transmitting authenticated confirmations and other reports required under this Contract, and all other equipment, materials, and facilities set forth in the Proposal. The communications and electronic data processing equipment and software supplied and utilized by the Contractor in performing its obligations under this Contract shall be of the highest quality and be fully compatible with the equipment and software utilized by the UN in connection with this Contract. In particular, the Contractor shall supply the following equipment and software to perform the Services:

(a) Each duty station shall be equipped with at least three (3) desktop PC's (with additional PC's as work volume may require); one (1) server with minimum Pentium II, with 128 MB RAM running at 333 Mhz, with three (3) 9.1 GB hard disk drives and one (1) DAT 12/24 GB SCSI DDS3; and Routers to facilitate data transmissions. Each server and PC will run Lotus Notes 4.6 or higher and be Y2K compliant. The Contractor shall create a Lotus Notes-based application to record authentications and transmit them directly to the UN Notes server in New York. The Contractor shall be responsible for ensuring that the integrity of all authentication data is maintained.

(b) Each duty station shall be equipped with UPS (uninterrupted power supply) back-up capable of sustaining operations for a minimum of twelve (12) hours. Each duty station utilizing local power shall also be equipped with a back-up generator with adequate capacity to power the entire station.

(c) Subject to the Parties' mutual agreement to an appropriate adjustment to the contract price and an amendment of this Contract to effect such price adjustment, each duty

station shall be equipped with either a V-SAT terminal (earth station) or INMARSAT B capable of transmitting at a minimum of 64 Kbps; at least one (1) MINI M (Inmarsat) or better equipment with a separate fax machine capable of transmitting data as a back-up to the V-SAT or INMARSAT B.

4.12 The Contractor shall safeguard the security of all documents, equipment, materials, and facilities used in connection with the performance of this Contract, including without limitation through the measures set forth in the Proposal.

Article 5. Contractor's Personnel

5.1 No person shall be assigned by the Contractor to perform the Services under this Contract unless the United Nations has approved in advance the selection of such person in writing. Without limiting the UN's rights of approval under Articles 4.2 and 5.2 hereof, in addition to the sixty-three (63) Agents selected by the United Nations under Article 4.2 hereof, the United Nations shall designate ten (10) additional persons from among the candidates identified by the Contractor who are acceptable to serve as replacement Agents under this Contract.

5.2 The United Nations may request at any time the withdrawal or replacement of any personnel of the Contractor assigned to perform the Services under this Contract. The Contractor shall, at its own cost and expense, withdraw or replace such personnel forthwith. The assignment by the Contractor of any replacement personnel shall be subject to the UN's prior written approval. A request by the United Nations for withdrawal or replacement of the Contractor's personnel shall not be deemed a termination of this Contract.

5.3 The Contractor shall be fully responsible for all work and services performed by its employees, agents, servants, and sub-contractors. The Contractor shall take all reasonable measures to ensure that they conform to the highest standards of moral and ethical conduct and respect the local customs which are not otherwise inconsistent with the provisions of this Contract, including without limitation the Resolutions, the MOU and the Programme.

5.4 The Contractor shall ensure that all personnel used to perform the Services under this Contract are (i) medically fit to perform the Services and (ii) adequately covered by insurance for any service-related illness, injury, death or disability. The Contractor shall submit proof of such medical fitness and such insurance satisfactory to the UN before commencing any work under

this Contract.

5.5 The UN shall not be liable for any action, omission, negligence, or misconduct of the Contractor's employees, agents, servants, or sub-contractors, nor for any insurance coverage which may be necessary or desirable for the purpose of this Contract, nor for any costs, expenses, or claims associated with any illness, injury, death, or disability of the Contractor's employees, agents, servants, or sub-contractors performing Services in connection with this Contract.

5.6 The Contractor shall ensure that the Agents are at their stations and ready to commence performance of the Services, in accordance with the RFP and the Proposal, on 1 February 1999. The duty stations shall be staffed as specified in the RFP and the Proposal, and the Agents shall carry out their work in accordance with a shift structure acceptable to the UN. The Contractor shall employ the management structure set forth in the Proposal. The UN reserves the right at any time to alter the shift structure or the duty stations to which the Agents are assigned, including the number of Agents assigned to each duty station, at no additional cost to the UN. The Agents assigned to each duty station shall at all times include at least one (1) information technologist capable of undertaking routine support tasks on hardware and software, one (1) food technologist, and one (1) person fluent in Arabic.

5.7 It is understood and agreed that the Agents performing the Services, whose names will be communicated to the Government of Iraq pursuant to Section VIII of the MOU, shall be deemed "experts" within the meaning of Article VI of the Convention on the Privileges and Immunities of the United Nations, and shall enjoy all of the privileges and immunities accorded to "experts" therein.

Article 6. Reporting Requirements

The Contractor shall submit to the Committee, the UN Secretary-General, and the United Nations Office of the Humanitarian Coordinator for Iraq daily and weekly reports in writing describing in detail the Services performed under this Contract. Such reports shall be transmitted via satellite facsimile and, if available, electronic mail. These reports shall be in such format and provide such information as the UN shall specify.

C. CONTRACT PRICE AND PAYMENT

Article 7. Contract Price

7.1 In full payment for the complete and satisfactory performance by the Contractor of all its obligations under this Contract, the UN will pay the Contractor a price not to exceed a total of U.S. Dollars Four Million Eight Hundred Seventy-Seven Thousand Two Hundred Twenty-Six (US$4,877,226.00), subject to any adjustment in such price pursuant to Articles 4.2 or 12.1 hereof. This price includes all costs relating to the Services to be provided under this Contract, including without limitation, all salaries, benefits, insurance, board, lodging, security, transportation, and communications, electronic data processing and other equipment. This price also includes all taxes, duties, levies, and other charges of any nature imposed by any authority, whether inside Iraq or in other countries. Such amount shall be payable to the Contractor monthly in arrears in six equal instalments of U.S. Dollars Eight Hundred Twelve Thousand Eight Hundred Seventy-One (US$ 812,871.00) each, subject to any adjustment in the total price as provided in Articles 4.2 and 12.1 hereof.

7.2 Payments under this Contract shall be made only against receipt of the Contractor's written invoices and certification by the UN that the Services represented by the invoice have been satisfactorily completed. The Contractor shall submit its invoices, together with such supporting documentation as the UN may require to enable payment, to the Office of the Iraq Programme, United Nations, New York, NY 10017, Attn: Senior Customs Officer, with a copy to the Procurement Division, United Nations, 304 East 45th Street, New York, NY 10017, Attn: Chief. All invoices shall make reference to the number of this Contract (PD/CON/324/98) and shall be payable net thirty (30) days from the date of the UN's receipt of the invoice and all required supporting documentation; provided that the UN shall be entitled to a two percent (2%) discount on any fixed price amounts paid within fifteen (15) days of its receipt of such invoice and documentation.

7.3 The UN may offset any amounts which are due to it from the Contractor against any payments due from the UN to the Contractor.

D. RESPONSIBILITIES OF THE UN

Article 8. Identification Cards

The UN shall provide the Contractor's personnel with appropriate identification cards.

Article 9. Access to Transport and Medical Facilities

9.1 Without limiting the Contractor's obligation under this Contract to provide all transportation, the United Nations agrees to allow the Contractor's personnel, on an exceptional basis and to the extent practicable, to travel on UN-provided transport to, in, and from Iraq strictly for the following purposes:

(a) evacuation due to security developments, on the understanding that such evacuation shall be to the nearest safe area; and

(b) medical evacuation due to serious medical conditions, provided that emergency medical evacuation of the Contractor's personnel will be from in-country sites to an in-country medical facility or transportation out of Iraq to an out-of-country medical facility in an appropriate neighbouring country.

9.2 In consideration of the Contractor's personnel being permitted to travel on UN-provided transport, each of such personnel shall sign a release from liability in the form attached hereto as Annex V, prior to their transport on any UN-provided transportation. The Contractor undertakes to obtain the signed release from each such person and to deliver the signed original to the UN prior to such person's initial use of any UN-provided transportation.

9.3 Without limiting the Contractor's obligation under this Contract to provide all medical services, in the event that the Contractor's personnel require emergency medical treatment, the UN agrees, on an exceptional basis and to the extent practicable, to allow such personnel access to available UN medical facilities. In consideration of the Contractor's personnel being permitted to utilize such UN medical facilities, each of such personnel shall complete and sign the release from liability in the form attached hereto as Annex VI and the Contractor undertakes to obtain the signed release from each such person and to deliver the signed original to the UN prior to such person's initial use of any UN medical facility.

9.4 The Contractor hereby releases the UN and its officials, employees, and agents from any and all liability of any nature arising in connection with the provision of any services to the Contractor's personnel under this Article 9 and waives any claims the Contractor may have against the UN, its officials, employees, or agents arising in connection with the provision of such services. The Contractor agrees to reimburse the UN for any costs incurred by it in connection with this Article 9 and to indemnify

and hold harmless the UN and its officials, employees, and agents for any claim or liability of any nature arising in connection with this Article 9.

E. MISCELLANEOUS MATTERS

Article 10. Contractor's Obligations Upon Expiration or Termination

Upon expiration or termination of this Contract, the Contractor shall take immediate steps to terminate its operations in a prompt and orderly manner and shall provide such information and take such actions as may be reasonably requested by the UN for the preservation and protection of (i) the work and services already performed by the Contractor and the results thereof and (ii) all property of the UN provided to the Contractor.

Article 11. Liaison and Inspection

11.1 The UN reserves the right to inspect and test all Services performed by the Contractor under this Contract, to the extent practicable, at all reasonable places and times during the term of this Contract. The UN shall perform inspections and tests in a manner that will not unduly hinder the performance of the Services by the Contractor. The Contractor shall cooperate with all inspections and tests.

11.2 If any work or services performed by the Contractor do not conform with the requirements of this Contract, the UN shall have the following options:

(a) If the UN determines that the improper performance can be remedied by way of re-performance or other corrective measures by the Contractor, the UN may request the Contractor in writing to take, and the Contractor shall take, at no expense to the UN, the measures necessary to re-perform or take other appropriate actions to remedy the improperly performed work or services within fourteen (14) days of receipt of the written request from the UN or within such shorter period as the UN may have specified in the written request if emergency conditions so require, as determined by the UN.

(b) If the Contractor does not promptly take corrective measures or if the UN reasonably determines that the Contractor is unable to remedy the improper performance in a timely manner, the UN may obtain the assistance of other

entities or persons and have corrective measures taken at the expense of the Contractor.

(c) If the UN determines that the improper performance cannot be remedied by re-performance or other corrective measures by the Contractor, the UN may terminate the Contract in accordance with Article 15 of the UN General Conditions of Contract (Annex I) without prejudice to any of its other rights and remedies under this Contract.

Article 12. Termination at Will; Force Majeure and Other Special Circumstances

12.1 In addition to the termination rights provided in Article 15 of the UN General Conditions of Contract (Annex I), the UN may terminate this Contract without cause, in whole or in part, upon thirty (30) days written notice to the Contractor. In the event of termination pursuant to this clause, the UN shall only be responsible for payment to the Contractor for Services satisfactorily performed in accordance with this Contract prior to the effective date of termination and any reimbursement to which the Contractor shall be entitled pursuant to Article 12.2 hereof. In the event of partial termination, the contract price shall be proportionately reduced as set forth in Article 4.2 hereof.

12.2 In the event the UN terminates this Contract pursuant to Article 12.1 hereof prior to the expiration of the initial six (6)-month term of this Contract, the UN shall reimburse the Contractor for a portion of its costs for dwellings, furniture, vehicles, and other equipment in accordance with the following schedule:

Month Termination Takes Effect	Reimbursement Amount
March 1998	US$ 727,542.00
April 1998	US$ 582,033.60
May 1998	US$ 436,525.20
June 1998	US$ 291,016.80
July 1998	US$ 145,508.40

12.3 Notwithstanding the provisions of Article 14 of the UN General Conditions of Contract (Annex I), in the event of any circumstance constituting or potentially constituting force majeure, the Contractor shall not withdraw any of its personnel from their duty stations except with the prior written approval of the UN, which approval shall not be unreasonably withheld. The Parties agree that it shall not be unreasonable for the UN to withhold its consent so long as UN personnel remain similarly situated in Iraq.

12.4 Without limiting any of the UN's other rights under this Contract, in the event that circumstances, whether or not constituting force majeure, shall render it impossible for the Contractor to perform the Services as contemplated in this Contract, the Contractor shall comply with any contingency plans designated by the UN to ensure continued performance of the Services.

Article 13. Customs Clearance, Licenses, Etc.

The Contractor shall be responsible for customs clearance and obtaining all licenses, permits, and authorizations from governmental or other authorities necessary for the performance of this Contract. The UN shall provide reasonable assistance to the Contractor, by liaising as appropriate with relevant authorities, in obtaining visas for the Contractor's personnel and permits for clearing through customs any equipment, materials, and supplies in connection with this Contract. Notwithstanding the foregoing, the UN's sole obligation with respect to customs clearance shall be to provide the Contractor with a documentary certificate identifying the items concerned and stating that such items are for the sole consumption or use of the Agents. If any further documentation is required in the future by Government authorities in Iraq or elsewhere, the Contractor will advise the UN, and the UN will provide reasonable assistance to the Contractor in obtaining such documents.

Article 14. Performance Bond

Within fifteen (15) days of signature of this Contract by the Parties, the Contractor shall provide the UN with a performance bond in the form set forth in Annex VII hereof, or a similar guarantee acceptable to the UN, in the amount of U.S. Dollars Two Hundred Forty-Three Thousand Eight Hundred Sixty-One (US$243,861.00) (i.e., five percent (5%) of the maximum amount payable specified in Article 7.1 above), which bond or guarantee shall remain in force until at least two (2) months after the expiration of the Contract. The UN shall be entitled to claim the performance bond/guarantee upon the first written demand of the UN, without having to prove the liability of the Contractor and in accordance with the terms and conditions set forth in Annex VII.

Article 15. Notices

Except as otherwise specified in this Contract or instructed by the UN, all notices and other communications required or

contemplated under this Contract shall be in writing and shall be delivered either by: (i) personal delivery; (ii) recognized overnight delivery service; (iii) postage prepaid, return receipt requested, certified mail; (iv) confirmed facsimile transmission; or (v) telegram, addressed to the Party for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice given pursuant to this Contract.

If to the Contractor:

Cotecna Inspection S.A.
58, Rue de la Terrassière
1211 Geneva 6
Switzerland
Attn: Chairman
Fax No.: 41-22-849-69-89

If to the UN (communications/notices of a contractual nature):

Procurement Division
United Nations
304 East 45th Street
New York, NY 10017
U.S.A.
Attn: Chief
Fax No.: 212-963-6315

If to the UN (communications/notices of an operational nature):

Office of the Iraq Programme
United Nations
New York, NY 10017
Attn: Senior Customs Officer
Fax No.: 212-963-8083

Notice by overnight mail or recognized overnight delivery service shall be effective on the date it is officially recorded as delivered to (or refused by) the intended recipient by return receipt or equivalent. All notices and other communications required or contemplated by this Contract delivered in person, by facsimile, or by telegram shall be deemed to have been delivered to and received by the addressee and shall be effective on the date of actual receipt.

IN WITNESS WHEREOF, the Parties have executed this Contract.

FOR COTECNA INSPECTION S.A.	FOR THE UNITED NATIONS
Name: ANDRE E. PRUNIEUX	Name: SANJAYA BAHEL
Title: SENIOR VICE-PRESIDENT	Title: OFFICER-IN- CHARGE PROCUREMENT DIVISION
Date: 31 DECEMBER 1998	Date: 31 DECEMBER 1998

ANNEXES

Annex I - UN General Conditions of Contract
Annex II - Security Council Resolutions
Annex III - Memorandum of Understanding
Annex IV - Procedures of the 661 Committee
Annex V - Transportation Release Form
Annex VI - Medical Release Form
Annex VII - Form of Performance Bond/Guarantee

SECRET

ANNEX I

[UN GENERAL CONDITIONS FOR GENERAL CONTRACTS]

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UNITED NATIONS GENERAL CONDITIONS OF CONTRACT

1.0 **LEGAL STATUS:** The Contractor shall be considered as having the legal status of an independent contractor vis-a-vis the United Nations. The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of the United Nations.

2.0 **SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to the United Nations in connection with the performance of its services under this Contract. The Contractor shall refrain from any action which may adversely affect the United Nations and shall fulfil its commitments with the utmost regard to the interests of the United Nations.

3.0 **CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES:** The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

4.0 **ASSIGNMENT:** The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of the United Nations.

5.0 **SUB-CONTRACTING:** In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and

clearance of the United Nations for all sub-contractors. The approval of the United Nations of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform with the provisions of this Contract.

6.0 **OFFICIALS NOT TO BENEFIT:** The Contractor warrants that no official of the United Nations has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.

7.0 **INDEMNIFICATION:** The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, the United Nations, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

8.0 **INSURANCE AND LIABILITIES TO THIRD PARTIES**

8.1 The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.

8.2 The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.

8.3 The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury,

or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.

8.4 Except for the workmen's compensation insurance, the insurance policies under this Article shall:

(i) Name the United Nations as additional insured;
(ii) Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the United Nations;
(iii) Provide that the United Nations shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

8.5 The Contractor shall, upon request, provide the United Nations with satisfactory evidence of the insurance required under this Article.

9.0 **ENCUMBRANCES/LIENS:** The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with the United Nations against any monies due or to become due for any work done or materials furnished under this Contract or by reason of any other claim or demand against the Contractor.

10.0 **TITLE TO EQUIPMENT:** Title to any equipment and supplies that may be furnished by the United Nations shall rest with the United Nations and any such equipment shall be returned to the United Nations at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment, when returned to the United Nations, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate the United Nations for equipment determined to be damaged or degraded beyond normal wear and tear.

11.0 **COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:** The United Nations shall be entitled to all intellectual property and other

proprietary rights including but not limited to patents, copyrights, and trademarks, with regard to products, or documents and other materials which bear a direct relation to or are produced or prepared or collected in consequence of or in the course of the execution of this Contract. At the United Nations's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them to the United Nations in compliance with the requirements of the applicable law.

12.0 **USE OF NAME, EMBLEM OR OFFICIAL SEAL OF THE UNITED NATION:** The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with the United Nations, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of the United Nations, or any abbreviation of the name of the United Nations in connection with its business or otherwise.

13.0 **CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION**

13.1 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of the United Nations, shall be treated as confidential and shall be delivered only to United Nations authorized officials on completion of work under this Contract.

13.2 The Contractor may not communicate at any time to any other person, Government or authority external to the United Nations, any information known to it by reason of its association with the United Nations which has not been made public except with the authorization of the United Nations; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

14.0 **FORCE MAJEURE; OTHER CHANGES IN CONDITIONS**

14.1 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the United Nations, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the United Nations of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Article, the United Nations shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

14.2 If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the United Nations shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 15, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

14.3 Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.

14.4 **Notwithstanding anything to the contrary in this Contract, the Contractor recognizes that the work and services will be performed under harsh or hostile conditions caused by civil unrest. Consequently, delays or failure to perform caused by events arising out of, or in connection with, such civil unrest shall not, in and of itself, constitute force majeure under this Contract.**

15.0 **TERMINATION**

15.1 Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16 "Arbitration" below shall not be deemed a termination of this Contract.

15.2 The United Nations may terminate forthwith this Contract at any time should the mandate or the funding of the Mission/Agency be curtailed or terminated, in which case the Contractor shall be reimbursed by the United Nations for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

15.3 In the event of any termination by the United Nations under this Article, no payment shall be due from the United Nations to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract.

15.4 Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, the United Nations may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Contractor shall immediately inform the UN of the occurrence of any of the above events.

16.0 **SETTLEMENT OF DISPUTES**

16.1 **Amicable Settlement**

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

16.2 **Arbitration**

Any dispute, controversy or claim between the Parties arising out of this Contract or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in this Contract, the arbitral tribunal shall have no authority to award interest in excess of six percent (6%), and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

17.0 **PRIVILEGES AND IMMUNITIES:** Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

18.0 **TAX EXEMPTION**

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

18.2 Accordingly, the Contractor authorizes the United Nations to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with the United Nations before the payment thereof and the United Nations has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide the United Nations with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

19.0 **OBSERVANCE OF THE LAW:** The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

20.0 **AUTHORITY TO MODIFY:** Pursuant to the Financial Regulations and Rules of the United Nations, only the Procurement Division at New York possesses the authority to agree on behalf of the United Nations to any modification of or change in this Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in this Contract shall be valid and enforceable against the United Nations unless provided by an amendment to this Contract signed by the Contractor and the Chief or Deputy Chief of the Procurement Division.

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UNITED NATIONS

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Security Council

Distr.
GENERAL

S/1996/636*
12 August 1996

ORIGINAL: ENGLISH

LETTER DATED 8 AUGUST 1996 FROM THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On behalf of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, I have the honour to communicate to you the following:

Pursuant to paragraph 12 of Security Council resolution 986 (1995), the Committee was requested to develop, in close coordination with the Secretary-General, expedited procedures as necessary to implement the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of that resolution. I am pleased to inform you that after several weeks of intensive deliberations the Committee, at its 142nd meeting held on 8 August 1996, adopted the procedures to be employed by it in the discharge of its responsibilities as required by paragraph 12 of resolution 986 (1995). A copy of the procedures is attached herewith for the information of the members of the Council.

(Signed) Tono EITEL
Chairman
Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

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* Reissued for technical reasons.

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PROCEDURES TO BE EMPLOYED BY THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT IN THE DISCHARGE OF ITS RESPONSIBILITIES AS REQUIRED BY PARAGRAPH 12 OF SECURITY COUNCIL RESOLUTION 986 (1995)

SECTION I

Sale of petroleum and petroleum products originating in Iraq

1. The Committee will select, upon recommendation by the Secretariat of the Committee, at least four independent experts in international oil trade, to be appointed by the Secretary-General as "overseers" at the United Nations Headquarters. The number of the overseers will be reviewed depending on the volume of transactions to be processed. The overseers will have the authority and responsibilities set forth in this section.

2. Notwithstanding the obligations of States under the relevant Security Council resolutions, States may, if they so wish, forward to the Committee a list of national oil purchasers (private companies, State-owned companies, State agencies, ministries, etc.) authorized to communicate with the overseers. States may present changes to the list at any time. Once the Committee has taken note of these lists or the changes thereto and passed them on to the overseers, these purchasers are entitled to communicate directly with the overseers. If States do not submit such a list, or if a certain purchaser is not included in the list, the communication with the overseers shall be submitted through the Permanent Mission of the State of purchase.

3. A contract for the purchase of petroleum and petroleum products will only be considered for approval if it has been endorsed by the Government of Iraq, or the Iraqi State Oil Marketing Organization (hereinafter SOMO) on behalf of the Government. The submission by the Government of Iraq or SOMO of a copy of a contract is acceptable as an endorsement.

4. SOMO's contracts with purchasers will include all the details specified in paragraph 1 (a) of resolution 986 (1995). In particular, the contract shall indicate the export route, the payment by way of a confirmed letter of credit consistent with paragraph 9 below, quantity and quality of petroleum or petroleum products purchased, duration of contract, credit and payment terms and pricing mechanism. The pricing mechanism for petroleum should include the marker crude oil and type of quotations to be used, adjustments for transportation and quality, and pricing dates.

5. The Government of Iraq or SOMO may submit at any time pricing mechanisms for sales of petroleum for review by the Committee. The overseers will assess these pricing mechanisms, in particular whether they reflect fair market value and will provide analysis and recommendations to the Committee. The Committee will then review the pricing mechanism according to its no-objection procedure within two business days. The pricing mechanism should include the elements listed in paragraph 4 above. In

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order to facilitate this process, regular consultations between the overseers and representatives of SOMO will take place consistent with paragraph 6 of annex II of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of resolution 986 (1995) dated 20 May 1996 (hereinafter Memorandum of Understanding).

5. When market conditions so require, and in particular during the first month of the implementation of resolution 986 (1995) adjustments to pricing mechanisms may be submitted by the Government of Iraq or SOMO for review by the Committee in accordance with paragraph 5 above. The pricing mechanisms will in any case be reviewed in accordance with paragraph 5 above whenever the Government of Iraq or SOMO submits a revision. Current approved price mechanisms will remain in effect until new ones are approved by the Committee.

7. The Secretariat of the Committee will set up a new fax line to be used exclusively for correspondence with regard to the petroleum and petroleum products transactions. The national oil purchaser or the Permanent Mission of the State of purchase shall forward by fax to the overseers an application for approval, together with a copy of the contract and, if necessary, other supporting documents. States and national oil purchasers shall use only the Standard Application Form annexed to the present procedures. Other correspondance with the Committee shall go through the already existing channels.

8. A contract for the sale of petroleum which employs a pricing mechanism approved by the Committee under paragraph 5 above, will be reviewed by two overseers on behalf of the Committee to determine whether the contract meets the criteria set forth in paragraph 9 below. Such review should be completed within 24 hours. No overseer shall review a contract submitted by or on behalf of an oil purchaser with the same nationality as the overseer or which employed him or her within the last two years.

9. To ensure that all contracts comply with the provisions of resolution 986 (1995) and do not contain any attempt at fraud or deception, the overseers shall only review the contracts and supporting documents to determine that:

- the contract and the documents comply with the requirements provided for in resolution 986 (1995) and in the present procedures, including the [illegible] of a confirmed irrevocable letter of credit to be opened, with the irrevocable undertaking that the proceeds of the letter of credit will be paid directly to the escrow account established by the Secretary-General under paragraph 7 of resolution 986 (1995) (hereinafter Iraq account). The letter of credit should contain the information as set out in Annex II to this document.

- the conditions of payment envisaged in the letters of credit are in conformity with the existing market practices;

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- the contract price is fair in view of all relevant circumstances, in particular that it is consistent with a currently approved pricing mechanism, and competitive given world prices and market trends and taking into consideration the provisions of paragraph 6 of annex II of the Memorandum of Understanding;

- the transaction does not exceed the limits established by resolution 986 (1995), including the requirements set out in paragraph 6 of the resolution.

10. If the contract and supporting documents reviewed under paragraph 9 above are found to be in order, the overseers, on behalf of the Committee, shall immediately approve the contract and inform by fax the national oil purchaser or the Permanent Mission concerned, as well as SOMO and the bank holding the Iraq account. The Committee and the parties concerned shall be informed immediately upon rejection of any contract by an overseer. In circumstances other than rejection for technical reasons the overseers will make a full report to the Committee for appropriate action.

11. Contracts for the sale of petroleum or petroleum products which do not employ a pricing mechanism approved by the Committee under paragraph 5 above will be reviewed by the overseers who will provide their analysis and recommendations to the Committee. In addition to the factors in paragraph 9 above, the overseers shall consider whether the contract's pricing mechanism reflects fair market value. Such review should be completed within 24 hours. Upon receipt of the analysis and recommendations from the overseers, the Committee will consider the contracts under its expedited no-objection procedure within two business days.

12. Once a contract is approved pursuant to these procedures, the national oil purchaser shall cause a letter of credit consistent with paragraph 9 above to be opened and transmitted to the bank holding the Iraq account. The bank transmits the letter of credit to the overseers. The overseers immediately review the opened letter of credit in order to determine whether it conforms to the information given in the application.

13. If the opened letter of credit complies with the information given in the application, the overseers inform the bank holding the Iraq account which adds its confirmation to the letter of credit and, for information purposes only, forwards the letter of credit to the Central Bank of Iraq for the purpose of advising SOMO. Furthermore, the overseers send notification of sales approval, together with a copy of the contract and, if necessary, supporting documents to the inspectors at Ceyhan and at the metering station at the Iraq-Turkey border, or at Mina-al-Bakr. If the opened letter of credit does not comply with the information given in the application the overseers shall immediately inform the Committee.

14. The overseers will submit a substantive report to the Committee, in a standardized format, at least once a week on the contracts considered by them, including the cumulative quantity and approximate value of petroleum authorised for export, and inform the Secretary-General accordingly. In

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the light of this report, any document submitted as part of an application to the Committee will be available for consultation by Committee members in the Secretariat.

15. The export of petroleum and petroleum products will be monitored by United Nations independent inspection agents, appointed by the Secretary-General, who will be stationed at the loading facilities at Ceyhan and Mina-al-Bakr and at the metering station at the Iraq-Turkey border. Such on-site monitoring will make use of the documents received from the overseers, direct observation, as well as quality and quantity verification. The independent inspection agents will authorize the loading, after they receive the information from the overseers that the relevant contract has been approved, and inform the overseers accordingly. The independent inspection agents will also have the authority to stop the loading of petroleum if there is any evidence of irregularity. They will immediately report any irregularity to the Committee and the Secretary-General.

16. In accordance with paragraph 2 of resolution 661 (1990) and the provisions of resolution 665 (1990) shipments of Iraqi oil must not be performed by Iraqi vessels. In order to facilitate the efficient maritime export of oil under resolution 986 (1995) oil purchasers will communicate to the Secretariat information when available concerning vessels contracted for shipping approved oil exports.

17. The Committee will be informed of the appointments of the independent inspection agents made by the Secretary-General under paragraph 6 of resolution 986 (1995).

18. The independent inspection agents shall report weekly to the Committee, through the overseers, on their assessment of the export operations. When the loading of oil under a contract is completed, they shall inform the overseers on the details for comparison with the original approved contract.

19. Payment of the full amount of each purchase of petroleum and petroleum products shall be made into the Iraq account as provided for in paragraph 8 (a) of resolution 986 (1995).

20. Once [illegible] the Secretary-General forwards to the Committee and to the Government of Iraq statements of the Iraq account, including outlines of anticipated future payments to and from that account.

21. The scheme for the sale of petroleum products will be broadly similar to that described above, and the precise arrangements, consistent with paragraph 6 of resolution 986 (1995), can be elaborated at a later stage, as and when the need arises.

22. The overseers will receive monthly reports from SOMO on the actual volume and type of petroleum and petroleum products exported under the relevant sales contracts.

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23. At a meeting, the Committee may provide additional guidance to be followed by the overseers.

24. If any Committee member judges the circumstances to be serious enough, that member may call for a review by the Committee of the system for approving oil contracts established in this section. At an urgent meeting, the Committee will decide, according to its normal procedures, whether to continue or revise the system. In the meantime, decisions on oil contracts can only be made in accordance with paragraph 11 above.

SECTION II

Import by Turkey of petroleum and petroleum products originating in Iraq pursuant to paragraph 2 of resolution 986 (1995)

25. The import by Turkey of petroleum and petroleum products originating in Iraq will be undertaken in accordance with the requirements of paragraphs 2 and 6 of resolution 986 (1995), so as to meet the pipeline tariff charges, verified as reasonable by the independent inspection agents, after the deduction of the percentage referred to in paragraph 2 of resolution 705 (1991) for the Compensation Fund. The import of petroleum and petroleum products will be authorized and monitored in accordance with the relevant provisions of section I of the present procedures.

SECTION III

Export to Iraq of humanitarian supplies

26. The Government of Iraq will prepare a categorised list of humanitarian supplies which it intends to purchase and import pursuant to resolution 986 (1995). This list will be submitted to the Secretary-General together with the distribution plan referred to in paragraph 8 (a) (ii) of the resolution.

27. After approving the distribution plan, the Secretary-General will forward the list, which constitutes a part of the plan, to the Committee, and will make it known to all States.

28. The Government of Iraq or the United Nations Inter-Agency Humanitarian Programme will contract directly with suppliers to arrange the purchase of humanitarian supplies, and will conclude the appropriate contractual arrangements.

29. Exports to Iraq of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs (hereinafter humanitarian supplies) financed from the Iraq account shall be undertaken in accordance with the following provisions.

30. Applications for each export of humanitarian supplies, to be financed from the Iraq account consistent with paragraph 22 of the Memorandum of Understanding, shall be submitted to the Committee at the request of the Government of Iraq by the exporting States with all relevant documentation,

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including the concluded contractual arrangements. Payment from the Iraq account can take place only for items included in the categorized list, unless the Committee exceptionally decides otherwise on a case-by-case basis.

31. The Committee will take action on such applications in accordance with paragraph 20 of resolution 687 (1991), its existing procedures and the provisions of this section. The Committee will inform the Government of Iraq, the requesting States, the Secretary-General and, if appropriate, the independent inspection agents at the intended point(s) of entry into Iraq of the actions taken on the applications submitted.

32. Such applications shall be submitted as follows:

(a) Medicines and Health Supplies

The exporting State informs the Committee that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to this communication.

(b) Foodstuffs

The exporting State notifies the Committee. The notification must indicate that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to the notification.

(c) Other Materials and Supplies for Essential Civilian Needs

The exporting State submits an application for approval by the Committee under its no-objection procedure. The application must indicate that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to the application.

33. Experts in the Secretariat examine each contract, in particular the details of price and value, and whether the items to be exported are on the categorized list referred to above. They will also take into consideration the reports of the Secretary-General provided for in paragraph 20 above, in order to check availability of funds in the Iraq account for the contract. They will inform the Committee of their findings.

34. The Committee acts upon the findings of the experts as set forth below:

(a) Medicines and Health Supplies

If the Committee finds, under its expedited no-objection procedure within two business days from the circulation of the application, that the contract is in order, it immediately informs the parties concerned that the exporter is eligible for payment from the Iraq account. If the contract is

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not found in order, the Committee informs the parties concerned that payment cannot be made from the Iraq account, but the medicines and health supplies can be shipped anyway if the exporter so desires.

(b) Foodstuffs

If the Committee finds, under its expedited no-objection procedure within two business days from the circulation of the application, that the contract is in order, it immediately informs the parties concerned that the exporter is eligible for payment from the Iraq account. If the contract is not found in order, the Committee informs the parties concerned that payment cannot be made from the Iraq account, but the foodstuffs can be shipped anyway if the exporter so desires.

(c) Other Materials and Supplies for Essential Civilian Needs

If the Committee approves the supplies, under its no-objection procedure within seven days, and if the contract is found in order, the Committee informs the parties concerned of the approval and that the exporter is eligible for payment from the Iraq account. If the contract is not found in order, but the Committee approves the supplies under its no-objection procedure, it informs the parties concerned that payment cannot be made from the Iraq account, but that the supplies are approved and can be shipped anyway if the exporter so desires. If the Committee cannot approve the supplies, whether or not the contract is found in order, it informs the parties concerned that the supplies cannot be shipped.

35. When the Committee has informed the parties concerned that the exporter is eligible for payment from the Iraq account, the Central Bank of Iraq will request the bank holding the Iraq account to open an irrevocable, non-transferable, non-assignable (except to the supplier's bank for the repayment of financing for the purchase of the humanitarian supplies) letter of credit [illegible] the account of the Iraqi purchaser in favour of the supplier, which will be available only at the bank holding the Iraq account, and providing for payment from the Iraq account. Such requests shall be [illegible] the bank holding the Iraq account to the Secretary-General [illegible] unconditional approval, so that payment from the Iraq account can be made without delay. The letter of credit will require as condition of payment the submission to the bank holding the Iraq account of the usual commercial documentation, and of the following documents: a copy of the Committee's letter stating that the exporter is eligible for payment from the Iraq account, and a standardized confirmation by the Secretary-General of the arrival of the humanitarian supplies in Iraq.

36. The arrival of the humanitarian supplies in Iraq will be confirmed by independent inspection agents appointed by the Secretary-General pursuant to resolution 986 (1995) and stationed at relevant entry points and other locations in Iraq as referred to in paragraph 26 of the Memorandum of Understanding. The independent inspection agents will add their authenticated confirmation of arrival to a copy of the Committee's letter stating that the exporter is eligible for payment from the Iraq account and to a copy of the invoice, and will inform the Secretary-General in

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accordance with paragraph 8 (a) (iii) of Security Council resolution 986 (1995). This information should be given without delay and in any case within 24 hours. The inspection agents will report all irregularities to the Secretary-General and to the Committee. If the problem is related to normal commercial practice, the Committee and the Government of Iraq will be informed but normal commercial resolution practices will go forth. Performance bonds may not be opened. Payments in favour of the purchaser resulting from normal commercial resolution practices should be made to the Iraq account. If the matter is of serious concern, the independent inspection agents will hold the shipment in question, pending guidance from the Committee. The Committee will make every effort to provide such guidance in the most expeditious manner.

37. The bank holding the Iraq account shall effect payment under any letter of credit only if all documents (listed in para. 35 above) stipulated in the letter of credit are presented to it and the terms and conditions of any such letter of credit are complied with. When specified in the contract and the supporting documents, payment can be made in several instalments corresponding to actual deliveries to Iraq. Documentary discrepancies can only be waived by the Secretary-General.

38. The provisions of this section are without prejudice to the application of the existing procedures of the Committee for goods which are not supplied pursuant to resolution 986 (1995).

SECTION IV

Export to Iraq of parts and equipment, and financial transactions related thereto, pursuant to paragraphs 9 and 10 of resolution 986 (1995)

39. The export to Iraq of the parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq will be undertaken in accordance with the procedures set out in section III of the present procedures. Requests for such exports to Iraq will be approved by the Committee on a case-by-case basis under its no-objection procedure. The Committee may request relevant United Nations personnel in Iraq to verify that the equipment exported to Iraq pursuant to paragraph 9 of resolution 986 (1995) is used only for the purposes permitted.

40. In accordance with paragraph 10 of resolution 986 (1995), until proceeds from the sale of petroleum and petroleum products are deposited into the Iraq account, the Committee may approve, on a case-by-case basis, the exceptional financing of the export of parts and equipment by letters of credit drawn against future oil sales. The Committee will seek, if necessary, the advice of the overseers in considering such requests. In this case the provisions of paragraph 35 above shall apply.

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SECTION V

Approval of reasonable expenses other than expenses payable in Iraq

41. Pursuant to paragraph 8 (f) of resolution 986 (1995), the Committee can approve, under its no-objection procedure, the financing from the Iraq account of reasonable expenses, other than expenses payable in Iraq, which are determined by it to be directly related to the export by Iraq of petroleum and petroleum products permitted under paragraph 1 of resolution 986 (1995) or to the export to Iraq of the parts and equipment referred to in paragraph 9 of resolution 986 (1995), and of activities directly necessary therefor.

42. Requests for meeting the expenses referred to in the previous paragraph will be submitted by the Government of Iraq together with all necessary documentation, and will be approved on a case-by-case basis by the Committee under its no-objection procedure. The Committee will seek, if necessary, the advice of the overseers or the independent inspection agents in reaching a decision.

SECTION VI

General provisions

43. The Secretariat will arrange for the establishment of the appropriate communication links to permit immediate communication among the overseers, the independent inspection agents, the bank holding the Iraq account and the coordinator of the Multinational Interception Forces operating in the area under resolution 665 (1990), as well as with the Central Bank of Iraq and SOMO.

44. The Secretary-General reports regularly to the Committee on the details of the disbursements made pursuant to paragraph 8 of resolution 986 (1995).

45. Letters of credit envisaged in these procedures should conform with the Uniform Customs and Practice for Documentary Credit.

46. The Committee will amend or revise the present procedures, if necessary, in the light of future developments.

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Annex I

Standard application form to request approval of contracts for sale of Iraqi petroleum and/or petroleum products

The attached contract with the Iraqi State Oil Marketing Organization (SOMO) for the purchase of petroleum and/or petroleum products is submitted for approval in accordance with paragraph 1 (a) of Security Council resolution 986 (1995) and the procedures of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, adopted at its ... meeting held on ... (S/....).

Information about the purchaser

Name of purchasing entity:

Place of registration:

Address:

Contact person:

Telephone: Telefax: Telex:

Summary of contract terms

Quantity of crude petroleum and/or petroleum products:

Quality of crude petroleum and/or petroleum products:

Pricing formula and/or price per U.S. barrel:

Date(s) of loading at Ceyhan:

Date(s) of loading at Mina al-Bakr:

Name of vessel(s) and destination (if available):

Payment details (draft irrevocable letter of credit, etc.)

Please find attached a copy of the contract, draft irrevocable letter of credit to be opened and all supporting documents.

Signature
Name of signatory
Title

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Annex II

Information to be included in the letter of credit

1. As provided for in paragraph 2 of Annex II of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995), signed on 20 May 1996, the following clauses will have to be inserted in each letter of credit:

"- Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be irrevocably paid into the 'Iraq Account' with .... Bank."

"- All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the purchaser."

2. Other information to be included:

- nature of the petroleum or petroleum product
- forecast quantity of petroleum or petroleum product
- date of loading
- unit price
- forecast amount of the transaction

ANNEX V

GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF USE OF UN-PROVIDED TRANSPORT

I, the undersigned, hereby recognize that all my travel on the UN-provided transport, pursuant to Contract No. PD/CON/324/98 between the United Nations and Cotecna Inspection S.A., is solely for my own convenience and benefit and may take place in areas or under conditions of special risk. In consideration of being permitted to travel on such means of transport, I hereby:

(a) Assume all risks and liabilities during such travel;

(b) Recognize that neither the United Nations nor any of its officials, employees or agents are liable for any loss, damage, injury or death that may be sustained by me during such travel;

(c) Agree, for myself as well as for my dependents, heirs and estate, to hold harmless the United Nations and all its officials, employees and agents from any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this Release shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

_____
Passenger

_____
Date

_____
Witness

SPECIMEN

ANNEX VI

GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF PROVISION BY UN OF EMERGENCY MEDICAL CARE

I, the undersigned, hereby recognize that all emergency medical care provided to me at UN medical facilities, pursuant to Contract No. PD/CON/324/98 between the United Nations and Cotecna Inspection S.A., is solely for my own convenience and benefit and may take place in areas or under conditions of special risk. In consideration of receiving such medical care, I hereby:

(a) Assume all risks and liabilities in connection with the provision of such medical care;

(b) Recognize that neither the United Nations nor any of its officials, employees or agents are liable for any loss, damage, injury or death that may be sustained by me during the provision of such medical care;

(c) Agree, for myself as well as for my dependents, heirs and estate, to hold harmless the United Nations and all its officials, employees and agents from any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this Release shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

_____
Employee

_____
Date

_____
Witness

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FORM OF PERFORMANCE BOND

Know all men by these presents, that we, ... a company incorporated in and under the laws of ....., the principal shareholders of which are .... as Principal (hereinafter called "the Supplier") and the ..... a corporation organized under the laws of ..... and duly organized to transact business in ..... as Surety (hereinafter called "the Surety") are held and firmly bound unto the United Nations, an international intergovernmental organization with its headquarters at New York, New York, USA, as Obligee (hereinafter called "the Employer") in the amount of ..... (USD), for the payment whereof which sum, well and truly to be made, the Supplier and the Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Whereas the Supplier has entered into a written contract with the Employer dated the ..... day of ....., 19..... for the ..... said Contract being by reference made part hereof and hereinafter referred to as "the Contract".

Now, therefore, for valuable consideration, the receipt whereof is hereby acknowledged by the Surety, the Surety hereby irrevocably undertakes to, whenever Supplier shall be declared by Employer to be in default under the Contract, without any objection, opposition or recourse, promptly pay the Employer the amount required by Employer to remedy the default and completes the Contract in accordance with its terms and conditions, any amount up to a total not exceeding the amount of the Bond, or remedy the default and completes the Contract in accordance with its terms and conditions.

The Surety shall not be liable for a greater sum than the specified amount of the Bond.

The Condition of this obligation is such that if the Employer shall notify the Surety in writing that the Supplier has promptly and faithfully performed the said Contract (including any amendment thereto) then this obligation shall be null and void, otherwise it shall remain in full force and effect until the Employer shall by written instrument declare the obligation discharged, except that the obligation shall continue for at least three months following termination of the Contract.

This Bond shall be enforceable without the need to have recourse to any judicial or arbitral proceedings.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators or successors of the Employer.

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ANNEX D (cont)

Nothing herein or related hereto shall be deemed a waiver or an agreement to waive any of the privileges or immunities of the United Nations.

Signed on

Signed on

on behalf of

on behalf of

by

by

in the capacity of

in the capacity of

in the presence of

in the presence of

SPECIMEN

COINS

COTECNA INSPECTION S.A.

TEL.: (41-22) 849 60 00
FAX: (41-22) 849 60 99
TELEX: 413 107 COT CH
CABLES: COTECNA GENEVA

CORRESPONDENCE:
P.O. BOX 6188 - 1211 GENEVA 6
SWITZERLAND

YOUR REF. OUR REF.

58, RUE DE LA TERRASSIERE

Officer in charge
Procurement Division
OCSS/D.M.
United Nations
New York (N.Y.

~~NEW YORK~~ New York, December 30th 1998.

Power of Attorney

I, the undersigned E. G. MASSEY, in my capacity of Chairman of COTECNA INSPECTION S.A. Geneva, hereby gives full and complete Power of Attorney to Mr. André E PRUNIAUX to sign on behalf of our Company a contract under Reference PD/CON/324/98, with the United Nations, New York (U.S.A.) relating to work & Services to be made in IRAQ within the Programme of "OIL FOR FOOD".

Made in one Original this 30th day of December 1998.

E. G. MASSEY
Chairman of
COTECNA INSPECTION S.

HA006548

COPY

CONTRACT PD/CO144/01

between

THE UNITED NATIONS

and

COTECNA INSPECTION S.A.

FOR THE PROVISION OF INDEPENDENT INSPECTION AGENTS

SPECIMEN

This Contract is entered into by and between the UNITED NATIONS, an international inter-governmental organization, with its headquarters, located in New York, N.Y. 10017, USA (hereinafter referred to as the "UN"), and COTECNA INSPECTION S.A., a corporation incorporated under the laws of Switzerland, having its headquarters at 58, Rue de la Terrassiere, Geneva, Switzerland (hereinafter referred to as the "Contractor"). The UN and the Contractor are collectively hereinafter referred to as the "Parties".

WITNESSETH

WHEREAS the UN, in furtherance of the mandate of United Nations Security Council Resolutions, wishes to engage the Contractor to provide all services and supplies required to verify and confirm that the description, value and quantity of humanitarian goods, oil spare parts and equipment arriving in Iraq, are in accordance with the applications established by the Committee, all on the terms and conditions set forth in this Contract;

WHEREAS the Contractor represents that it is qualified, ready, willing and able to provide these services on the terms and conditions set forth in this Contract;

NOW, THEREFORE, subject to the terms and conditions hereinafter set forth, the Parties agree as follows.

A. GENERAL

Article 1: Contract Documents

1.1 This document and all annexes hereto, together with the following named documents, which are incorporated herein by reference, constitute the entire contract (herein referred to as the "Contract" or this "Contract") between the UN and the Contractor:

(a) The Request for Proposal issued by the UN and dated 30 March 2001 under reference "Request for Proposal for the Provision of Services by Independent Inspection Agents for Humanitarian Supplies/LM" as modified or supplemented by the answers to queries dated 24 April 2001, (hereinafter referred to as the "RFP") and;

(b) The Contractor's Proposal dated 24 April 2001, as modified or supplemented by letter dated 23 July 2001 confirming its acceptance of the negotiated rates (hereinafter referred to as the "Proposal").

SPECIMEN

1.2 The following Annexes shall form an integral part of this Contract:

Annex I: UN General Conditions for General Contracts;

Annex II: Security Council Resolution 986 (1995), 1111 (1997), 1143 (1997), 1153 (1998) and 1175 (1998) (as such Resolutions may be modified or supplemented after the date hereof, hereinafter referred to as the "Resolutions");

Annex III: Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995) (hereinafter referred to as the "MOU");

Annex IV: The Procedures to be Employed by the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation between Iraq and Kuwait in the Discharge of its Responsibilities as Required by Paragraph 12 of Security Council Resolution 986 (1995) (such Procedures may be modified or supplemented after the date hereof, hereinafter referred to as the "Procedures");

Annex V: Transportation Release Form;

Annex VI: Medical Release Form;

Annex VII: Form of Performance Bond/Guarantee.

1.3 In the event of any inconsistency among the documents constituting this Contract, the following order of priority shall apply:

(a) this document and Annexes I - VII hereto;

(b) the RFP; and,

(c) the Proposal.

It is expressly agreed that this Contract embodies the entire agreement of the Parties with regard to the subject matter hereof, and that no promises, understandings, obligations or

agreements, verbal or otherwise, exist between the Parties except as herein expressly set forth.

Article 2: Term of Contract

This Contract shall be in force for an initial term of one (1) year, from 1 August 2001 through 31 July 2002, unless earlier terminated in accordance with the terms of this Contract. The UN shall have the right, at its sole option, to extend this Contract on the same terms and conditions (including price), for an additional period of one (1) year or of such shorter duration as the UN may in its sole discretion determine, by giving the Contractor written notice of its intention to do so not less than fifteen (15) days prior to the expiration of the then current term of the Contract.

Article 3: Objective of Contract

The Resolutions direct the Security Council Committee established by UN Security Resolution 661 (1990) (hereinafter referred to as the "Committee") to, inter alia, monitor the import into Iraq of certain humanitarian supplies and equipment for the petroleum industry (such supplies, spare parts and equipment hereinafter referred to as "Supplies"). Under this Contract, the Contractor will provide all services, equipment and materials to verify and confirm (i) that the shipment, quantity and quality of Supplies arriving in Iraq (including those imported in accordance with the United Nations Inter-Agency Humanitarian Programme) are in accordance with the specifications established by the Committee and (ii) that certain activities in respect of imports of Supplies are performed in accordance with the requirements established by the Committee. The activities referred to in clause (i) shall (the "Services").

B. RESPONSIBILITIES OF THE CONTRACTOR

Article 4: Scope of Work; Representations

4.1 The Contractor undertakes to provide independent inspection agents and related personnel (hereinafter referred to as the "Agents") as required to perform the Services. The Agents shall perform the required Services [illegible] per week basis and in accordance with the specifications and procedures set forth in the RFP and the Proposal.

4.2 The Contractor shall provide a [illegible], present at all times at the border entry points of Al-Waleed, Trebil, Umm Qasr and Zakho, and [illegible]

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the UN, one (1) field manager, one (1) senior liaison officer, and one (1) chemist, all of whom shall be posted as specified in the Proposal. The Agents assigned to perform the Services shall be selected by the UN from among the individuals identified by the Contractor as experienced and qualified to perform their duties. There shall be no substitution of the Contractor's personnel without the UN's prior written consent in each instance. The UN reserves the right, in its sole discretion, to increase or reduce the number of Agents at any time, in which event the contract price set forth in Article 7.1 hereof shall be proportionately adjusted based on the labour cost per man/day differentials as set forth in the Proposal. Notwithstanding anything in the Proposal to the contrary, any adjustment in the contract price arising from an increase in the number of Agents shall be based on the actual number of days worked by such additional Agents.

4.3 The Agents shall confirm imports of Supplies into Iraq in accordance with Article 4.9 hereof, the RFP, and the Proposal, including without limitation the monitoring, inspection, and testing procedures set forth in the Proposal. In particular the Agents shall check and compare the appropriate documentation, such as bills of lading, letter of shipping documents or cargo manifests, with the letter of approval and other documentation issued by the Committee against humanitarian supplies and oil spare parts and equipment arriving in Iraq. They shall, among other matters, conduct quantity inspection by draught survey, including visual inspection, sampling, and when necessary, timely laboratory testing. If the shipment is in order, the Agents shall add their authenticated confirmation of arrival, stating that the exporter is eligible for payment, to a copy of the letter of approval issued by the Committee. The Agents shall immediately report any irregularities to the Secretary-General and the Committee. The Agents shall also electronically transmit to the Secretary-General daily shipment inspection reports authenticating the delivery of supplies and, in writing, weekly reports via facsimile describing the inspection activities undertaken.

4.4 The Agents shall also undertake special inspection and authentication procedures. The UN shall notify the Agents, through a monthly update, of the relevant items that require special inspection and authentication procedures. Separate lists shall be prepared for humanitarian supplies and oil spare parts and equipment. This monthly update shall also be provided to the independent oil inspection agents contracted separately by the United Nations. The items for export to Iraq shall be inspected and authenticated by the Agents upon arrival at the border crossing point to Iraq. The Agents shall report on a weekly basis to the UN on the arrival of the designated humanitarian supplies and, with regard to oil spare parts and equipment, also to the oil inspection agents, until delivery is completed. As required, the Agents shall apply a unique Reference Number (URN) seal on a specified item(s) upon their arrival at the relevant border crossing point to Iraq. The item shall be inspected and authenticated by the Agents upon arrival at the relevant border crossing point to Iraq. The Agents shall then apply a URN seal to the consignment and annotate the relevant documentation with that number accordingly.

This seal may only be removed by the United Nations at the time of the visit to the end-user facility. Subsequent to the inspection and authentication of this consignment, the Agents shall inform the United Nations and, with regard to oil spare parts and equipment, the oil inspection agents, of the arrival at the border of the item(s) in question and also transmit details of the warehouse or storage site location and, where available, details regarding end-use or the end-user facility.

4.5 Should the Government of Iraq consider certain commodities to be defective upon receipt and not in accordance with contractual specifications, it may make arrangements for the export of an item(s) from Iraq back to the supplier (or other approved destination). On such occasions, the supplies will also be subject to special inspection procedures by the Agents to ensure the appropriate export of the item(s) in question. This will involve the same procedures as indicated in Article 4.4 above but in reverse order. Upon being informed by the Government of Iraq, the Agents shall also undertake special inspection and authentication procedures for the transport of an item(s) for the purposes of repair. On such occasions, the Agents shall inspect and verify the pre-shipment packing, preparation and export of the item(s) in question.

4.6 The Agents will immediately report all irregularities to the UN Secretary-General and the Committee. In case of shipments other than those in connection with the United Nations Inter-Agency Humanitarian Programme, if the shipment relates to normal commercial practice (e.g., some shortlanded goods), the Committee and the Government of Iraq shall be informed, but normal commercial resolution procedures, as set forth, shall apply. If the Agents determine that the matter is of a serious nature, they will hold the shipment in question pending guidance from the UN. The Contractor shall not be liable in respect of any disputes arising between buyer and seller of the supplies and services for which the Contractor is not responsible. The Contractor shall cooperate with any requests by the UN to provide assistance in connection with the Resolution of such disputes.

4.7 The Contractor shall be responsible for operating the convoy control system at the Zhako/Faida border crossing, including without limitation, preparing convoy lists, collecting passports, and transmitting such documents to the relevant authorities.

4.8 The Contractor shall be responsible for making the necessary arrangements to ensure the fulfilment of its obligations under this Contract. The Contractor shall perform its obligations under this Contract in accordance with the highest professional standards.

In performing their obligations under this Contract, the Contractor and its personnel shall comply with all the relevant aspects of applicable UN documents and procedures, including without limitation, the Resolutions, the MOU, the Procedures, any other procedures

and decisions approved by the Committee, and instructions and applicable reports of the UN Secretary-General.

4.10 The Contractor acknowledges that (i) the UN shall have no obligation to provide any assistance to the Contractor in performing the Services other than as expressly set forth herein and (ii) the UN makes no representations as to the availability of any facilities or equipment in Iraq or the conduct of Iraqi authorities. The Contractor represents and warrants that all information in the Proposal is true and correct.

4.11 The UN reserves the right at any time, including during the term of this Contract or any extension thereof, to enter into any agreements or arrangements with any other entities or persons for performance of all or any part of the Services. The UN shall incur no liability to the Contractor by virtue of its entry into such agreements or arrangements. The UN may at any time expand the responsibilities of the Contractor, subject to the UN's obligation to pay for any additional agents that may be required as a result thereof.

4.12 The Contractor shall supply all equipment, materials and facilities necessary to perform the Services, including without limitation all equipment for taking and storing samples, all vehicles for transporting the Agents, all equipment for transmitting authenticated confirmations and other reports required under this Contract, and all other equipment, materials, and facilities set forth in the Proposal. The communications and electronic data processing equipment and software supplied or utilized by the Contractor in performing its obligations under this Contract shall be of the highest quality and be fully compatible with the equipment and software utilized by the UN in connection with this Contract. The Contractor shall supply all hardware, software and other information technology related equipment in order to perform its duties. Furthermore, the Contractor shall provide all personnel to support its information technology operations in Iraq. In particular, the Contractor shall supply the following equipment and software to perform the Services:

(a) Each duty station shall be equipped with at least three (3) desktop PC's (with additional PC's as work volume may require); one (1) server with minimum Pentium III, 700 Mhz Processor, with 512 Mb PC 133 MHz SDRAM memory, with 2 x 18 GB hard disk drives and one (1) DAT 12/24 GB SCSI DDS3; and Routers to facilitate data transmissions. Each server and PC will run Lotus Notes 4.6 or higher and Y2K compliant. The Contractor shall create a Lotus Notes-based application to record authentications and transmit them directly to the UN Notes server in New York. The Contractor shall be responsible for ensuring that the integrity of all authentication data is maintained.

(b) Each duty station shall be equipped with UPS (uninterrupted power supply) back

up capable of sustaining operations for a minimum of twelve (12) hours. Each duty station utilizing local power shall also be equipped with a back-up generator with adequate power capacity to power the entire station.

(c) Subject to the Parties' mutual agreement to an appropriate adjustment to the contract price and an amendment of this Contract to effect such price adjustment, each duty station shall be equipped with either a V-SAT terminal (earth station) or INMARSAT B capable of transmitting at a minimum of 64 Kbps; at least one (1) INMARSAT M (Inmarsat) or better equipment with a separate fax machine capable of transmitting data as back-up to the V-SAT or INMARSAT B.

4.13 The Contractor shall safeguard the security of all documents, equipment, materials and facilities used in connection with the performance of this Contract, including without limitation through the measures set forth in the Proposal.

Article 5: Contractor's Personnel

5.1 No person shall be assigned by the Contractor to perform the Services under this Contract unless the United Nations has approved in writing the selection of such person in writing. Without limiting the United Nations' rights of approval under Articles 4.2 and 5.2 hereof, in addition to the sixty-two (62) Agents designated by the United Nations under Article 4.2 hereof, the United Nations shall designate ten (10) additional persons from among the candidates identified by the Contractor who are acceptable to serve as replacement Agents under this Contract.

5.2 The United Nations may request at any time, the withdrawal or replacement of any personnel of the Contractor assigned to perform the Services under this Contract. The Contractor shall, at its own cost and expense, withdraw or replace such personnel forthwith. The assignment by the Contractor of any replacement personnel shall be subject to the UN's prior written approval. A request by the United Nations for withdrawal or replacement of the Contractor's personnel shall not be deemed a termination of the Contract.

5.3 The Contractor shall be fully responsible for all work and services performed by its employees, agents, servants and sub-contractors. The Contractor shall take all reasonable measures to ensure that they conform to the highest standards of moral and ethical conduct and respect local customs which are not otherwise inconsistent with the provisions of this Contract, including without limitation the Resolutions, the MOU and the Procedures.

5.4 The Contractor shall ensure that all personnel used to perform services under this

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Contract are (i) medically fit to perform the Services and (ii) adequately covered by insurance for any service-related illness, injury, death or disability. The Contractor shall submit proof of such medical fitness and such insurance satisfactory to the UN before commencing any work under this Contract.

5.5 The UN shall not be liable for any action, omission, negligence or misconduct of the Contractor's employees, agents, servants or sub-contractors, nor for any insurance coverage which may be deemed necessary or desirable for the purpose of this Contract, nor for any costs, expenses or claims associated with any illness, injury, death or disability of the Contractor's employees, agents, servants or sub-contractors performing Services in connection with this Contract.

5.6 The Contractor shall ensure that the Agents are at their stations and ready to commence work under this Contract, in accordance with the RFP and the Proposal, [illegible] August 2001. The duty stations shall be staffed as specified in the RFP and the Proposal, and the Agents shall carry out their work in accordance with a shift structure acceptable to the UN. The Contractor shall employ the management structure set forth in its proposal. The UN reserves the right, at any time, to alter the shift structure or the duty stations to which the Agents are assigned, including the number of each Agents assigned to a duty station, at no additional cost the UN. The Agents assigned to each duty station shall at all times include at least one (1) information technologist capable of undertaking routine support tasks on hardware and software, one (1) food technologist, and one [illegible] fluent in Arabic.

5.7 It is understood and agreed that the Agents performing the Services, whose names will be communicated to the Government of Iraq pursuant to Section VIII of the MOU, shall be deemed "experts" within the meaning of Article VI of the Convention on the Privileges and Immunities of the United Nations, and shall enjoy all of the privileges and immunities accorded to "experts" therein.

Article 6: Reporting Requirements

6.1 The Contractor shall submit to the Committee, the UN Secretary-General, and the United Nations Office of the Humanitarian Coordinator for Iraq [illegible]. Such reports shall be submitted via satellite facsimile and [illegible] electronic mail. These reports shall be in the format and provide such information, as the UN shall specify.

Article 7: Contract Price and Payment Terms

7.1 In full payment for the complete and satisfactory performance by the Contractor of all its obligations under this Contract, the UN will pay the Contractor a price not to exceed (N.T.E.) a total of **U.S. DOLLARS ELEVEN MILLION SEVEN HUNDRED SIXTY-SEVEN THOUSAND SIX HUNDRED (US$11,767,600.00)**, at the all inclusive man/day rate of US$520.00, subject to any adjustment in such price pursuant to Articles 4.2 and 12.1 hereof. This price includes all costs relating to the Services to be provided under this Contract, including without limitation, salaries, benefits, insurance, board, lodging, security, transportation and communications, electronic data processing and other equipment. The price also includes all taxes, duties, levies and other charges of any nature imposed by any authority, whether inside Iraq or in any other countries. Such amount shall be payable to the Contractor monthly in arrears.

7.2 Payments under this Contract shall be made only against receipt of the Contractor's written invoices and certification by the UN that the services represented by the invoice have been satisfactorily completed. The Contractor shall submit its invoices to the UN, together with such supporting documentation as the UN may require to enable payment to the Office of the Iraq Programme, United Nations, New York, New York, Attn: Senior Customs Officer, with a copy to the Procurement Division, United Nations, 2 East 45th Street, New York, New York, 10017, Attn: Chief of Procurement Division. All invoices shall make reference to the number of this Contract (PD/CO) and shall be payable net thirty (30) days from the date of the UN's receipt of the invoice and all required supporting documentation; provided that the UN shall be entitled to a two percent (2%) discount on any invoice amounts paid within fifteen (15) days of its receipt of such invoice and documentation.

7.3 The UN may offset any amounts which are due to it from the Contractor against any payments due from the UN to the Contractor.

C. RESPONSIBILITIES OF THE UN

Article 8: Identification Cards

The UN shall provide the Contractor's personnel with appropriate identification cards.

Article 9: Access to Transport and Medical Facilities

9.1 Without limiting the Contractor's obligation under this Contract to provide all transportation, the United Nations agrees to allow the Contractor's personnel, on an

exceptional basis and to the extent practicable, to travel on UN-provided transport to, in, and from Iraq strictly for the following purposes:

(a) evacuation due to security developments, on the understanding that such evacuation shall be to the nearest safe area; and

(b) medical evacuation due to serious medical conditions, provided that emergency medical evacuation of the Contractor's personnel will be from the country sites to an in-country medical facility or transportation out of Iraq to an out-of-country medical facility in an appropriate neighbouring country.

9.2 In consideration of the Contractor's personnel being permitted to travel on UN-provided transport, each of such personnel shall sign a release from liability in the form attached hereto as Annex V, prior to their transport on any UN-provided transportation. The Contractor undertakes to obtain the signed release from each such person and deliver the signed original to the UN prior to such person's initial use of any UN-provided transportation.

9.3 Without limiting the Contractor's obligation under this Article 9 to provide all medical services, in the event that the Contractor's personnel require emergency medical treatment, the UN agrees, on an exceptional basis and to the extent practicable, to allow such personnel access to available UN medical facilities. In consideration of the Contractor's personnel being permitted to utilize such UN medical facilities, prior to their using any such UN medical facilities, each of such personnel shall complete and sign the release from liability in the form attached hereto as Annex VI. The Contractor undertakes to obtain the signed release from each such person and to deliver the signed original to the UN prior to such person's initial use of any UN medical facility.

9.4 The Contractor hereby releases the UN and its officials, employees and agents from any and all liability of any kind in connection with the provision of any services to the Contractor's personnel under this Article 9 and waives any claims the Contractor may have against the UN, its officials, employees or agents arising in connection with the provision of such services. The Contractor agrees to reimburse the UN for any costs incurred by it in connection with this Article 9 and to indemnify and hold harmless the UN and its officials, employees and agents for any claim or liability of any nature arising in connection with this Article 9.

10. MISCELLANEOUS MATTERS:

Article 10: Contractor's Obligations Upon Expiration or Termination

Upon expiration or termination of this Contract, the Contractor shall take immediate steps to terminate its operations in a prompt and orderly manner and shall provide such information and take such actions as may be reasonably requested by the UN for the preservation and protection of (i) the work and services already performed by the Contractor and the results thereof and (ii) all property of the UN provided to the Contractor.

Article 11: Liaison and Inspection

11.1 The UN reserves the right to inspect and test all Services performed by the Contractor under this Contract, to the extent practicable, at all reasonable places and times during the term of this Contract. The UN shall perform inspections and tests in a manner that will not unduly hinder the performance of the services by the Contractor. The Contractor shall cooperate with all inspections and tests.

11.2 If any work or services performed by the Contractor do not conform with the requirements of this Contract, the UN shall have the following options:

(a) If the UN determines that the improper performance can be remedied by way of re-performance or other corrective measures by the Contractor, the UN may request the Contractor in writing to take, and the Contractor shall take, at no expense to the UN, the measures necessary to re-perform or take other appropriate actions to remedy the improperly performed work or services within fourteen (14) days of receipt of the written request from the UN, or within such shorter period as the UN may have specified in the written request if emergency conditions so require, as determined by the UN.

(b) If the Contractor does not promptly take corrective measures or if the UN reasonably determines that the Contractor is unable to timely remedy the improper performance, the UN may obtain the assistance of other entities or persons and have corrective measures taken at the expense of the Contractor.

(c) If the UN reasonably determines that the improper performance cannot be remedied by re-performance or other corrective measures by the Contractor, the UN may terminate the Contract in accordance with Article 15 of the UN General Conditions for General Contracts without prejudice to any of its other rights and remedies under this Contract.

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Article 12: Termination at Will

12.1 In addition to the termination rights provided in Article 15 of the UN General Conditions for General Contracts (Annex I), the UN may terminate this Contract without cause, in whole or in part, upon thirty (30) days written notice to the Contractor. In the event of termination pursuant to this clause, the UN shall only be responsible for payment to the Contractor for Services satisfactorily performed in accordance with this Contract prior to the effective day of termination and any reimbursement to which the Contractor shall be entitled pursuant to Article 12.2 hereof. In the event of partial termination, the contract price shall be proportionately reduced as set forth in Article 4.2 hereof.

12.2 Notwithstanding the provisions of Article 14 of the UN General Conditions for Contract (Annex I), in the event of any circumstance constituting or potentially constituting *force majeure*, the Contractor shall not withdraw any of its personnel from duty stations except with the prior written approval of the UN, which approval shall not be unreasonably withheld. The Parties agree that it shall not be unreasonable for the UN to withhold its consent so long as UN personnel remain similarly situated in Iraq.

12.3 Without limiting any of the UN's other rights under this Contract, in the event that circumstances, whether or not constituting *force majeure*, render it impossible for the Contractor to perform the Services as contemplated in this Contract, the Contractor shall comply with any contingency plans designated by the UN to ensure continued performance of the Services.

Article 13: Customs Clearance, Transportation.

The Contractor shall be responsible for customs clearance and obtaining all licenses, permits, and authorizations from governmental or other authorities necessary for the performance of this Contract. The UN shall provide reasonable assistance to the Contractor, by liaising as appropriate with relevant authorities, in obtaining visas for the Contractor's personnel and permits for clearing through customs any equipment, material and supplies in connection with this Contract. Notwithstanding the foregoing, the UN's sole obligation with respect to customs clearance shall be to provide the Contractor with a documentary certificate identifying the items concerned and stating that such items are for the sole consumption or use of the UN. If any further documentation is required in the future by Government [illegible] in Iraq or elsewhere, the Contractor will advise the UN and the UN will provide reasonable assistance to the Contractor in obtaining such documents.

Article 14. Performance Bond

Within fifteen (15) days of signature of this Contract by the Parties, the Contractor shall provide the UN with a Performance Bond in the form set forth in Annex VII hereof, or a similar guarantee acceptable to the UN, in the amount of U.S. Dollars One Million One Hundred Seventy Six Thousand Seven Hundred and Sixty (US$ 1,176,760.00) (i.e., ten percent (10%) of the maximum amount payable specified in Article 7.1 above), which bond or guarantee shall remain in force until at least two (2) months after the expiration of the Contract. The UN shall be entitled to claim the performance bond/guarantee upon first written demand of the UN, without having to prove the liability of the Contractor and in accordance with the terms and conditions set forth in Annex VII.

Article 15: Notices

Except as otherwise specified in this Contract or instructed by the UN, all notices and other communications required or contemplated under this Contract shall be in writing and shall be delivered either by: (i) personal delivery; (ii) recognized overnight delivery service; (iii) postage prepaid, return receipt requested, certified mail; (iv) confirmed facsimile transmission; or (v) telegram, addressed to the Party for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice previously given pursuant to this Article.

IF TO THE CONTRACTOR:

COTECNA INSPECTION
58, Rue de la Terrassière
1211 Geneva 6
Switzerland
Attn: Chairman
Fax No. 41-22-[illegible]-89

IF TO THE UN (communications/notices of a contractual nature)

Procurement Division
United Nations
304 East 45th Street, Room FF-202
New York, New York, 10017
Attn: Chief
Procurement Division/OCSS

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Fax no. (212) 963-6315

IF TO THE UN (communications/notices of an operational nature)

Office of the Iraq Programme
United Nations
New York, New York 10017
Attn: Senior Customs Officer
Fax No.: (212) 963-8083

Notice by overnight mail or recognized overnight delivery service shall be effective on the date it is officially recorded as delivered to (or refused by) the intended recipient by return receipt or equivalent. All notices and other communications required or contemplated by this Contract delivered in person, by facsimile, or by telegram shall be deemed to have been delivered to and received by the addressee and shall be effective on the date of the actual receipt.

IN WITNESS THEREOF, the Parties hereto have executed this Contract.

For and on behalf of:

COTECNA INSPECTIONS S.A. **THE UNITED NATIONS**

SIGNATURE_____ **SIGNATURE**_____

NAME: _____ **NAME:** _____

TITLE: _____ **TITLE:** Officer-in-Charge, Procurement Division

DATE: _____ **DATE:** _____

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ATTACHMENTS

Annex I	-	**UN General Conditions for General Contracts**
Annex II	-	**Security Council Resolutions**
Annex III	-	**Memorandum of Understanding**
Annex IV	-	**Procedures of the 661 Committee**
Annex V	-	**Transportation Release Form**
Annex VI	-	**Medical Release Form**
Annex VII	-	**Form of Performance Bond**

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ANNEX I

[UN GENERAL CONDITIONS FOR GENERAL CONTRACTS]

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ANNEX A

UNITED NATIONS GENERAL CONDITIONS OF CONTRACT

1.0 LEGAL STATUS: The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis the United Nations. The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of the United Nations.

2.0 SOURCE OF INSTRUCTIONS: The Contractor shall neither seek nor accept instructions from any authority external to the United Nations in connection with the performance of its services under this Contract. The Contractor shall refrain from any action which may adversely affect the United Nations and shall fulfil its commitments with the fullest regard to the interests of the United Nations.

3.0 CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES: The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of the Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

4.0 ASSIGNMENT: The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of the United Nations.

5.0 SUB-CONTRACTING: In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of the United Nations for all sub-contractors. The approval of the United Nations of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform with the provisions of this Contract.

6.0 OFFICIALS NOT TO BENEFIT: The Contractor warrants that no official of the United Nations has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.

7.0 INDEMNIFICATION: The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, the United Nations, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents,

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servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

11.0 INSURANCE AND LIABILITIES TO THIRD PARTIES

11.1 The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.

11.2 The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.

11.3 The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising out of or in connection with the provision of services under this Contract or the operation of any vehicles, boats, aircraft or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.

11.4 Except for the workmen's compensation insurance, the insurance policies under this Article shall:

(i) Name the United Nations as additional insured;
(ii) Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the United Nations;
(iii) Provide that the United Nations shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

11.5 The Contractor shall, upon request, provide the United Nations with satisfactory evidence of the insurance required under this Article.

11.0 ENCUMBRANCES/LIENS: The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with the United Nations against monies due or to become due for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Contractor.

0.0 TITLE TO EQUIPMENT: Title to any equipment and supplies that may be furnished by the United Nations shall remain with the United Nations and any such equipment shall be returned to the United Nations at the completion of this Contract or when no longer needed by the Contractor. Such equipment, when returned to the United Nations, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate the United Nations for equipment determined to be damaged or degraded beyond normal wear and tear.

1.0 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS: The United Nations shall be entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights, and

trademarks, with regard to products, or documents and other materials which bear a direct relation to or are produced or prepared or collected in consequence of or in the course of the execution of this Contract. At the United Nations's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them to the United Nations in compliance with the requirements of the applicable law.

12.0 USE OF NAME, EMBLEM OR OFFICIAL SEAL OF THE UNITED NATION: The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with the United Nations, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of the United Nations, or any abbreviation of the name of the United Nations in connection with its business or otherwise.

13.0 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION

13.1 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of the United Nations, shall be treated as confidential and shall be delivered only to United Nations authorized officials on completion of work under this Contract.

13.2 The Contractor may not communicate at any time to any other person, Government or authority external to the United Nations, any information known to it by reason of its association with the United Nations which has not been made public except with the authorization of the United Nations; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

14.0 FORCE MAJEURE; OTHER CHANGES IN CONDITIONS

14.1 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the United Nations, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the United Nations of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of this Contract. Not more than fifteen (15) days after receipt of the notice required under this Article, the United Nations shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

14.2 If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the United Nations shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 15, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

14.3 Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.

15.0 TERMINATION

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15.1 Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16 "Arbitration" below shall not be deemed a termination of this Contract.

15.2 The United Nations may terminate forthwith this Contract at any time should the mandate or the funding of the Mission/Agency be curtailed or terminated, in which case the Contractor shall be reimbursed by the United Nations for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

15.3 In the event of any termination by the United Nations under this Article, no payment shall be due from the United Nations to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract.

15.4 Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, the United Nations may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Contractor shall immediately inform the UN of the occurrence of any of the above events.

16.0 SETTLEMENT OF DISPUTES

16.1 Amicable Settlement

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

16.2 Arbitration

Any dispute, controversy or claim between the Parties arising out of this Contract or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in this Contract, the arbitral tribunal shall have no authority to award interest *in excess of ..... [insert rate] and any such interest shall be simple interest only*. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, dispute or claim.

17.0 PRIVILEGES AND IMMUNITIES: Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

18.0 TAX EXEMPTION

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

18.2 Accordingly, the Contractor authorizes the United Nations to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with the United Nations before the payment thereof and the United Nations has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall

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

19.0 OBSERVANCE OF THE LAW: The Contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the terms of this Contract.

20.0 AUTHORITY TO MODIFY: Pursuant to the Financial Regulations and Rules of the United Nations, only the Procurement Division at New York possesses the authority on behalf of the United Nations to any modification of or change in this Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in this Contract shall be valid and enforceable against the United Nations unless provided by an amendment to this Contract signed by the Contractor and the Chief or Officer-in-Charge of the Procurement Division.

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ANNEX II

[SECURITY COUNCIL RESOLUTION 986 (1995)]

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Legal Library

UNITED NATIONS

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Security Council

Distr.
GENERAL

S/RES/986 (1995)
14 April 1995

RESOLUTION 986 (1995)

Adopted by the Security Council at its 3519th meeting,
on 14 April 1995

The Security Council,

Recalling its previous relevant resolutions,

Concerned by the serious nutritional and h[illegible]tion of the Iraqi population, and by the risk of a further deteri[illegible] this situation,

Convinced of the need as a temporary measure to provide for the humanitarian needs of the Iraqi people until the fulfilment by Iraq of the relevant Security Council resolutions, including notably resolution 687 (1991) of 3 April 1991, allows the Council to take further action with regard to the prohibitions referred to in resolution 661 (1990) of 6 August 1990, in accordance with the provisions of those resolutions,

Convinced also of the need to ensure equitable distribution of humanitarian relief to all segments of the Iraqi population throughout the country,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of Iraq,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that States, notwithstanding the provisions of paragraphs 3 (a) and 3 (b) of resolution 661 (1990) and subsequent relevant resolutions, to permit the export of petroleum and petroleum products originating in Iraq, including financial and other essential transactions directly relating thereto, sufficient to produce a sum not exceeding a total of one billion United States dollars every 90 days for the purposes set out in this resolution and subject to the following conditions:

(a) Approval by the Committee established by resolution 661 (1990), in order to ensure the transparency of each transaction and its conformity with the other provisions of this resolution, after submission of an application by the

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[redacted]

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State concerned, endorsed by the Government of Iraq, for each proposed purchase of Iraqi petroleum and petroleum products, including details of the purchase price at fair market value, the export route, the opening of a letter of credit payable to the escrow account to be established by the Secretary-General for the purposes of this resolution, and of any other directly related financial or other essential transaction;

(b) Payment of the full amount of each purchase of Iraqi petroleum and petroleum products directly by the purchaser in the State concerned into the escrow account to be established by the Secretary-General for the purposes of this resolution;

2. Authorizes Turkey, notwithstanding the provisions of paragraphs 3 (b) and 4 of resolution 661 (1990) and the provisions of paragraph above, to permit the import of petroleum and petroleum products originating in Iraq sufficient, after the deduction of the percentage referred to in paragraph (c) below for the Compensation Fund, to meet the pipeline tariff certified as reasonable by the independent inspection agents referred to in paragraph 6 below, for the transport of Iraqi petroleum and petroleum products through the Kirkuk-Yumurtalik pipeline in Turkey authorized by paragraph above;

3. Decides that paragraphs 1 and 2 of this resolution shall come into force at 00.01 Eastern Standard Time on the day after the President of the Council has informed the members of the Council that it has received the report from the Secretary-General requested in paragraph below, and shall remain in force for an initial period of 180 days unless the Council takes other relevant action with regard to the provisions of resolution 661 (1990);

4. Further decides to conduct a thorough review of all aspects of the implementation of this resolution 90 days after the entry into force of paragraph 1 above and again prior to the end of the initial 180 day period, on receipt of the reports referred to in paragraphs 11 and 12 below, and expresses its intention, prior to the end of the 180 day period, to consider favourably renewal of the provisions of this resolution, provided that the reports referred to in paragraphs 11 and 12 indicate that those provisions are being satisfactorily implemented;

5. Further decides that the remaining paragraphs of this resolution shall come into force provisionally;

6. Directs the Committee established by resolution 661 (1990) to monitor the sale or supply of petroleum and petroleum products to be exported by Iraq via the Kirkuk-Yumurtalik pipeline from Iraq to Turkey and from the Mina al-Bakr oil terminal with the assistance of independent inspection agents appointed by the Secretary-General, who will keep the Committee informed of the amount of petroleum and petroleum products exported from Iraq after the date of entry into force of paragraph 1 of this resolution, and will verify that the purchase price of petroleum and petroleum products is reasonable in the light of prevailing market conditions, and that, for the purposes of the arrangements set out in this resolution, the larger share of the petroleum and petroleum products is shipped via the Kirkuk-Yumurtalik pipeline and the remainder is exported from the Mina al-Bakr oil terminal;

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7. Requests the Secretary-General to establish an escrow account for the purposes of this resolution, to appoint independent and certified public accountants to audit it, and to keep the Government of Iraq fully informed;

8. Decides that the funds in the escrow account shall be used to meet the humanitarian needs of the Iraqi population and for the following other purposes, and requests the Secretary-General to use the funds deposited in the escrow account:

(a) To finance the export to Iraq, in accordance with the procedures of the Committee established by resolution 661 (1990), of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs as referred to in paragraph 20 of resolution 687 (1991) provided that:

(i) Each export of goods is at the request of the Government of Iraq;

(ii) Iraq effectively guarantees their equitable distribution on the basis of a plan submitted to and approved by the Secretary-General, including a description of the goods to be purchased;

(iii) The Secretary-General receives authenticated confirmation that the exported goods concerned have arrived in Iraq;

(b) To complement, in view of the exceptional circumstances prevailing in the three Governorates mentioned below, the distribution by the Government of Iraq of goods imported under this resolution, in order to ensure an equitable distribution of humanitarian relief to all sectors of the Iraqi population throughout the country, by providing between 130 million and 150 million United States dollars every 90 days to the United Nations Inter-Agency Humanitarian Programme operating within the sovereign territory of Iraq in the three northern Governorates of Dihouk, Arbil and Sulaymaniyah, except that if less than one billion United States dollars worth of petroleum or petroleum products is sold during any 90 day period the Secretary-General may provide a proportionately smaller amount for this purpose;

(c) To transfer to the Compensation Fund the same percentage of the funds deposited in the escrow account as that decided by the Council in paragraph 2 of resolution 705 (1991) of 15 August 1991;

(d) To pay the costs to the United Nations of the independent inspection agents and the certified public accountants and the activities associated with implementation of this resolution;

(e) To meet the current operating costs of the Special Commission, pending subsequent assessment in full of the costs of carrying out the tasks authorized by section C of resolution 687 (1991);

(f) To meet any reasonable expenses, other than expenses payable in Iraq, which are determined by the Committee established by resolution 661 (1990) to be directly related to the export by Iraq of petroleum and petroleum products permitted under paragraph 1 above or to the export to Iraq, and activities

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directly necessary therefor, of the parts and equipment permitted under paragraph 9 below;

(g) To make available up to 10 million United States dollars every 90 days from the funds deposited in the escrow account for the payments envisaged under paragraph 6 of resolution 778 (1992) of 2 October 1992;

9. Authorizes States to permit, notwithstanding the provisions of paragraph 3 (c) of resolution 661 (1990):

(a) The export to Iraq of the parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, subject to the prior approval by the Committee established by resolution 661 (1990) of export contract;

(b) Activities directly necessary for the exports authorized in subparagraph (a) above, including financial transactions related thereto;

10. Decides that, since the costs of the exports and activities authorized under paragraph 9 above are precluded by paragraph 4 of resolution 661 (1990) and by paragraph 11 of resolution 778 (1992) from being met from funds frozen in accordance with those provisions, the cost of such exports and activities may, until funds begin to be paid into the escrow account established for the purposes of this resolution, and following approval in each case by the Committee established by resolution 661 (1990), alternatively be financed by letters of credit, drawn against future oil sales the proceeds of which are to be deposited in the escrow account;

11. Requests the Secretary-General to report to the Council 90 days after the date of entry into force of paragraph 1 above, and again prior to the end of the initial 120 day period, on the basis of observation by United Nations personnel in Iraq, and on the basis of consultations with the Government of Iraq, on whether Iraq has ensured the equitable distribution of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs, financed in accordance with paragraph 8 (c) above, including in his reports any observations he may have on the adequacy of the revenues to meet Iraq's humanitarian needs, and the capacity to export sufficient quantities of petroleum and petroleum products to produce the sum referred to in paragraph 1 above;

12. Requests the Committee established by resolution 661 (1990), in close coordination with the Secretary-General, to develop expedited procedures as necessary to implement the arrangements in paragraphs 1, 2, 4, 8, 9 and 10 of this resolution and to report to the Council 90 days after the date of entry into force of paragraph 1 above and again prior to the end of the initial 120 day period on the implementation of those arrangements;

13. Requests the Secretary-General to take the actions necessary to ensure the effective implementation of this resolution, authorizes him to enter into any necessary arrangements or agreements, and requests him to report to the Council when he has done so;

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14. Decides that petroleum and petroleum products subject to this resolution shall while under Iraqi title be immune from legal proceedings and not be subject to any form of attachment, garnishment or execution, and that all States shall take any steps that may be necessary under their respective domestic legal systems to assure this protection, and to ensure that the proceeds of the sale are not diverted from the purposes laid down in this resolution;

15. Affirms that the escrow account established for the purposes of this resolution enjoys the privileges and immunities of the United Nations;

16. Affirms that all persons appointed by the Secretary-General for the purpose of implementing this resolution enjoy privileges and immunities as experts on mission for the United Nations in accordance with the Convention on the Privileges and Immunities of the United Nations, and requests the Government of Iraq to allow them full freedom of movement and all necessary facilities for the discharge of their duties in the implementation of this resolution;

17. Affirms that nothing in this resolution affects Iraq's duties, including those relating to the judicial, and scrupulously to adhere to all of its obligations concerning servicing and repayment of its foreign debt, in accordance with the applicable international mechanisms;

18. Also affirms that nothing in this resolution shall be construed as infringing the sovereignty or territorial integrity of Iraq;

19. Decides to remain seized of the matter

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ANNEX III

[MEMORANDUM OF UNDERSTANDING]

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UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1996/356*
20 May 1996

ORIGINAL: ENGLISH

LETTER DATED 20 MAY 1996 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to submit to you, and through you to the members of the Security Council, the text of a memorandum of understanding concluded today between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995) of 14 April 1995. I am also submitting to you a letter handed over by the Head of the Iraqi delegation upon signing the memorandum.

The memorandum represents an important step in the arrangements that are required under the resolution to bring it fully into effect. Once all the necessary actions have been taken, I will be in a position to report to the Security Council as provided for in paragraph 8 of the resolution. The present letter, therefore, is submitted with a view to keeping the Council abreast of the progress achieved so far in the implementation of the resolution.

(Signed) Boutros BOUTROS-GHALI

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* Reissued for technical reasons.

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Memorandum of understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995)

Section I

General provisions

1. The purpose of this Memorandum of Understanding is to ensure the effective implementation of Security Council resolution 986 (1995) (hereinafter "the Resolution").

2. The Distribution Plan referred to in paragraph 8 (a) (ii) of the Resolution, which has to be approved by the Secretary-General of the United Nations, constitutes an important element in the implementation of the Resolution.

3. Nothing in the present Memorandum should be construed as infringing upon the sovereignty or territorial integrity of Iraq.

4. The provisions of the present Memorandum pertain strictly and exclusively to the implementation of the Resolution and, as such, in no way create a precedent. It is also understood that the arrangement provided for in the Memorandum is an exceptional and temporary measure.

Section II

Distribution Plan

5. The Government of Iraq undertakes to effectively guarantee equitable distribution to the Iraqi population throughout the country of medicine, health supplies, foodstuffs and essential supplies for essential civilian needs (hereinafter humanitarian supplies) purchased with the proceeds of the sale of Iraqi petroleum and petroleum products.

6. To this end, the Government of Iraq shall prepare a Distribution Plan describing in detail the procedures to be followed by the competent Iraqi authorities with a view to ensuring such distribution. The present distribution system of supplies, the prevailing needs and humanitarian conditions in the various Governorates of Iraq shall be taken into consideration with due regard to the sovereignty of Iraq and the national unity of its population. The plan shall include a categorized list of the supplies and goods that Iraq intends to import for this purpose on a six-month basis.

7. The part of the Distribution Plan related to the three northern Governorates of Arbil, Dihouk and Sulaimaniyeh shall be prepared in accordance with Annex I, which constitutes an integral part of this Memorandum.

8. The Distribution Plan shall be submitted to the Secretary-General of the United Nations for approval. If the Secretary-General is satisfied that the

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plan adequately ensures equitable distribution of humanitarian supplies to the Iraqi population throughout the country, he will so inform the Government of Iraq.

9. It is understood by the Parties to this Memorandum that the Secretary-General will not be in a position to report as required in paragraph 13 of the Resolution unless the plan prepared by the Government of Iraq meets with his approval.

10. Once the Secretary-General approves the plan, he will forward a copy of the categorized list of the supplies and goods, which constitutes a part of the plan, to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait (hereinafter the 661 Committee) for information.

11. After the plan becomes operational, each Party to the present Memorandum may suggest to the other for its consideration a modification of the plan if it believes that such adjustment would improve the equitable distribution of humanitarian supplies and their adequacy.

Section III

Establishment of the escrow account and operation of that account

12. The Secretary-General, after consultations with the Government of Iraq, will select a major international bank and open with there the escrow account described in paragraph 7 of the Resolution, to be known as "the United Nations Iraq Account" (hereinafter the "Iraq Account"). The Secretary-General will negotiate the terms of this account with the bank and will keep the Government of Iraq fully informed of his actions in choosing the bank and opening the account. All transactions and deductions mandated by the Security Council under paragraph 8 of the Resolution shall be made from the "Iraq Account", which will be administered in accordance with the relevant Financial Regulations and Rules of the United Nations.

13. The Iraqi authorities shall designate a senior banking official to liaise with the Secretariat of the United Nations on all banking matters relating to the "Iraq Account".

14. In accordance with the United Nations Financial Regulations, the "Iraq Account" will be audited by the Board of Auditors who are external independent public auditors as provided for in the Regulations, the Board of Auditors will issue periodic reports on the audit of the financial statements relating to the account. Such reports will be submitted by the Board to the Secretary-General who will forward them to the 661 Committee and to the Government of Iraq.

15. Nothing in this Memorandum shall be interpreted to create a liability on the part of the United Nations for any purchase made by the Government of Iraq or any agents acting on its behalf pursuant to the provisions of the Resolution.

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Section IV

Sale of petroleum and petroleum products originating in Iraq

16. Petroleum and petroleum products originating in Iraq will be exported via the Kirkuk-Yumurtalik pipeline through Turkey and from the Mina al-Bakr oil terminal. The 661 Committee will monitor the exports through those outlets to ensure that they are consistent with the Resolution. Transportation costs in Turkey will be covered by an additional amount of oil, as foreseen in the Resolution and in accordance with procedures to be established by the 661 Committee. The arrangement between Iraq and Turkey concerning the [illegible] and payment modalities for the use of Turkish oil installations has been provided to the 661 Committee.

17. Each export of petroleum and petroleum products originating in Iraq shall be approved by the 661 Committee.

18. Detailed provisions concerning the sale of Iraqi petroleum and petroleum products are contained in Annex II, which constitutes an integral part of this Memorandum.

Section V

Procurement and contract [illegible] procedures

19. The purchase of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs of the Iraqi population throughout the country, as referred to in paragraph 20 of resolution 687 (1991), will, subject to paragraph 20 below, be carried out by the Government of Iraq, will follow normal commercial practices and on the basis of the relevant resolutions of the Security Council and procedures of the 661 Committee.

20. The purchase of [illegible] supplies for the three northern Governorates of Arbil, Dihouk and [illegible]yeh, as provided for in the Distribution Plan, will be carried out in accordance with Annex I.

21. The Government of Iraq will, except as provided for in paragraph 20, contract directly with suppliers to arrange the purchase of supplies, and will conclude the appropriate contractual arrangements.

22. [illegible] of goods to Iraq shall be at the request of the Government of Iraq pursuant to paragraph 8 (a) of the Resolution. Accordingly, exporting [illegible] shall submit all relevant documentation, including contracts, for all goods to be exported under the Resolution to the 661 Committee for appropriate action according to its procedures. It is understood that payment of the supplier from the "Iraq Account" can take place only for items purchased by Iraq that are included in the categorized list referred to in Section II of the present Memorandum. Should exceptional circumstances arise, applications for the export of additional items may be submitted to the 661 Committee for its consideration.

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23. As noted above, the 661 Committee will take action on applications for the export of goods to Iraq in accordance with its existing procedures subject to future modifications under paragraph 12 of the Resolution. The 661 Committee will inform the Government of Iraq, requesting States, and the Secretary-General of the actions taken on the requests submitted.

24. After the 661 Committee has taken action on the applications for export in accordance with its procedures, the Central Bank of Iraq will request the bank holding the "Iraq Account" to open irrevocable letters of credit in favour of the beneficiaries. Such requests shall be referred by the bank holding the "Iraq Account" to the United Nations Secretariat for approval of the opening of the letter of credit by the latter bank, allowing payment from the "Iraq Account" upon presentation of credit-conform documents. The letter of credit will require as condition of payment, inter alia, the submission to the bank holding the "Iraq Account" of the documents to be determined by the procedures established by the 661 Committee, including the confirmations by independent agents referred to in paragraph 25 below. The United Nations, after consultation with the Government of Iraq, shall determine the clause to be inserted in all [illegible] purchase orders, contracts and letters of credit regarding payments made from the "Iraq Account". All charges incurred in Iraq are to be borne by the applicant, whereas all charges outside Iraq are for the account of the beneficiary.

25. The arrival of goods in Iraq purchased under the [illegible] shall be confirmed by independent inspection agents to be appointed by the Secretary-General. No payments can be made until the independent inspection agents provide the Secretary-General with authenticated confirmation that the exported goods concerned have arrived in Iraq.

26. The independent inspection agents may be stationed at relevant Iraqi entry points, customs areas or other locations where the functions set out in paragraph 27 of this Section can be performed. The number and location of the stationing points for the agents will be designated by the United Nations after consultations with the Government of Iraq.

27. The independent inspection agents will confirm delivery to Iraq of shipments. They will [illegible] the appropriate documentation, such as bills of lading, other shipping [illegible] or cargo manifests, and the documents issued by the 661 Committee, relating to goods actually arriving in Iraq. They will also have the authority to [illegible] such duties necessary for such confirmation, including: quantity inspection by weight or count, quality inspection including visual inspection, [illegible], and, when necessary, laboratory testing.

28. The inspection agents will report all irregularities to the Secretary-General and the 661 Committee. If the problem is related to normal commercial practice (e.g., some shortlanded goods), the 661 Committee and the Government of Iraq are informed, but normal commercial resolution practices (e.g., [illegible]) go forth. If the matter is of serious concern, the independent inspection agents will hold the shipment in question pending guidance from the 661 Committee.

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29. As regards the export to Iraq of parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, the requests will be submitted to the 661 Committee by the national Government of the supplier. Such requests will be considered for approval by the Committee in accordance with its procedures.

30. If the 661 Committee has approved a request in accordance with paragraph 29, the provisions of paragraph 24 shall apply. However, since the supplier can expect payment against future oil sales, as stated in paragraph [illegible] of the Resolution, the proceeds of which are to be deposited in the "[illegible] Account", the bank holding the "Iraq Account" will issue an irrevocable letter of credit stipulating that payment can only be effected when at [illegible] time drawing the "Iraq Account" has sufficient disposable funds and the United Nations Secretariat approves the payment.

31. The requirement of authenticated confirmation of arrival provided for in this Section shall apply also to the parts and equipment identified in paragraph 29.

Section VI

Distribution of humanitarian supplies purchased under the Distribution Plan

32. The distribution of humanitarian supplies shall be undertaken by the Government of Iraq in accordance with the Distribution Plan referred to in Section II of the present Memorandum. The Government of Iraq will keep the United Nations observation personnel informed about the implementation of the plan and the activities that the Government is undertaking.

33. The distribution of humanitarian supplies in the three northern Governorates of Arbil, Dahuk and Sulaimaniyah shall be undertaken by the United Nations Inter-Agency Humanitarian Programme on behalf of the Government of Iraq under the Distribution Plan with due regard to the sovereignty and territorial integrity of Iraq in accordance with Annex I.

Section VII

Observation of the equitable distribution of humanitarian supplies and determination of their adequacy

GENERAL PROVISIONS

34. The United Nations observation process will be conducted by United Nations personnel in Iraq under the overall authority of the Department of Humanitarian Affairs at United Nations Headquarters in New York in accordance with the provisions described below. Such observation shall apply to the distribution of humanitarian supplies financed in accordance with the procedures set out in the Resolution.

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35. The objectives of the United Nations observation process shall be:

(a) to confirm whether the equitable distribution of humanitarian supplies to the Iraqi population throughout the country has been ensured;

(b) to ensure the effectiveness of the operation and determine the adequacy of the available resources to meet Iraq's humanitarian needs.

OBSERVATION PROCEDURES

36. In observing the equitable distribution and its adequacy, United Nations personnel will use, inter alia, the following procedures.

Food items

37. The observation of the equitability of food distribution will be based on information obtained from local markets throughout Iraq, the Iraqi Ministry of Trade, the information available to the United Nations and specialized agencies on food imports, and on sample surveys conducted by United Nations personnel. The observation will also include the quantities and prices of food items imported under the Resolution.

38. To provide regular updated observation of the most pressing needs, a survey undertaken by United Nations agencies in collaboration with the appropriate Iraqi ministries will serve as a baseline for the [illegible] observation of nutritional status of the population of Iraq. This information will take account of public health data generated by the Ministry of Health (MOH) and the relevant United Nations agencies.

Medical supplies and equipment

39. Observation regarding distribution of medical supplies and equipment will focus on the existing [illegible] and storage system and will involve visits to hospitals, clinics as well as medical and pharmaceutical facilities where such supplies and equipment are stored. Such observation will also be guided by health statistics from MOH and surveys by relevant United Nations agencies.

Water/sanitation supplies and equipment

40. Observation of distribution of water/sanitation supplies and equipment will focus on the determination that they are used for their intended purposes. Control will be carried out by collecting data on the incidence of water-borne diseases and by water quality control checks by visits to water and sanitation facilities by representatives of relevant United Nations agencies. In this regard the United Nations will rely on all relevant indicators.

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Other materials and supplies

41. With reference to materials and supplies which do not fall within the three areas indicated above, in particular, those needed for the rehabilitation of infrastructures essential to meet humanitarian needs, observation will focus on confirmation that such materials and supplies are delivered to the predefined destinations in accordance with the Distribution Plan and that they are used for their intended purposes, and on the determination of whether these materials and supplies are adequate or necessary to meet essential needs of the Iraqi population.

COORDINATION AND COOPERATION

42. The United Nations observation activities will be coordinated by the Department of Humanitarian Affairs at United Nations Headquarters in New York. Observation will be undertaken by United Nations personnel. The exact number of such personnel will be determined by the United Nations taking into account the practical requirements. The Government of Iraq will be consulted in this regard.

43. The Iraqi authorities will provide to United Nations personnel the assistance required to facilitate the performance of their functions. United Nations personnel will coordinate with the Iraqi competent authorities.

44. In view of the importance of the functions which United Nations personnel will perform in accordance with the provisions of this Section of the Memorandum, such personnel shall have, in connection with the performance of their functions, unrestricted freedom of movement, access to documentary material which they find relevant having discussed the matter with the Iraqi authorities concerned, and the possibility to make such contacts as they find essential.

Section VIII

Privileges and Immunities

45. In order to facilitate the successful implementation of the Resolution the following provisions concerning privileges and immunities shall apply:

(a) officials of the United Nations and of any of the Specialized Agencies performing functions in connection with the implementation of the Resolution shall enjoy the privileges and immunities applicable to them under Articles V and VII of the Convention on the Privileges and Immunities of the United Nations, or Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies to which Iraq is a party;

(b) independent inspection agents, technical experts and other specialists appointed by the Secretary-General of the United Nations or by heads of the Specialized Agencies concerned and performing functions in connection with

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the implementation of the Resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities accorded to experts on mission for the United Nations or for the Specialized Agency under Article VI of the Convention on the Privileges and Immunities of the United Nations or the relevant Annexes of the Convention on the Privileges and Immunities of the Specialized Agencies respectively;

(c) persons performing contractual services for the United Nations in connection with the implementation of the Resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities referred to in sub-paragraph (b) above concerning experts on mission appointed by the United Nations.

46. In addition, officials, experts and other personnel referred to in paragraph 45 above shall have the right of unimpeded entry into and exit from Iraq and shall be issued visas by the Iraqi authorities promptly and free of charge.

47. It is further understood that the United Nations and its Specialized Agencies shall enjoy freedom of entry into and exit from Iraq without delay or hindrance of supplies, equipment and means of surface transport required for the implementation of the Resolution and that the Government of Iraq agrees to allow them to, temporarily, import such equipment free of customs or other duties.

48. Any issue relating to privileges and immunities, including safety and protection of the United Nations and its personnel, not covered by the provisions of this Section shall be governed by paragraph 16 of the Resolution.

Section IX

Consultations

49. The Secretariat of the United Nations and the Government of Iraq shall, if necessary, hold consultations on how to achieve the most effective implementation of the provisions of this Memorandum.

Section X

Final clauses

50. The present Memorandum shall enter into force following signature, on the day when paragraphs 1 and 2 of the Resolution become operational and shall remain in force until the expiration of the 180 day period referred to in paragraph 3 of the Resolution.

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51. Pending its entry into force, the Memorandum shall be given by the United Nations and the Government of Iraq provisional effect.

SIGNED this 20th day of May 1996 at New York in two originals in English.

For the United Nations

(Signed) Hans CORELL
Under-Secretary-General
The Legal Counsel

For the Government of Iraq

(Signed) Abdul Amir AL-ANBARI
Ambassador Plenipotentiary
Head of the Delegation of Iraq

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Annex I

1. In order to ensure the effective implementation of paragraph 8 (b) of the Resolution, the following arrangements shall apply in respect of the Iraqi Governorates of Arbil, Dihouk and Sulaimaniyeh. These arrangements shall be implemented with due regard to the sovereignty and territorial integrity of Iraq, and to the principle of equitable distribution of humanitarian supplies throughout the country.

2. The United Nations Inter-Agency Humanitarian Programme shall collect and analyze pertinent information on humanitarian needs in the three northern Governorates. On the basis of that information, the Programme will determine the humanitarian requirements of the three northern Governorates for discussion with the Government of Iraq and subsequent incorporation in the Humanitarian Plan. In preparing estimates of food needs, the Programme will take into consideration all relevant circumstances, both within the three northern Governorates and in the rest of the country, in order to ensure equitable distribution. Specific rehabilitation needs in the three northern Governorates shall receive the necessary attention.

3. Within a week following the approval of the Humanitarian Plan by the Secretary-General, the Programme and the Government of Iraq will hold discussions to enable the Programme to determine how the procurement of humanitarian supplies for the three northern Governorates can be undertaken most efficiently. These discussions should be guided by the following considerations. The bulk purchase by the Government of Iraq of standard food commodities and medicine may be the most cost-effective means of procurement. Other materials and supplies for essential civilian needs, specifically required for the three northern Governorates, may be more suitably procured through the United Nations system in view of the logistical aspects related to their proper use.

4. To the extent that purchases and deliveries are made by the Government of Iraq in response to the notification of the Programme, an amount corresponding to the cost of the delivered goods will be deducted from the amount allocated to the three Governorates from the "Iraq Account".

5. Humanitarian supplies destined for distribution in the three northern Governorates will be delivered by the Programme to warehouses located within these Governorates. Such supplies may also be delivered by the Government of Iraq or the Programme, as appropriate, to warehouses in Kirkuk and Mosul. The warehouses shall be managed by the Programme. The Government of Iraq shall ensure the prompt customs and administrative clearances to enable the safe and quick passage of such supplies to the three northern Governorates.

6. The Programme shall be responsible in the three northern Governorates for the selection, handling, internal transportation, distribution and confirmation of equitable distribution of humanitarian supplies. The Programme will keep the Government of Iraq informed on the implementation of distribution.

7. Whenever possible and cost-effective, the Programme shall use appropriate local distribution mechanisms which are comparable to those existing in the rest

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of Iraq in order to effectively reach the population. Recipients under this arrangement will pay a fee for internal transportation, handling, and distribution as in the rest of the country. The Programme shall ensure that the special needs of internally displaced persons, refugees, hospital in-patients and other vulnerable groups in need of supplementary food are appropriately met, and will keep the Government of Iraq informed.

8. The Programme will observe that humanitarian supplies are used for their intended purposes, through visits to sites and by collecting relevant data. Programme will report to the Department of Humanitarian Affairs at United Nations Headquarters in New York and the Government of Iraq any violations observed by the Programme.

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Annex II

1. The State concerned or, if the 661 Committee so decides, the national petroleum purchaser authorized by the 661 Committee, shall submit to the Committee for handling and approval the application, including the relevant contractual documents covering the sales of such petroleum and petroleum products, for the proposed purchase of Iraqi petroleum and petroleum products endorsed by the Government of Iraq or the Iraqi State Oil Marketing Organization (hereinafter SOMO) on behalf of the Government. Such endorsement could be made by sending a copy of the contract to the 661 Committee. The application should include details of the purchase price at fair market value, the export route, opening of a letter of credit payable to the "Iraq Account", and other necessary information required by the Committee. The sales of petroleum and petroleum products shall be covered by contractual documents. A copy of these documents shall be included in the information provided to the 661 Committee together with the application for forwarding to the independent inspection agents described in paragraph 4 of this Annex. The contractual documents should contain the following information: quantity and quality of petroleum or petroleum products, duration of contract, credit and payment terms, and pricing mechanism. The pricing mechanism for petroleum should include the following points: marker crude oil and type of quotations to be used, additions for transportation and quality, and pricing dates.

2. Irrevocable confirmed letters of credit will be opened by the oil purchaser's bank with the irrevocable understanding that the proceeds of the letter of credit will be paid directly into the "Iraq Account". For this purpose, the following clauses will have to be incorporated in each letter of credit:

"- Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be irrevocably paid into the "Iraq Account" with ...

"- All charges within [illegible] for the beneficiary's account, whereas all charges outside [illegible] be borne by the purchaser."

3. All such letters of credit will have to be directed by the purchaser's bank to the bank holding the "Iraq Account" with the request that the latter adds its confirmation and forwards it to the Central Bank of Iraq for the purpose of advising [illegible]

4. The sale of petroleum and petroleum products originating in Iraq will be monitored by United Nations independent oil experts appointed by the Secretary-General of the United Nations to assist the 661 Committee. The monitoring of [illegible] will be carried out by independent inspection agents at the loading facilities at Ceyhan and Mina al-Bakr and, if the 661 Committee so decides, at the [illegible] metering station at the Iraq-Turkey border, and would include quality and quantity verification. They would authorize the loading, after they receive the information from the United Nations oil experts that the relevant contract has been approved, and report to the United Nations.

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5. The United Nations will receive monthly reports from SOMO on the actual volume and type of petroleum products exported under the relevant sales contracts.

6. The United Nations Secretariat and SOMO shall maintain continuing contact and in particular United Nations oil experts shall meet routinely with SOMO representatives to review market conditions and oil sales.

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Letter dated 20 May 1996 from the Head of delegation of Iraq addressed to the Legal Counsel

In reference to the memorandum of understanding signed today and as I advised you during the discussion that a letter would be sent to you concerning the position of Iraq as to the cost of production and transportation of oil inside Iraq, I state below Iraq's position, which I request that you include in the official record of our discussion:

The Iraqi delegation explained during the discussion that the cost of production and transportation of petroleum exluding expenses in local currency is currently estimated at US$ 2.00 per barrel. Such cost had to be deducted from the sale price or recovered through the production and export of petroleum and petroleum products. In either case the amounts referred to above would be deposited in the "Iraq account" to be utilized for the import of spare parts and other items necessary for the maintaining and sustaining of production and transportation operations as is the established practice in the oil industry, otherwise production and transportation operations would be hindered and eventually come to a halt.

Nevertheless, and in order to facilitate the conclusion of this memorandum of understanding, the Iraqi delegation agreed not to [illegible] on the acceptance of its position by the United Nations Secretariat delegation at this stage and agreed to have it included in a separate letter addressed to the Head of the delegation of the United Nations Secretariat for consideration in any future discussion.

Although the matter is not discussed, the Iraqi delegation wishes to state that a third outlet for Iraqi petroleum export could be via the Syrian Arab Republic.

(Signed) Ambassador A. Amir AMBARI
Head of the delegation of Iraq

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ANNEX IV

[PROCEDURES OF THE 661 COMMITTEE]

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UNITED NATIONS

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Security Council

Distr.
GENERAL

S/1996/636*
12 August 1996

ORIGINAL: ENGLISH

LETTER DATED 8 AUGUST 1996 FROM THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On behalf of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, I have the honour to communicate to you the following:

Pursuant to paragraph 12 of Security Council resolution 986 (1995), the Committee was requested to develop, in close consultation with the Secretary-General, expedited procedures as necessary to implement the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of that resolution. I am pleased to inform you that after several weeks of intensive deliberations, the Committee, at its 142nd meeting held on 8 August 1996, adopted the procedures to be employed by it in the discharge of its responsibilities as required by paragraph 12 of resolution 986 (1995). A copy of the procedures is attached herewith for the information of the members of the Council.

(Signed) Tono EITEL
Chairman
Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

* Reissued for technical reasons.

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PROCEDURES TO BE EMPLOYED BY THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT IN THE DISCHARGE OF ITS RESPONSIBILITIES AS REQUIRED BY PARAGRAPH 12 OF SECURITY COUNCIL RESOLUTION 986 (1995)

SECTION I

Sale of petroleum and petroleum products originating in Iraq

1. The Committee will select, upon recommendation by the Secretariat [illegible] to be appointed by the Secretary-General as "overseers" at the United Nations Headquarters. The number of the overseers will be revi[illegible]ending on the volume of transactions to be processed. The overse[illegible]ve the authority and responsibilities set forth in this se[illegible]

2. Notwithstanding the obligations of States under [illegible]nt Security Council resolutions, States may, if they so wish, [illegible] to the Committee a list of national oil purchasers (private c[illegible] State-owned companies, State agencies, ministries, st[illegible]ed to communicate with the overseers. States may present changes [illegible]t at any time. Once the Committee has taken note of these lists [illegible] changes thereto and passed them on to the overseers, the[illegible]chasers are entitled to communicate directly with the overseers. If States do not submit such a list, or if a certain purchaser is not included in the list, the communication with the overseers shall be submitted through the Permanent Mission of the State of purchase.

3. A contract for the purcha[illegible]troleum and petroleum products will only be considered for approval [illegible]has been endorsed by the Government of Iraq, or the Iraqi [illegible]Oil Marketing Organization (hereinafter SOMO) on behalf of the Gov[illegible]e submission by the Government of Iraq or SOMO of a copy of a [illegible]acceptable as an endorsement.

4. SOMO's contr[illegible]purchasers will include all the details specified in paragraph [illegible]of resolution 986 (1995). In particular, the contract shall i[illegible] the export route, the payment by way of a confirmed letter of cr[illegible]sistent with paragraph 9 below, quantity and quality of petrol[illegible]petroleum products purchased, duration of contract, credit and payment [illegible] and pricing mechanisms. The pricing mechanism for petroleum [illegible]nclude the marker crude oil and type of quotations to be used, [illegible]nts for transportation and quality, and pricing dates.

5. [illegible]overnment of Iraq or SOMO may submit at any time pricing mechanisms [illegible] sales of petroleum for review by the Committee. The overseers will assess these pricing mechanisms, in particular whether they reflect fair market value and will provide analysis and recommendations to the Committee. The Committee will then review the pricing mechanism according to its no-objection procedure within two business days. The pricing mechanism should include the elements listed in paragraph 4 above. In

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order to facilitate this process, regular consultations between the overseers and representatives of SOMO will take place consistent with paragraph 6 of annex II of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of resolution 986 (1995) dated 20 May 1996 (hereinafter Memorandum of Understanding).

6. When market conditions so require, and in particular during the first [illegible] of the implementation of resolution 986 (1995) adjustments to pricing mechanisms may be submitted by the Government of Iraq or SOMO for [illegible] the Committee in accordance with paragraph 5 above. The pricing [illegible] will in any case be reviewed in accordance with paragraph 5 above [illegible] the Government of Iraq or SOMO submits a revision. Current approved [illegible] mechanisms will remain in effect until new ones are approved by the Committee.

7. The Secretariat of the Committee will set up a new [illegible] line used exclusively for correspondence with regard to the [illegible] petroleum products transactions. The national oil purchaser [illegible] Permanent Mission of the State of purchase shall forward by fax to [illegible] overseers an application for approval, together with a copy of the contract and, if necessary, other supporting documents. [illegible] national oil purchasers shall use only the standard Application Form [illegible] to the present procedures. Other correspondence with the Committee shall go through the already existing channels.

8. A contract for the sale of petroleum which employs a pricing mechanism approved by the Committee under paragraph 5 above, will be reviewed by two overseers on behalf of the Committee to determine whether the contract meets the criteria set forth in paragraph 9 below. Such review should be completed within 24 hours. No overseer shall review a contract submitted by or on behalf of a national purchaser with the same nationality as the overseer or which [illegible] him or her within the last two years.

9. To ensure that [illegible] comply with the provisions of resolution 986 (1995) and [illegible] contain any attempt at fraud or deception, the overseers shall verify [illegible] the contracts and supporting documents to determine:

- [illegible]ntract and the documents comply with the requirements provided for [illegible]esolution 986 (1995) and in the present procedures, including [illegible] of a confirmed irrevocable letter of credit to be opened, with [illegible] irrevocable undertaking that the proceeds of the letter of credit [illegible] be paid directly to the escrow account established by the Secretary-General under paragraph 7 of resolution 986 (1995) (hereinafter Iraq account). The letter of credit should contain the information as set out in Annex II to this document.

- the conditions of payment envisaged in the letters of credit are in conformity with the existing market practices;

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- the contract price is fair in view of all relevant circumstances, in particular that it is consistent with a currently approved pricing mechanism, and competitive given world prices and market trends and taking into consideration the provisions of paragraph 6 of annex II of the Memorandum of Understanding;

- the transaction does not exceed the limits established by resolution 986 (1995), including the requirements set out in paragraph 6 of the resolution.

10. If the contract and supporting documents reviewed under paragraph [illegible] are found to be in order, the overseers, on behalf of the Committee, shall immediately approve the contract and inform by fax the national oil purchaser or the Permanent Mission concerned, as well as [illegible] bank holding the Iraq account. The Committee and the parties concerned shall be informed immediately upon rejection of any contract by an overseer. In circumstances other than rejection for technical reasons, the overseers will make a full report to the Committee for appropriate action.

11. Contracts for the sale of petroleum or petroleum products which do not employ a pricing mechanism approved by the Committee under paragraph 5 above will be reviewed by the overseers who will provide their analysis and recommendations to the Committee. In addition to the factors in paragraph 9 above, the overseers shall consider whether the contract's pricing mechanism reflects fair market value. Such review should be completed within 24 hours. Upon receipt of the analysis and recommendations from the overseers, the Committee will consider the contracts under its expedited no-objection procedure within two business days.

12. Once a contract is approved pursuant to these procedures, the national oil purchaser shall cause a letter of credit consistent with paragraph 9 above to be opened and transmitted to the bank holding the Iraq account. The bank transmits the letter of credit to the overseers. The overseers immediately review the opened letter of credit in order to determine whether it complies with the information given in the application.

13. If the opened letter of credit complies with the information given in the application, the overseers inform the bank holding the Iraq account which adds its confirmation to the letter of credit and, for information purposes only, forwards the letter of credit to the Central Bank of Iraq for the latter's advising SOMO. Furthermore, the overseers send notification of approval, together with a copy of the contract and, if necessary, supporting documents to the inspectors at Ceyhan and at the metering station at the Iraq-Turkey border, or at Mina-al-Bakr. If the opened letter of credit does not comply with the information given in the application the overseers shall immediately inform the Committee.

14. The overseers will submit a substantive report to the Committee, in a standardized format, at least once a week on the contracts considered by them, including the cumulative quantity and approximate value of petroleum authorized for export, and inform the Secretary-General accordingly. In

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the light of this report, any document submitted as part of an application to the Committee will be available for consultation by Committee members in the Secretariat.

15. The export of petroleum and petroleum products will be monitored by United Nations independent inspection agents, appointed by the Secretary-General, who will be stationed at the loading facilities at Ceyhan and Mina-al-Bakr, and at the metering station at the Iraq-Turkey border. Such on-site monitoring will make use of the documents received from the overseers, direct observation, as well as quality and quantity verification. The independent inspection agents will authorize the loading, after they have received the information from the overseers that the relevant contract has been approved, and inform the overseers accordingly. The independent inspection agents will also have the authority to stop the loading of petroleum if there is any evidence of irregularity. They will immediately report any irregularity to the Committee and the Secretary-General.

16. In accordance with paragraph 3 of resolution 661 (1990) and the provisions of resolution 665 (1990) shipments of Iraqi oil exports will be performed by Iraqi vessels. In order to facilitate the efficient and timely export of oil under resolution 986 (1995) oil purchasers will communicate to the Secretariat information when available concerning vessels contracted for shipping approved oil exports.

17. The Committee will be informed of the findings of the independent inspection agents made by the Secretary-General under paragraph 6 of resolution 986 (1995).

18. The independent inspection agents shall report weekly to the Committee, through the overseers, on their assessment of the export operations. When the loading of oil under a contract is completed, they shall inform the overseers on the details for comparison with the original approved contract.

19. Payment of the purchase price of each purchase of petroleum and petroleum products shall be made into the Iraq account as provided for in paragraph [illegible] of resolution 986 (1995).

20. Once a month the Secretary-General forwards to the Committee and to the Government of Iraq statements of the Iraq account, including outlines of anticipated future payments to and from that account.

21. [illegible]ements for the sale of petroleum products will be broadly similar to those described above, and the precise arrangements, consistent with paragraph 6 of resolution 986 (1995), can be elaborated at a later stage, should when the need arises.

22. The overseers will receive monthly reports from SOMO on the actual volume and type of petroleum and petroleum products exported under the relevant sales contracts.

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23. At a meeting, the Committee may provide additional guidance to be followed by the overseers.

24. If any Committee member judges the circumstances to be serious enough, that member may call for a review by the Committee of the system for approving oil contracts established in this section. At an urgent meeting, the Committee will decide, according to its normal procedures, whether to continue or revise the system. In the meantime, decisions on oil contracts can only be made in accordance with paragraph 11 above.

SECTION II

Import by Turkey of petroleum and petroleum products originating in Iraq pursuant to paragraph 2 of resolution 986 (1995)

25. The import by Turkey of petroleum and petroleum products originating in Iraq will be undertaken in accordance with the requirements of paragraphs 2 and 6 of resolution 986 (1995), so as to meet the pipeline tariff charges, verified as reasonable by the independent inspection agents, after the deduction of the percentage referred to in paragraph 8 (b) of resolution 705 (1991) for the Compensation Fund. The import of petroleum and petroleum products will be authorized and monitored in accordance with the relevant provisions of section I of the present procedures.

SECTION III

Export to Iraq of humanitarian supplies

26. The Government of Iraq will provide a categorized list of humanitarian supplies which it intends to purchase and import pursuant to resolution 986 (1995). This list will be submitted to the Secretary-General together with the distribution plan referred to in paragraph 8 (a) (ii) of the resolution.

27. After approving the distribution plan, the Secretary-General will forward the list, which constitutes a part of the plan, to the Committee, and will make it known to all States.

28. The Government of Iraq or the United Nations Inter-Agency Humanitarian Programme will contract directly with suppliers to arrange the purchase of humanitarian supplies, and will conclude the appropriate contractual arrangements.

29. The export to Iraq of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs (hereinafter humanitarian supplies) financed from the Iraq account shall be undertaken in accordance with the following provisions.

30. Applications for each export of humanitarian supplies, to be financed from the Iraq account consistent with paragraph 22 of the Memorandum of Understanding, shall be submitted to the Committee at the request of the Government of Iraq by the exporting States with all relevant documentation,

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including the concluded contractual arrangements. Payment from the Iraq account can take place only for items included in the categorized list, unless the Committee exceptionally decides otherwise on a case-by-case basis.

31. The Committee will take action on such applications in accordance with paragraph 20 of resolution 687 (1991), its existing procedures and the provisions of this section. The Committee will inform the Government of Iraq, the requesting States, the Secretary-General and, if appropriate, the independent inspection agents at the intended point(s) of entry into Iraq of the actions taken on the applications submitted.

32. Such applications shall be submitted as follows:

(a) Medicines and Health Supplies

The exporting State informs the Committee that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to this communication.

(b) Foodstuffs

The exporting State notifies the Committee. The notification must indicate that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to the notification.

(c) Other Materials and Supplies for Essential Civilian Needs

The exporting State submits an application for approval by the Committee under its no-objection procedure. The application must indicate that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to the application.

33. Experts in the Secretariat examine each contract, in particular the details of price and origin, and whether the items to be exported are on the categorized list referred to above. They will also take into consideration the report by the Secretary-General provided for in paragraph 20 above, in order to check the availability of funds in the Iraq account for the contract. They inform the Committee of their findings.

34. The Committee acts upon the findings of the experts as set forth below:

(a) Medicines and Health Supplies

If the Committee finds, under its expedited no-objection procedure within two business days from the circulation of the application, that the contract is in order, it immediately informs the parties concerned that the exporter is eligible for payment from the Iraq account. If the contract is

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not found in order, the Committee informs the parties concerned that payment cannot be made from the Iraq account, but the medicines and health supplies can be shipped anyway if the exporter so desires.

(b) Foodstuffs

If the Committee finds, under its expedited no-objection procedure within two business days from the circulation of the application, that the contract is in order, it immediately informs the parties concerned that the exporter is eligible for payment from the Iraq account. If the contract is not found in order, the Committee informs the parties concerned that payment cannot be made from the Iraq account, but the foodstuffs can be shipped anyway if the exporter so desires.

(c) Other Materials and Supplies for Essential Civilian Needs

If the Committee approves the supplies, under its no-objection procedure within seven days, and if the contract is found in order, the Committee informs the parties concerned of the approval and that the exporter is eligible for payment from the Iraq account. If the contract is not found in order, but the Committee approves the supplies under its no-objection procedure, it informs the parties concerned that payment cannot be made from the Iraq account, but that the supplies are approved and can be shipped anyway if the exporter so desires. If the Committee cannot approve the supplies, whether or not the contract is found in order, it informs the parties concerned that the supplies cannot be shipped.

35. When the Committee has informed the parties concerned that the exporter is eligible for payment from the Iraq account, the Central Bank of Iraq will request the bank holding the Iraq account to open an irrevocable, non-transferable, confirmed (except to the supplier's bank for the repayment of financing for the purchase of the humanitarian supplies) letter of credit in favour of the Iraqi purchaser in favour of the supplier, which will be available only at the bank holding the Iraq account, and provide for payment from the Iraq account. Such requests shall be submitted by the bank holding the Iraq account to the Secretary-General for his prior approval, so that payment from the Iraq account can be made without delay. The letter of credit will require as condition of payment the submission to the bank holding the Iraq account of the usual commercial documentation, and of the following documents: a copy of the Committee's letter stating that the exporter is eligible for payment from the Iraq account, and a standardized confirmation by the Secretary-General of the arrival of the humanitarian supplies in Iraq.

36. The arrival of the humanitarian supplies in Iraq will be confirmed by the independent inspection agents appointed by the Secretary-General pursuant to resolution 986 (1995) and stationed at relevant entry points and other locations in Iraq as referred to in paragraph 26 of the Memorandum of Understanding. The independent inspection agents will add their authenticated confirmation of arrival to a copy of the Committee's letter stating that the exporter is eligible for payment from the Iraq account and to a copy of the invoice, and will inform the Secretary-General in

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accordance with paragraph 8 (a) (iii) of Security Council resolution 986 (1995). This information should be given without delay and in any case within 24 hours. The inspection agents will report all irregularities to the Secretary-General and to the Committee. If the problem is related to normal commercial practice, the Committee and the Government of Iraq will be informed but normal commercial resolution practices will go forth. Performance bonds may not be opened. Payments in favour of the purchaser resulting from normal commercial resolution practices should be made to the Iraq account. If the matter is of serious concern, the independent inspection agents will hold the shipment in question, pending guidance from the Committee. The Committee will make every effort to provide such guidance in the most expeditious manner.

37. The bank holding the Iraq account shall effect payment under any letter of credit only if all documents (listed in para. 35 above) stipulated in the letter of credit are presented to it and the terms and conditions of any such letter of credit are complied with. When specified items in the contract and the supporting documents, payment can be made in partial instalments corresponding to actual deliveries to Iraq. Documentary discrepancies can only be waived by the Secretary-General.

38. The provisions of this section are without prejudice to the application of the existing procedures of the Committee for items which are not supplied pursuant to resolution 986 (1995).

SECTION IV

Export to Iraq of parts and equipment, and financial transactions related thereto, pursuant to paragraph 8 (a) (ii) of resolution 986 (1995)

39. The export to Iraq of the parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq will be undertaken in accordance with the procedures set out in section III of the present procedures. Contracts for such exports to Iraq will be approved by the Committee on a case-by-case basis under its no-objection procedure. The Committee may request relevant United Nations personnel in Iraq to verify that the equipment exported to Iraq pursuant to paragraph 9 of resolution 986 (1995) is used only for the purposes permitted.

40. In accordance with paragraph 10 of resolution 986 (1995), until proceeds from the export of petroleum and petroleum products are deposited into the Iraq account, the Committee may approve, on a case-by-case basis, the financing of the export of parts and equipment by letters of credit drawn against future oil sales. The Committee will seek, if necessary, the advice of the overseers in considering such requests. In this case the provisions of paragraph 35 above shall apply.

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SECTION V

Approval of reasonable expenses other than expenses payable in Iraq

41. Pursuant to paragraph 8 (f) of resolution 986 (1995), the Committee can approve, under its no-objection procedure, the financing from the Iraq account of reasonable expenses, other than expenses payable in Iraq, which are determined by it to be directly related to the export by Iraq of petroleum and petroleum products permitted under paragraph 1 of resolution 986 (1995) or to the export to Iraq of the parts and equipment [illegible] in paragraph 9 of resolution 986 (1995), and of activities directly necessary therefor.

42. Requests for meeting the expenses referred to in the preceding paragraph will be submitted by the Government of Iraq together with all necessary documentation, and will be approved on a case-by-case basis by the Committee under its no-objection procedure. The Committee will seek, if necessary, the advice of the overseers or the Independent inspection agents in reaching a decision.

SECTION VI

General provisions

43. The Secretariat will arrange for the establishment of the appropriate communication links to permit immediate communication among the overseers, the Independent inspection agents, the Bank holding the Iraq account and the coordinator of the Multinational Interception Forces operating in the area under resolution 665 (1990), as well as with the Central Bank of Iraq and SOMO.

44. The Secretary-General reports regularly to the Committee on the details of the disbursements [illegible] pursuant to paragraph 8 of resolution 986 (1995).

45. Letters of credit [illegible] in these procedures should conform with the Uniform Customs and Practice for Documentary Credit.

46. The Committee will amend or revise the present procedures, if necessary, in the light of future developments.

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Annex I

Standard application form to request approval of contracts for sale of Iraqi petroleum and/or petroleum products

The attached contract with the Iraqi State Oil Marketing Organization (SOMO) for the purchase of petroleum and/or petroleum products is submitted for approval in accordance with paragraph 1 (a) of Security Council resolution 986 (1995) and the procedures of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, adopted at its ... meeting held on ... (S/....).

Information about the purchaser

Name of purchasing entity:

Place of registration:

Address:

Contact person:

Telephone: Telefax: Telex:

Summary of contract terms

Quantity of crude petroleum and/or petroleum products:

Quality of crude petroleum and/or petroleum products:

Pricing formula and/or [illegible] per barrel:

Date(s) of loading at Ceyhan:

Date(s) of loading at Mina al-Bakr:

Name of vessel(s) and destination (if available):

Payment terms (sight draft irrevocable letter of credit, etc.)

Please find attached a copy of the contract, draft irrevocable letter of credit to be opened and all supporting documents.

Signature
Name of signatory
Title

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Annex II

Information to be included in the letter of credit

1. As provided for in paragraph 2 of Annex II of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995), signed on 20 May 1996, the following clauses will have to be inserted in each letter of credit:

"- Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be irrevocably paid into the 'Iraq Account' with .... Bank."

"- All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the purchaser."

2. Other information to be included:

- nature of the petroleum or petroleum product
- forecast quantity of petroleum or petroleum product
- date of loading
- unit price
- forecast amount of the transaction

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ANNEX V

GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF USE OF UN-PROVIDED TRANSPORT

I, the undersigned, hereby recognize that all my travel on the UN-provided transport, pursuant to Contract No. PD/CON/324/96 between the United Nations and Cotecna Inspection S.A., is solely for my own convenience and benefit and may take place in areas of under conditions of special risk. In consideration of being permitted to travel on such means of transport, I hereby:

(a) Assume all risks and liabilities during such travel;

(b) Recognize that neither the United Nations nor any of its officials, employees or agents are liable for any loss, damage, injury or death that may be sustained by me during such travel;

(c) Agree, for myself as well as my dependents, heirs and estate, to hold harmless the United Nations and all its officials, employees and agents from any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this release shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

_____
Passenger

_____
Date

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ANNEX VI

GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF PROVISION BY UN OF EMERGENCY MEDICAL CARE

I, the undersigned, hereby recognize that all emergency medical care provided to me at UN medical facilities, pursuant to Contract No. PD/CON/324/98 between the United Nations and Cotecna Inspection S.A., is solely for my own convenience and benefit and may take place in areas or under conditions of special risk. In consideration of receiving such medical care, I hereby:

(a) Assume all risks and liabilities in connection with the provision of such medical care;

(b) Recognize that neither the United Nations nor any of its officials, employees or agents are liable for any loss, damage, injury or death that may be sustained by me during the provision of such medical care;

(c) Agree, for myself as well as my dependents, heirs and estate, to hold harmless the United Nations and all its officials, employees and agents from any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this release shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

_____
Employee

_____
Date

SPECIMEN

FORM OF PERFORMANCE BOND

Know all men by these presents, that we, ... a company incorporated in and under the laws of ....., the principal shareholders of which are .... as Principal (hereinafter called "the Supplier") and the ..... a corporation organized under the laws of ..... and duly organized to transact business in ..... as Surety (hereinafter called "the Surety") are held and firmly bound unto the United Nations, an international intergovernmental organization with its headquarters at New York, New York, USA, as Obligee (hereinafter called "the Employer") in the amount of ..... (USD), for the payment whereof which sum, well and truly to be made, the Supplier and the Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Whereas the Supplier has entered into a written contract with the Employer dated the ..... day of ....., 19..... for the ..... said Contract being by reference made part hereof and hereinafter referred to as "the Contract".

Now, therefore, for valuable consideration, the receipt whereof is hereby acknowledged by the Surety, the Surety hereby irrevocably undertakes that if the Supplier shall be declared by Employer to be in default under the Contract, without any objection, opposition or recourse, promptly pay the Employer the amount required by Employer to remedy the default and complete the Contract in accordance with its terms and conditions, any amount up to a total not exceeding the amount of the Bond, to remedy the default and complete the Contract in accordance with its terms and conditions.

The Surety shall not be liable for a greater sum than the specified amount of the Bond.

The Condition of this obligation is such that if the Employer shall notify the Surety in writing that the Supplier has duly and faithfully performed the said Contract (including any amendment thereto), then this obligation shall be null and void, otherwise it shall remain in full force and effect. If the Employer shall by written instrument declare the obligation discharged, that the obligation shall continue for at least three months following termination of the Contract.

The Bond shall be enforceable without the need to have recourse to any judicial or other proceedings.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators or successors of the Employer.

SPECIMEN

Nothing herein or related hereto shall be deemed a waiver or an agreement to waive any of the privileges or immunities of the United Nations.

Signed on

Signed on

on behalf of

on behalf of

by

by

in the capacity of

in the capacity of

in the presence of

in the presence of

SPECIMEN

Mr. SHAYS. Let me start with the counsel to ask some questions, and then I will have some questions.

Mr. HALLORAN. Mr. Smith, in describing the factors that you say led the United Nations to select BNP as the provider of banking services, you said an established commercial trade operation in Europe. Did that include facilities for processing letters of credit of the kind that the program generated?

Mr. SMITH. The program in itself was unique. I don't think that any bank had facilities established to process the type of business that was created by the program itself. However, BNP had an existing trade finance operation which dealt with the issue of letters of credit in New York City.

Mr. SHAYS. Could you just explain what made it unique?

Mr. SMITH. Potentially the size of the program, which was obviously a little bit unclear at the start of the actual program, but especially the additional controls that were included. The confirmations of arrival are unique. As far as I am aware, they are not used anywhere else as far as letters of credit are concerned.

Normally a supplier of goods under a letter of credit would be paid as soon as they presented all of the required documents under the letter of credit, which is usually at the point they ship the goods. Under this program, no payment is possible until the goods have actually arrived in Iraq and been inspected and confirmed to be in accordance with the contract.

Mr. HALLORAN. So that complicated the process both in terms of paper and time?

Mr. SMITH. It complicated the process. It gave us an additional amount of paper that we needed to check against the shipping documents and the letter of credit.

Mr. HALLORAN. In that line of business with your client, the United Nations, when does the Bank get paid, based on what triggering event?

Mr. SMITH. The Bank basically gets paid for the issuance of the letter of credit. There are some associated fees relating to pure payments, to SWIFT messages, etc. But the actual fees charged under the program really related to the issuance of the letters of credit.

Mr. HALLORAN. The Oil-for-Food Program was run in phases designated by the Office of the Iraqi Program?

Mr. SMITH. It was run in 6-month phases, yes.

Mr. HALLORAN. Were there negotiations with the Iraqi Government and other entities from phase to phase as the program matured, and how did that change the Bank's operating?

Mr. SMITH. As far as the Bank was concerned, the banking service agreement was basically extended by the United Nations at each stage during the process. To the best of my knowledge, during the course of a series of extensions over what eventually were 13 phases of the program, there were some changes made to the way the business was conducted.

Mr. HALLORAN. As the processing or the flow of business changed, what kind of capacity did the Bank have to discern trends or novelties in the business? For example, it has been suggested about phase 8, when Saddam got a little more sophisticated about oil vouchers as opposed to directly selling to end users, that the roster of those being paid would have changed both in quality and

quantity, new people and a new number of people. Would that have been discernible by the Bank and would it have put a red light on the border anywhere for any reason?

Mr. SMITH. There was certainly an increase in the volume and the complexity of the business that the Bank was handling around about phase 8. As far as red flags are concerned, I would come back to my statement in that the United Nations was the Bank's customer. The United Nations was approving all of the counterparties on both the oil and the humanitarian contracts. In addition to that, I would remind you that all of this business was screened for OFAC purposes and reviewed against the various OFAC listings.

Mr. HALLORAN. With those safeguards in place, the Bank felt confident that its business was being done according to the rules. But what can go wrong with a letter of credit? What would have sent a bell or red light off in a letter-of-credit transaction?

Mr. SMITH. Most of the immediate thoughts that come to mind regarding that question are purely from an operational point of view in how we check documents, etc., which would not really be caused under the program.

Mr. HALLORAN. If the recipient of the shipment said this is not the quality or quantity of oil I ordered, and there is a rejection, the letter of credit is not claimed upon.

Mr. SMITH. The letter of credit is a written undertaking that a payment will be made on the presentation of documents that are specified within that letter of credit. So a letter of credit is constructed so that the buyer of the goods ensures that they have the necessary documents to give them the comfort that the goods are of the quality they want, of the quantity they want, and will be delivered in a timely manner.

So, for instance, on the oil that was being lifted from Iraq, one of the documents that would need to be presented for payment would be a chemical analysis of the goods or the oil to prove it was of a specific quality. In addition, bills of lading confirming the shipment and the quantity of the shipment would also be presented, so the protection is in the documents which the Bank is dealing with.

Mr. HALLORAN. In the course of these transactions, did BNP have occasion to be in contact with the Central Bank of Iraq?

Mr. SMITH. The Bank received the initial requests to issue letters of credit under the humanitarian program from the Central Bank of Iraq. Once those requests were received, they were referred to the United Nations, and the United Nations would give the approval to issue those letters of credit or not.

As far as the inspection of the documents before payment is concerned, there would be no contact with the Central Bank of Iraq. The Bank would review those documents, check those documents in the same way that it would under any other commercial transaction, albeit with the additional documents and controls that are included in this program, and make a determination whether a payment should be made. If the Bank was comfortable that the documents were in order and a payment should be made, then we would approach the U.N. telling them that we had good documents and we were proposing to make a payment. They would confirm that payment.

Mr. HALLORAN. The Central Bank of Iraq had no say as to who or how much got paid?

Mr. SMITH. That's correct. Once the letter of credit is issued, it governs the conditions of payment. As long as the correct documents are presented, payment should follow.

Mr. HALLORAN. Thank you.

Mr. Pruniaux, describe a little more, if you could, the distinction that is being made in your testimony between authentication and inspection. Our perception from both your testimony, and other documents, is that it was a process that compared paper to paper, sometimes it did not matter what was in the truck behind you, and if the documents said the truck should contain 50 barrels of something, your obligation was fulfilled and you never got to look in the truck; is that correct?

Mr. PRUNIAUX. Authentication is really matching documents. You know that we were present at four sites. The fifth one was opened in 2002, but it never really operated. It was at the border between Iraq and Saudi Arabia. The documents were ordered by U.N. OIP-New York in such a way it provided very detailed information on the goods which had been approved and for which the letters of approval had been issued. So the suppliers would send the goods, the shipments, to Iraq, and we would know beforehand that the goods were going to arrive through the secure transmission of documents coming from the U.N. OIP addressed to each individual site. No one—let me phrase it differently.

The information provided to a certain site was not available to the other sites to keep confidentiality. For instance, at Trebil where we had most of the traffic, the trucks would arrive with containers, and they had to stop. The supplier's and the transporter's duty was to come to us and tell us, this is the shipment so-and-so, these are the references, these are all of the documents; and we would look at all these documents and see that they matched the information we had received from U.N. OIP.

Mr. HALLORAN. When they did not match?

Mr. PRUNIAUX. There were three major reasons. Maybe the letter of approval had expired because it took more time for the goods to arrive in Iraq to be presented at the border. Sometimes—and very often the sites are changed, especially between Turkey—goods landed in Turkey or Jordan. Very often there was substitution in sites. Sometimes the documents were incomplete. That was mostly the case in Umm Qasr. So we would block in the sense that we would not authenticate, but we had no authority and no power to prevent the truck from crossing the border and entering into Iraq. The only thing, nobody would be paid because we had not authenticated. In such a case we would refer these problems to the U.N. OIP and it was up to U.N. OIP to discuss with the supplier and find the reason or maybe extend the validity of the approval.

Mr. SHAYS. Did you know what the outcome was when you would disclose these transactions had taken place? Do you know how they were resolved? Or once they were passed on to the U.N. authorities, it kind of left your hands?

Mr. PRUNIAUX. No, I would not know. We would get information from U.N. OIP, yes, the approval has been extended, it was acceptable that the site be changed and the supplier was requested to

provide the missing documents. On that basis, on that very specific information, requests from U.N. OIP Cotecna would authenticate by electronic mail—that was in 2002, but before that it was faxed and signed by the team leader on each site and it was sent to U.N. OIP so the payment of the supplier could be processed.

Mr. HALLORAN. In your testimony you say the Iraqi ministries complained continuously that the authentication process favored the supplier, often claiming they had received substandard goods or delivery shortfalls. Iraq frequently exerted firm pressure on Cotecna to withhold or retract authentication. OIP directed Cotecna to refer all such matters to the U.N. What does that mean?

Mr. PRUNIAUX. To the U.N. Security Council.

Mr. HALLORAN. Where did that get you?

Mr. PRUNIAUX. Maybe I misunderstood.

Mr. SHAYS. His question is what happened then? What was achieved by doing that?

Mr. PRUNIAUX. The Iraqi authorities in Umm Qasr, that is the place they put us under pressure. The Iraqi authorities would complain that we were authenticating goods which were sub-quality. We would not get involved in those discussions, as long as foodstuffs were fit for human consumption. Now, the fact that the Iraqis considered goods were substandard or were not exactly what they had ordered was a matter of commercial dispute between the supplier and the receiver. In fact, being in the business, in the profession, we always told everyone that it is normal practice in this kind of business, in commercial transactions, to appoint an independent inspection company to verify that the goods which are being purchased matched the contract, the detailed contract specifications, and that was told by the U.N. OIP to the Iraqi authorities to implement these kinds of procedures.

Mr. HALLORAN. But they chose not to?

Mr. PRUNIAUX. They did that occasionally. I would like to mention, for instance, that one of the things that Cotecna was forbidden, we were forbidden from acting as a commercial inspection company providing our services to, of course, the Iraqi receivers and, of course, the suppliers. So there would be no conflict of interest between the independent inspection authentication that we were providing to the U.N. OIP and the commercial disputes between a receiver and the supplier.

Mr. HALLORAN. That was a provision in your contract with the U.N.?

Mr. PRUNIAUX. Yes.

Mr. HALLORAN. Your testimony also says that one of the challenges you faced in executing this contract was that you had to navigate Cotecna's delicate web of contacts with U.N.'s Office of Humanitarian Coordinator for Iraq. Could you amplify on that? There are other references in testimony that particular office was a problem in terms of executing this program.

Mr. PRUNIAUX. I would not say it was a problem. It was a delicate, diplomatic way of having to coordinate on a daily basis in Iraq because we had from 54 to 67 inspectors living and traveling and eating and sleeping in Iraq. You have to realize also, to get into Iraq you need a visa to enter the territory, and the visas were pro-

vided only at the Embassy of Iraq in Amman, in Jordan, and if for some reason the visa was not granted, the inspectors would be stranded and cannot reach their sites. The only way to get some support to clear visas or get transportation authorization to travel in Iraq, you needed a very specific authorization, and that was provided by the Iraqi authorities. The Iraqi authorities for all of these problems of logistics and transportation was handled by the Office of the Humanitarian Coordinator in UNOHCI in Baghdad.

Also and more importantly, a lot of complaints came from the Iraqis, unjustified and justified, on the behavior of certain of our inspectors on things which could have happened on some of the sites which have been reported to the Iraqi officials, and also complaints on the performance of Cotecna, especially in Umm Qasr where we were put under extreme pressure to shorten some of the delays that they were experiencing.

In such case I have to be frank. UNOHCI was adopting a rather friendly attitude toward the requests from the Iraqi authorities; and this is what I mean, "problem" is maybe not the right word, but rather a "delicate."

Mr. HALLORAN. Right. Sounds like a problem to me.

You also say that you had to deal with direct pressure from the Iraqis. What kind of pressure? There is some e-mail traffic describing pressure to move things through and not be so careful about things. Where did that pressure come from?

Mr. PRUNIAUX. From Iraqi officials. We have an example which I presented in the documents you have received where it was in 1999 there was a minister of I think of Kuwait, who came with armored guards to our site in Umm Qasr and told us that we would not be authorized to authenticate unless the goods had already been accepted in terms of quality by the Baghdad laboratories. As we brought in various correspondence which appear in the documents, the inspectors were very shaken on the ground. So we issued a formal complaint that came to my attention in Geneva, and I told the U.N. OIP-New York. But there was pressure of these kinds of things.

Mr. HALLORAN. What would have been the problem of Baghdad checking off on the acceptance of goods?

Mr. PRUNIAUX. They would have blocked all authentication.

Mr. HALLORAN. Until they got paid first?

Mr. PRUNIAUX. Yes, and create a bottleneck so someone would have to pay to get the goods cleared by financial gains to the Iraqi officials.

Mr. HALLORAN. After the Minister of Trade shows up with 20 or more armed guards and intimidates your crew, how was that demand resolved?

Mr. PRUNIAUX. Diplomatically or politically I cannot respond. I can say technically that problem was solved because that did not occur again. However, as I said before, there was constant pressure, especially in Umm Qasr, on Cotecna to authenticate, in a speedy or in a slow way, so the Iraqi officials could exercise some pressure on the suppliers.

Mr. HALLORAN. Thank you.

Mr. Boks, there was an allegation in the Wall Street Journal 2 days ago that in the course of one oil transaction a Saybolt em-

ployee had been bribed to allow a topping-off of the ship. The company's response was that it had been investigated before. Do you have anything more to say about that?

Mr. BOKS. We have investigated that incident at the time we learned of the incident which was in October 2001. At that time we conducted a thorough investigation. We went through the whole process. We looked at off-loadings. We interviewed the team leader. We virtually took all of the events and circumstances and we submitted that report of the investigation to the United Nations with a briefing also to the 661 committee.

What we have now learned from the article in the Wall Street Journal actually is for us a new allegation. We had no knowledge of that before it was published. You can rest assured that we will investigate this further. We will get to the bottom of it. Actually, as a matter of fact, our board has already instructed our general counsel to get a team of lawyers to investigate this to the bottom.

Mr. HALLORAN. If you can supply the subcommittee with whatever product your investigation produces, that would be helpful.

Mr. BOKS. Sure. We will share this with the investigating commission.

Mr. HALLORAN. The incident of the Essex, which was detained and found to have oil loaded in excess of the Oil-for-Food Program contract, what changes were made in the Saybolt inspection process and the U.N. inspection process as a result of that? What confidence do you have that it was effective in preventing the practice of topping off?

Mr. BOKS. That evening I heard we took immediate actions for temporary reasons to have an inspector sitting 24 hours, 7 days a week, on board a vessel if it was alongside the terminal. Given the staff levels, that was not something that we could continue, so we implemented new instructions in terms of sealing the ship's manifold after the loading had been completed and the loading arms were disconnected. These seals would have unique numbers and would be also inserted on the notification letter. The notification letter was a letter which we put on board with the U.N.-authorized quantity loaded on board that specific vessel, actually a procedure that only was implemented earlier in 2001.

In addition to that, we would check the seals prior to departure of a vessel because a vessel would not always depart immediately after it completed its loadings. So before departing, we would check the integrity of the seals. If not, we would then remeasure the vessel.

Other instruction was we would look at the draft of the vessel after its completed loading. Draft is, I would say the surface of the water and the keel of the vessel. Maximum draft is, say, 21 meters, so if a vessel would load with less than that, we would take reference of that and also check it prior to departure.

Basically we would also look at potential vessels that would still have space after it had loaded its U.N.-authorized volume. So if that were the case, special attention would be required. Those new instructions have been adopted by the 661 committee at some stage.

Mr. HALLORAN. The calibration of the measuring methods you describe in your testimony, of the 2,600 loadings, of those, how

many were validated by you based on less than the type of methods you would have preferred?

Mr. BOKS. You mean did we ever?

Mr. HALLORAN. In your testimony you said you would prefer to have the calibration and use other indirect methods to determine the amount of oil.

Mr. BOKS. The consideration is as follows. When we first came to Iraq and we did our fact-finding mission, we came to the conclusion there were no properly calibrated metering facilities in place. Actually the border station in Zakho did not have a metering station so the Iraqis had to cannibalize on the Syrian pipeline and build it there within a couple of weeks.

Generally speaking, the metering equipment has never, during the whole of the Oil-for-Food Program, became on a level which would be able to be used for fiscalisation purposes. So all 2,600 loadings have been done by utilizing the methods that I have described in my statement.

Mr. HALLORAN. In your experience, what is the potential margin of error?

Mr. BOKS. That is a very good question. Actually what we did was we made a total comparison of all of the volumes we lifted from Turkey. In Turkey we had a cross-check possibility of measuring prior to loading and after loading, and then the volume could be calculated, derived from those two measurements. And we did also the ship, applying the vessel experience factor, and of the 1.3 billion barrels which were loaded from that port, actually we found a surplus even; a small surplus of 0.04 percent, which would lead us to believe that method was applied very accurately, and, I would say, very professionally.

Mina Al-Bakr was a different story because we could not cross-check. We did not have any ability. We only could rely on the ship's figures by applying the vessel experience factor. I could not give any estimate as to the accuracy of those figures. Although I would have to say that the percentages would be probably around maximum 2 percent.

Mr. HALLORAN. Two percent, OK.

Finally, for all three of you, what kind of oversight did you get on this contract with the U.N. from the U.N.? Were you subject to an audit or an inquiry by the Office of Internal Oversight at the United Nations, and if so, how often and what was the outcome?

Mr. SMITH. The Bank provided daily statements of the U.N. Iraq account to the United Nations. They also had copies of all of the letters of credit that we were issuing and the amendments that were made to those letters of credit and details of the payments.

From that, I understand that there were internal audits within the U.N. based on that information. As far as I am aware, there was never a physical audit of the Bank or the Bank's premises in our conducting of the business.

Mr. HALLORAN. But certainly the Bank, through perhaps other regulatory channels, had lines of business audited that crossed Oil-for-Food transactions?

Mr. SMITH. The Bank in itself had internal audits and external audits which included the trade finance area that provided the sup-

port to the United Nations. Sorry, my answer was the United Nations.

Mr. HALLORAN. Thank you.

Mr. Boks.

Mr. BOKS. In terms of audits, from what I know, the U.N. has audited us three times in total. At least I have seen three times the report; or let me say in two instances we only got a requirement to answer a few questions which basically were for us very easy to answer.

In one instance there was done a full audit report of which, let us say, there were quite a few comments and we had to go through them and answer them point by point, which we obviously did.

Mr. HALLORAN. Thank you.

Mr. PRUNIAUX. Because of the nature of our activities, we had almost 24-hour coordination with the U.N. OIP-New York, and U.N. OIP would call directly the sites to discuss technical or management matters on the sites. However, we were audited several times, maybe every 3 to 6 months. One of the senior customs officers from the U.N. OIP would go and visit the sites, with or without the Cotecna contract manager. We had an organization where we had a contract manager based in Amman and one working in Geneva working with me. We would go with them or without them. As a consequence, we would have meetings, regular meetings in New York every 3 months, and meetings also with the team leaders in Baghdad or Amman. That was an ongoing exercise that we conducted several times.

Mr. HALLORAN. Thank you.

Mr. SHAYS. I have a number of questions that I would like to go through. I don't think that they will take us long to answer. Some of them simply may not be relevant in the end, but since they are on my mind I want to ask and get them out of my brain if they were not relevant.

Why were transactions carried out in euros instead of dollars?

Mr. SMITH. A decision was made part way through the program to change the pricing and the settlement of the oil sales from U.S. dollars to euros. That decision was made by the Security Council of the United Nations.

Mr. SHAYS. So it was the Security Council and not Saddam Hussein?

Mr. SMITH. The decision was made by the Security Council, sir.

Mr. SHAYS. What sort of challenges, if any, did this present?

Mr. SMITH. In banking terms, the additional challenges were minimal. Whatever currency we are dealing with, whether it is U.S. dollars or Euro's the process is basically the same. The physical payment process is slightly different. But again, it is a well-established process.

Mr. SHAYS. And the charge that your Bank would make would be the standard charge made on every transaction?

Mr. SMITH. Yes. Pricing was agreed based on the transactions that were being undertaken on behalf of the United Nations.

Mr. SHAYS. I am told the bank did not begin an internal investigation for the Oil-for-Food Program and allegations of the corruption began to emerge in 2001. One, is that true; and two, why not?

Mr. SMITH. The Bank undertakes regular reviews of the program. If your question relates to the rumors and the stories relating to overpricing——

Mr. SHAYS. They were rumors that turned out to be true.

Mr. SMITH. Right. From what the Bank could see from the details they had from the information that it had, from the letters of credit and the documents that were presented, there was no evidence that we could see that substantiated anything that was happening. We were dealing with documents presented under a letter of credit which determined what the amount of the payment was, and the payment was basically made to the beneficiary or their bankers. Anything that happened outside of the letter of credit arrangement, obviously, we had no knowledge of at all.

Mr. SHAYS. So your company was not really in the field, this was more papers crossed your desk?

Mr. SMITH. We were dealing solely with paperwork, and we were dealing with it in Manhattan, in New York City.

Mr. SHAYS. The bottom line is when there were rumors that ultimately turned out to be true, your bank pretty much decided that there was not sufficient knowledge to have you conduct your own internal investigation?

Mr. SMITH. We would certainly from an operational point of view look at whatever rumors were going around. Indeed, quite often we would discuss them at what were reasonably frequent operational communication meetings with the U.N. treasury, so I am aware that the U.N. was also aware of those rumors. At the end of the day, it was the Security Council that were sanctioning the various transactions.

Mr. SHAYS. Did you have a sense, or lack thereof, of Saybolt and Cotecna's ability to verify transactions?

Mr. SMITH. We were obviously not on the ground in Iraq, so we did not see their operations at all. We were being provided with certificates that were required under the letters of credit. As far as the Cotecna certificates were concerned, they came to us directly from the United Nations, they did not come through any direct route. Again, the Saybolt inspections, all of the documentation for the payment of an LC relating to an oil shipment were presented to us by the United Nations.

Mr. SHAYS. Mr. Boks, do you have any reaction, or did you have any reaction to the description in the Amman newspaper that said there was a Netherland company of SyBolt, S-Y, and then capital B-O-L-T, as receiving $3 million in oil? Did that get your attention?

Mr. BOKS. Sure. We looked at that. We were puzzled that our name appeared on that list because we had not received any allocation. That also would have been very unusual. I can say Saybolt did not buy or sell oil or vouchers.

Mr. SHAYS. Being one in that list of 269, it would make us have to question some of the others on that list. In the Essex incident which was the illegal topping-off of oil, how were the Iraqis punished or censored for this obvious illegality?

Mr. BOKS. I'm sorry, I can't answer that question because that is beyond our mandate.

Mr. SHAYS. So you don't know?

Mr. BOKS. I don't know.

Mr. SHAYS. Your mandate, you basically reported the incident?

Mr. BOKS. Well, what happened is a letter was sent by the captain of that vessel with corresponding documents to the United Nations clearly stipulating what happened during the event, and actually said this all happened after the U.N. inspectors left the vessel, after they had completed.

Mr. SHAYS. How did you respond?

Mr. BOKS. When we received that letter, we took immediate action. We changed immediately the working procedures and introduced the seals.

Mr. SHAYS. Could you describe the Clovely incident?

Mr. BOKS. The Clovely incident was of a different magnitude. This vessel was nominated to load in February 2002, and when it arrived alongside the terminal, it was very close to the expiration of the letter of credit.

Mr. SHAYS. I have no sense how long a letter of credit lasts.

Mr. BOKS. It was just a matter of days.

Mr. SHAYS. Letters of credit give you a window of how much?

Mr. SMITH. It depends on the individual letter of credit. Normally the oil letters of credit—and they varied—but normally it would be a period of 4 to 6 weeks.

Mr. SHAYS. Thank you.

Mr. Boks.

Mr. BOKS. When the vessel arrived, we noticed, because we kept track and record of the expiration date of each individual letter of credit so we would make sure that the completion of the vessel would fall into that window; otherwise there would be problems by, I would say, drawing on the letter of credit to get payment for the oil lifting.

So what we did was basically we instructed our team leader to notify SOMO of this event, and that loading would not be started until we had received from the U.N. oil overseers a revised date or window for the letter of credit.

That took obviously some time, and irrespective of that, the loading master or the Iraqi people on the platform decided still irrespective of that problem to start loading the vessel. And luckily we were able to get the letter of credit arranged prior to the departure of the vessel. But on itself it was clearly, I would say, an abuse.

Mr. SHAYS. This is for both Saybolt and Cotecna. How did the various U.N. offices that you work with coordinate their assistance and responses to your needs?

Mr. PRUNIAUX. I'm sorry?

Mr. SHAYS. Both of you have complained about confusion within the United Nations, sometimes a lack of cooperation from the U.N. Both of you have said that. I want to know how the various U.N. offices that you worked with coordinated their interaction with you. Let me ask you this way: How many different parts of the U.N. did you need to interact with?

Mr. PRUNIAUX. On a daily basis and for technical matters, operational matters, it was only the U.N. OIP. However, when you negotiate a contract, or if you want to modify the content of the contracts——

Mr. SHAYS. You're talking about your own contract?

Mr. PRUNIAUX. Yes. You have to deal with a completely different department or entities at the U.N. One of them is the Procurement Department, and, in fact, since I negotiated and I signed two contracts and several amendments, all the technical work was done with U.N. OIP. But all the rest, the negotiations on the financial conditions, that was done with the Procurement Department, and sometimes there was a lack of coordination between the two departments, which made it difficult for a company like Cotecna to fully and properly negotiate. And on top of that there was the Office of Legal Affairs.

Mr. SHAYS. What affairs?

Mr. PRUNIAUX. Office of Legal Affairs.

Mr. SHAYS. Legal Affairs.

Mr. PRUNIAUX. Yes, which was a very powerful department which included several very tough conditions, administrative contractual conditions, in our contracts. So, in fact, to operate under a contract, we had to work with U.N. OIP, but to implement the contract, we had to deal with three separate entities. That was in New York.

Mr. SHAYS. Yes. Would that describe the same challenge for you, Mr. Boks?

Mr. BOKS. To a certain extent I underlined that we had similar problems with procurement. If our contract was up for renewal, you have—basically when they would not continue it, obviously you would need to have that information prior to the expiration of the contract. But sometimes the amendment was coming after the expiration date, which gave sometimes some problems with insurers, because obviously in Iraq, if you want to ensure yourself, then you need to make sure that there were reasons to be there in a certain country.

With OIP I must say I haven't had any major difficulties other than that we have issues where we asked advice after irregularities were noted, and it took sometimes quite some time. The other contact points we had was with the U.N. overseers, with whom we basically on a daily basis had contact concerning the oil export, and here and there obviously delays were observed, but not to the extent that it was an unworkable situation.

Mr. SHAYS. Both of you lacked power, and you lacked personnel. In other words, there are just certain things you couldn't tell the Iraqis to do. Did you try to get power, and did you have your contracts revised so that you could hire more people to do the job you needed to do? Mr. Boks.

Mr. BOKS. Shall I start? The staffing levels, the staffing levels in the oil program have to a certain extent always been sufficient. Where we faced major difficulties was in monitoring the spare parts and equipment, which were also purchased under the Oil-for-Food Program. When we started, we started with one inspector, very modest, because spare parts were ordered but came.

Mr. SHAYS. You're talking about parts for the oil industry itself.

Mr. BOKS. Yes. Perhaps I should elaborate a bit on that.

In 1998, the Secretary General had been to Iraq, and a proposal was made to change the cap of dollars that could be generated through a phase would be going up to five——

Mr. SHAYS. Greater production.

Mr. BOKS. Exactly. So at the same time, the oil prices were very low, and production was very low, so Iraq was not able to come up to those proceeds and to come up to that cap. And then the Secretary General appointed a group of experts to go to Iraq and, in consultation with the Government of Iraq, try to find ways of increasing production. We were that group of experts. And one of the conclusions as the industry was in an amendable state is that spare parts were needed and equipment was needed to bring the production up to the levels required. And for that purpose, the Security Council decided that they would allow Iraq to purchase spare parts and equipment, as long as there was a monitoring system that would keep track that those spare parts would also be used for their intended purpose.

Mr. SHAYS. And so that's the area where you could have used more people.

Mr. BOKS. Absolutely.

Mr. SHAYS. And did you request more people?

Mr. BOKS. Yes. That was on an ongoing basis because we were facing also difficulties in terms of the fact that the Government of Iraq insisted that our staff would be deployed only in Baghdad, and that we had to travel throughout the country to check all those sites, and we only had, let's say, at the top level, six, seven people.

Mr. SHAYS. So the bottom line is you couldn't do the job properly with the staff you had.

Mr. BOKS. Well, we had to prioritize.

Mr. SHAYS. OK. Did this mean that you then had to take people from one part of your program to put it in the other part, spare parts? Did you have to kind of cannibalize your program?

Mr. BOKS. Given the constraints in traveling, we have used mainly in the beginning some staff from Zakho to do in the northern part of Iraq also some checks on spare parts and equipment for a very short period of time, because his traveling was difficult as we were staying in a Kurdish area, so it was difficult to travel around.

Mr. SHAYS. Let me ask you, Mr. Pruniaux, the whole issue of the lack of power, which you have described, and the lack of personnel, were both of these a serious problem at various times or not?

Mr. PRUNIAUX. Mr. Chairman, respectfully, it was not really a question of having more power. The specifications of our mandate were clear enough for the authentication. There was no need to get further—in my opinion, further power, physical power, to implement and to do the work that we are doing on the sites.

Mr. SHAYS. Yes, sir.

Mr. PRUNIAUX. However, sometimes because of the fluctuations in the volume of goods entering Iraq, or the fact that it was that the transporters were moving from one site to the other, made the work at certain sites more difficult, because all of a sudden we would have almost thousands of trucks arriving at Trebil, which was the border between Jordan and Iraq, or—and especially Umm Qasr, we would have an accumulation of ships and loading and containers being stored in the port. In such a case we would immediately try to ask the U.N. OIP permission to move staff between sites.

In that sense we did not have the power to move at our own will an inspector from one site to the other. The contract specified that we were requested to put a certain number of permanent inspectors on a daily basis per site, let's say 12 in Trebil. So if you want to move that and do that, you are in contradiction with the obligations of the contract. So we had to ask permission. And to move an inspector from one place to the other in Iraq could take a couple of days, so we would rush people to Umm Qasr because there was an accumulation of volume in Umm Qasr.

I must say that in order to have between 54 and 67 permanent inspectors in Iraq, Cotecna had to hire up to 95 permanent inspectors because of the rotation and those that are sick or going on vacation and so on. And this would be illustrated by the statistics that are available at U.N. We had more, always more mandates of inspectors especially in places like Umm Qasr. For instance, we were requested to have between 17 and 22 permanent inspectors in Umm Qasr, but we would have always 25, 26 all paid by Cotecna.

Mr. SHAYS. So sometimes you simply didn't have enough people.

Mr. PRUNIAUX. Yes.

Mr. SHAYS. But was the solution to get more, and did you request more, and did the U.N. say no or yes?

Mr. PRUNIAUX. It was a question of the decisions and convincing the U.N. OIP that it was not to increase our invoice, but we were generally asking for more inspectors on the sites.

Mr. SHAYS. The bottom line is you don't have to worry about the U.N. making money off of this. I mean, their 3 percent, I'm assuming, helped pay your costs; is that right? Does anyone know? In other words, who paid you?

Mr. PRUNIAUX. The U.N.

Mr. SHAYS. And they took a fee for——

Mr. PRUNIAUX. From the 2.2 percent.

Mr. SHAYS. Right. There is nothing that we have seen so far that makes us think that they didn't cover their cost plus; in other words, they made money off of this.

Would you say the U.N. sided more with your side when there was a dispute with the Iraqis or the Iraqis? Did they tend to dismiss—and I am asking both of you this. This isn't a trick question. At the end of the day, did you often feel that you lost more arguments with the United Nations, they just more or less sided with the Iraqis, or did they more or less side with you? I am asking both of you. Do you understand the question?

Mr. BOKS. Would you ask it——

Mr. SHAYS. In other words, when you had a dispute with some transaction, and you contacted the U.N. officials with some disappointment, did they tend more to dismiss it and just say, you know, don't worry about it, or did they take your complaint very seriously and try to deal with it?

Mr. PRUNIAUX. As far as Cotecna is concerned, they took it very seriously, very seriously, because they had the permanent missions to the U.N. from all the countries exporting to Iraq and back, plus they had the suppliers coming there and so on. And there was until 2002 until there was——

Mr. SHAYS. Well, taking it seriously means they paid attention to. It doesn't mean they took your position though. I mean, in other words, they realized they had something they had to deal with, so they dealt with it seriously. I don't want to put words in your mouth. Did they basically say you all were right, and they were wrong, and what was your feeling?

Mr. PRUNIAUX. Ultimately somebody had to make a decision, and they told us to do the job with the number of people that you have, and that's it. So we tried to work under these conditions.

Mr. SHAYS. Mr. Boks.

Mr. BOKS. And in terms of disputes, the U.N. would take it serious if—we have hardly had any disputes, but we have had loadings where the off-takers were dissatisfied for one or another reason. And I must say that OIP did try to come to a solution; not always, I would say, in a quick way, but at the end of the day, they always tried to solve and to assist.

Mr. SHAYS. The number that is thrown out in these two sides of the equation, the Oil-for-Food Program suspected that Saddam basically took out $4.4 billion, and the smuggling, which we looked at the numbers being more like $5.7 billion. Did your inspectors ever identify or observe any smuggling?

Mr. BOKS. Although we had not the authority to look for smuggling, and we also have to realize that our inspectors were at very remote locations, we have——

Mr. SHAYS. In other words, there were a lot of sites were you not at?

Mr. BOKS. Absolutely. More than that we were. But we have——

Mr. SHAYS. There were more sites that you weren't at than you were at.

Mr. BOKS. Absolutely.

Mr. SHAYS. OK. Is that true for you, Mr. Pruniaux, as well?

Mr. PRUNIAUX. Well, we operated on the four or five sites. As I explained before, we were told that the goods were presented to us. But there was a permanent flow of goods entering into Iraq which had nothing do with the Oil-for-Food Program. And I visited Iraq several times, Mr. Chairman, and it could be—it was easy to see that, you know, visiting Baghdad there was plenty of goods which shouldn't have been on the open market.

Mr. SHAYS. OK. So in observing smuggling, if you saw it, did you report it, or did you figure that wasn't your responsibility?

Mr. BOKS. Well, basically I can say that we have had instances that I felt that we had to report it, and I realized that was outside our mandate, but still felt that it had to be brought to the attention.

Mr. SHAYS. Right. Mr. Pruniaux, tell me the response to that question.

Mr. PRUNIAUX. When you see goods entering Iraq outside of the Oil-for-Food Program, you do not know if these are the 661 goods or if these are smuggled. These were entirely left to the authority of the Iraqi Customs to check these goods entering Iraq. No, we would not report, because we did not know what kind of goods these were.

Mr. SHAYS. What I see the difference is that in the Oil-for-Food Program, the oil part of the transaction, it seems to me, is a little

easier to have policed. But if a ship came up and loaded up, that was something that you would simply step in. I mean, you weren't going to allow that kind of smuggling, correct?

Mr. BOKS. Well, it wasn't always ships, but at some states we also——

Mr. SHAYS. It could be a truck.

Mr. BOKS. We learned obviously there was traffic to Jordan, although that was more or less of an acceptable phenomena, and we have reported in our fact-finding missions that volumes were estimated at 80,000 barrels a day. But we also have seen the fact that had been used in early 2003, and we reported that to both the Multilateral Interception Force as well as the United Nations.

Mr. SHAYS. So there would be some ships, though, that you would not have inspected, correct?

Mr. BOKS. Sure. But if they were loaded at a different terminal, we would not have staff available to do that.

Mr. SHAYS. I mean, you know, that's kind of significant, how many terminals were you at versus how many terminals exist.

Mr. BOKS. Well, you had not only terminals. We have to make a distinction here. You have the pipeline to Syria. You have trucks to Turkey, trucks to Jordan. You had vessels in the Arabian Gulf, which were loaded at the Shatt al-Arab, which basically—and then we had also a terminal 10 kilometers north of Mina Al-Bakr called Khor al-Amaya. Those were, I would say, the points that activity has been observed, not by us, but by others.

Mr. SHAYS. Why didn't Cotecna operate inspectionsites in neighboring countries as Saybolt did? Let me say it again. Saybolt had inspectionsites in neighboring countries; is that correct, Mr. Boks?

Mr. BOKS. We had one inspectionsite in Turkey.

Mr. SHAYS. Right. And why were you in Turkey?

Mr. BOKS. Well, as a matter of fact, Iraq had from the beginning onwards two export points. One in the south we talked about. But the crude oil which was produced in the north was transshipped through the Iraq-Turkey pipeline to Ceyhan. And in Ceyhan there was a terminal, there is a terminal where that crude oil is stored and loaded subsequently in vessels which then proceed through the Mediterranean.

Mr. SHAYS. Now, why wouldn't you have been in Syria then? If you were in Turkey, why wouldn't you have been in Syria?

Mr. BOKS. Well, that's an interesting question. I can't answer that. That is not up to me. It's beyond——

Mr. SHAYS. No. I understand it's not up to you, but the same logic that would apply that you should be in Turkey would apply, correct, that you should be in Syria as well, correct?

Mr. BOKS. Correct. We discussed that also at some states with OIP, that whether there could be coming a mandate to inspect also the Syrian part. But it was obviously up to the Security Council.

Mr. SHAYS. And their response was?

Mr. BOKS. Well, again, that there was no mandate. Obviously Iraq has subsequently said that they were testing the pipeline.

Mr. SHAYS. Well, I mean, that's absurd. I mean, what we are basically saying is that there was a very viable pipeline through Syria, very viable pipeline through Turkey. We were inspecting the pipeline through Turkey, and we were not inspecting the pipeline

through Syria. And I just would like to have a sense of why. They had to give you some answer.

Mr. BOKS. It is an interesting subject. But having said that, if we would not have the authority, we couldn't do it, and the authority had to come from the Council.

Mr. SHAYS. Let me just say this to you. You're cleared of all responsibility, so you can relax. But what you're doing is you're educating the subcommittee. I want to know what they would have said. I mean, it is a rather porous system that would—I mean, I have wondered how the smuggling could happen, and I didn't realize that we made it so easy. You must have had just general conversations with U.N. officials. Did they give you a logical reason as to why we wouldn't want you also to be in Syria?

Mr. BOKS. What I heard is that it has been discussed also merely during meetings of the 661 committee, and there was no agreement reached as to how to proceed on that.

Mr. SHAYS. An agreement required a unanimous consent. It's kind of like the Senate in Washington, which doesn't give me any comfort.

We're almost done here, gentlemen. And thank you very much.

How often, Mr. Pruniaux, did goods avoid or ignore the authentication or inspection process? How often did you actually inspect goods? I get the feeling, given your mandate, given your personnel, that when ships lined up, when trucks lined up, you were more inspecting the paperwork than actually opening up the containers.

Mr. PRUNIAUX. Yes. It mattered to match the documents and to authenticate. There are two things in your question.

Mr. SHAYS. No, that is your mandate. The mandate was to match the papers, not verify that was what was in the container verified the papers.

Mr. PRUNIAUX. It was left to our appreciation as a professional inspection company to inspect, which means to open, for instance, the containers, or to open the trucks, talking of the land border sites. Now, in such a case, normal practice is about 2 percent, sometimes 5, 6 percent, 5, 6 percent. What we did was on an average basis was about 10 percent of the number of trucks or containers being presented to us were opened, and I have provided some pictures to illustrate this.

Mr. SHAYS. But candidly, when there was the queuing up and a backlog, there was more pressure on you.

Mr. PRUNIAUX. Then the trucks would wait. No.

Mr. SHAYS. The trucks would wait.

Mr. PRUNIAUX. No. The trucks would wait. The drivers are educated. I mean, patience is a virtue in the Middle East, and they would just wait at the border.

Mr. SHAYS. Patience is a virtue. So can I infer from that when there was pressure to—a backlog, that did not impact your—quality of the work.

Mr. PRUNIAUX. No.

Mr. SHAYS. Well, here's the general feeling I get from your testimony, and I want you to tell me whether you agree or disagree. Mr. Smith, I get the sense that BNP basically believed—and I'm not passing judgment on this, I'm just saying what I believe—that

your responsibility was to check documents. You were basically Iraq's bank selected by the United Nations, correct?

Mr. SMITH. We were the U.N.'s bank, in our opinion, maintaining an account for the United Nations, which was styled the Iraq account.

Mr. SHAYS. OK. And I'm happy you're correcting me. You were the U.N.'s bank for Iraq, for Iraqi transactions.

Mr. SMITH. That's right.

Mr. SHAYS. Dollars came in from the sale of oil, and dollars flowed out for the purchase of commodities, and that your responsibility was to make sure that—and you were giving letters of credit to make sure that this would all happen. But ultimately, your responsibility was to make sure that the paperwork matched. Is that a fair assessment of what I've heard you say?

Mr. SMITH. Our responsibility was to ensure that all of the paperwork was in accordance with the letters of credit before we made any payments.

The one additional point I would add in there, that not all of the funds that were received for the sale of the oil were retained at BNP Paribas. A minimum of 41 percent, as I explained in my opening statement, was transferred away to another bank, the U.N.'s main bank, Chase Manhattan, because BNP Paribas was only involved in the part of the humanitarian program that affected the central and southern provinces of Iraq.

Mr. SHAYS. Oh, the Kurdish area was not.

Mr. SMITH. The Kurdish area was within the funds that we moved to Chase Manhattan.

Mr. SHAYS. OK. As long as your paperwork matched, then the transactions took place.

Mr. SMITH. Yes. Basically we were making payment against the letter of credits that we had issued on the U.N.'s behalf.

Mr. SHAYS. OK. And with you, Mr. Boks, and you, Mr. Pruniaux, what I sense is a different challenge. With you, Mr. Pruniaux, you had lots of different commodities to check. You had ports, plus you four transaction points there. You were inspecting trucks, you were inspecting ships, but you were primarily processing paper. You weren't taking a good look at every—you were not able to verify whether or not the paperwork matched what was actually potentially in a ship or in a truck; is that correct?

Mr. PRUNIAUX. We were able to do that. Sometimes, as I mentioned before, there were pressures because of the volumes or for outside reasons, like the Iraqis trying to put pressure on us. But, no, we had IT technicians. The operations that we carried was a combination of physical inspections, as I said, 10 percent or systematic sampling of foodstuffs.

Mr. SHAYS. It was sampling of the cargo. It was a sample of it.

Mr. PRUNIAUX. Of the food basket only, and for which we had to do 100 percent laboratory analysis. But it was a combination, as I said, of physical inspections, matching documents, and receiving and keying data and processing these data on these documents and sending them to New York. So the sites were busy 24 hours per day.

Mr. SHAYS. But your testimony before the subcommittee was you didn't have enough people to do your job.

Mr. PRUNIAUX. On a case-by-case basis, not on a permanent basis. And that was especially, as I mentioned in my testimony—it was specially hard in 2001. And as a request there was an increase, I believe, when we were operating in Umm Qasr at—when there was this peak at the end of 2002, 2001, at the beginning of 2001, we had the total of 62—no, 57 permanent inspectors. And that was the following contract which was won again by us covered additional five inspectors for Umm Qasr.

Mr. SHAYS. In both cases, neither of you were at all the sites that you needed to be in order to see all transactions, which enabled smuggling to take place.

Mr. PRUNIAUX. That was not our duty.

Mr. SHAYS. I'm not saying it's your duty. I'm just saying that you were not at all the potential sites of transaction, either for oil or for commodities; is that correct?

Mr. PRUNIAUX. All the 986, all the Oil-for-Food transactions across the border, and we all authenticated them.

Mr. SHAYS. What's that?

Mr. PRUNIAUX. All transactions under the Oil-for-Food Program crossed the border. Those which crossed the border and we authenticated them.

Mr. SHAYS. Right.

Mr. PRUNIAUX. There was nothing else for us to do but just to look for the——

Mr. SHAYS. You only looked for the Oil-for-Food transactions.

Mr. PRUNIAUX. Yes. Absolutely.

Mr. SHAYS. All the other transactions you did not look at.

Mr. PRUNIAUX. No. We did not know.

Mr. SHAYS. And that's the case with you, Mr. Boks?

Mr. BOKS. That's correct. We were at the authorized export points, and, yes, that was about it.

Mr. SHAYS. I'm sorry to keep you a little longer, but I just need to ask you this one other area. When he undersold his oil, did you have any responsibilities to deal with that issue? In other words, were there questions raised when he would sell oil for below market price because the U.N. approved it, that was good enough? In other words, I mean, any thinking person would wonder why would he undersell for oil. Did that raise questions in your mind? He undersold his oil. He sold it for a price below market.

Mr. BOKS. Well, obviously we didn't have anything to do with the transfers of money. Pricing was not——

Mr. SHAYS. A factor. You just looked at buying. When he offered to pay for commodities, you didn't look at pricing either.

Mr. PRUNIAUX. No, not at all.

Mr. SHAYS. OK. Let me conclude by asking you, each of you, which is the weakness of the program? What was the greatest weakness of the program? Tell me, each of you, what you think the greatest weakness in the program from your perspective? I will start with you, Mr. Smith. If you were designing the program, what would you have designed differently to make sure there weren't the rip-offs that we know took place?

Mr. SMITH. As I said in my opening statement, from a banking perspective, I think the structure was right. From the program as

a whole, more control was required over the procurement process and the pricing process.

Mr. SHAYS. Mr. Boks.

Mr. BOKS. Yes. That is something I can't comment on, but I would say that the unauthorized export points, Syria came on line obviously in a much later stage than the inception of the programsm. But I think that is obviously a shame that it happened.

Mr. SHAYS. Thank you.

Mr. Pruniaux.

Mr. PRUNIAUX. Well, Cotecna has contracts worldwide for the control of borders and especially provide services to the Customs of various countries in the world. When I say provide, it means really sometimes we replace the Customs or we control the Customs.

Now, the Oil-for-Food Program and the authentication was something totally different, as I mentioned at the very beginning. If a comprehensive program had been designed even for the Oil-for-Food Program, it should have covered or it could have covered the various sectors of a complete control of imports, which is the price verification, the quality, quantity and so on. But that was not written. That was not requested in our mandate.

Mr. SHAYS. You all have been extraordinarily patient, and I think you have changed your schedules, and you have had to stay later than even I thought would happen. And you have been very cooperative with us. You have tried to be, I think, extraordinarily helpful, which is a credit to all three of you and to your companies, and I thank you for that.

Is there anything that you want to put on the record before we adjourn? Anything that you think needs to be on the record before we adjourn?

Gentlemen, thank you very much. This hearing is adjourned.

[Whereupon, at 4:45 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

WSJ.com OpinionJournal
from THE WALL STREET JOURNAL Editorial Page

THE REAL WORLD

What's 'Illegal'?

Kofi Annan helped Saddam Hussein steal food from babies.

BY CLAUDIA ROSETT
Wednesday, September 22, 2004 12:01 a.m.

When U.N. Secretary-General Kofi Annan opined last week to the BBC that the U.S.-led overthrow of Saddam Hussein had been "illegal," two words came instantly to my mind: baby food.

No, I'm not comparing Mr. Annan's thoughts to pabulum. He is a smart man, adept enough that even in his BBC moment of condemning the U.S. (perhaps mindful that the U.S. is the U.N.'s chief financial backer) he took the trouble to blur responsibility for his own words, amending his use of "I" to the royal "we." Said Mr. Annan: "From our point of view, from the charter point of view, it was illegal."

It's unclear exactly whose collective view Mr. Annan thinks he was authorized to express, or under what terms in the U.N. charter he casts himself on some occasions as the hapless servant of the Security Council, and at other times, such as this, as the outspoken chief judge of world law.

But if Mr. Annan wants to discuss right and wrong in Iraq, which seems to be the real issue, then it is time to talk about baby formula. Why? Because Mr. Annan's preferred means of dealing with Saddam was a mix of U.N. sanctions and the U.N. relief program called Oil-for-Food. And the heart and soul of Oil-for-Food was supposed to be the feeding of sick and hungry Iraqi babies--including the purchase by Saddam, under U.N. auspices, of large amounts of baby formula. When Oil-for-Food was launched in 1996, it was advertised by the U.N. as a response to such horrors as pictures of starving Iraqi children and alarming statistics about infant mortality in Iraq, released by one of the U.N.'s own agencies, Unicef.

It was in service of that U.N. mix of sanctions and humanitarian relief that Mr. Annan after visiting with Saddam in Iraq in 1998 returned to New York to report: "I think I can do business with him."

And oh what a lot of business the U.N. did. Mr. Annan's Secretariat collected more than $1.4 billion in commissions on Saddam's oil sales, all to supervise the integrity of Saddam's $65 billion in oil sales and $46 billion in relief purchases. The official aim of this behemoth U.N. aid operation was solely to help the people of Iraq, while the U.N. waited for sanctions to weaken Saddam enough so he would be either overthrown from within or forced to comply with U.N. resolutions on disarmament. Instead, Saddam threw out the U.N. weapons inspectors for four years, and, by estimates of the U.S. General Accounting Office, fortified his own regime with at least $10.1 billion grafted and smuggled out of Oil-for-Food.

But of all the abuses of Oil-for-Food committed by Saddam--and not only allowed but in effect

approved and covered up by Mr. Annan's U.N.--the most cynical has to have been the trade in baby formula. This was one of Saddam's imports that few even among the U.N.'s critics dared question. Who could be so heartless as to object to food for hungry children? And given the secrecy with which Mr. Annan ran Oil-for-Food (as hapless servant of a Security Council packed with big-time business partners of Saddam, such as France and Russia), no one outside the U.N. except Saddam and his handpicked contractors knew much in any event about Baghdad's traffic in baby formula.

The U.N. insisted that the identities of Saddam's contractors and the terms of his deals remain confidential. Even today, though the names have leaked, many of the vital details of these contracts (such as quantity and quality of goods) remain smothered in the continuing secrecy imposed by the U.N.-authorized investigation into Oil-for-Food, led by former Fed chairman Paul Volcker. And Mr. Volcker, apparently focused mainly on bribery allegations involving officials of the U.N. itself, may never get around to such broader but also important matters as Oil-for-Baby-Food.

But since Saddam's fall, a few windows have opened through which one can glimpse Saddam's U.N.-approved trade in nursery nutrition. Chief among them is a pricing study carried out by the U.S. Defense Department's contract auditing agencies last year, shortly after Saddam's overthrow. Lest anyone suspect the Pentagon of bias, it would of course be handy to draw on other studies as well. But there are none. Mr. Annan's Secretariat, while swimming in cash from its 2.2% commission on Saddam's oil sales, never got around to systematically examining Saddam's contract prices. That was a notable omission, given that Saddam's scam on relief contracts was one of the oldest and simplest in the book: overpaying for goods, using relief funds meant for the Iraqi public; then collecting part of those overpayments in the form of kickbacks.

And when it came to overpricing, which any veteran aid worker should surely recognize as a flashing red sign of probable graft, one of the most roundly abused categories under Oil-for-Food appears to have been the original rationale for the program: food itself.

The Pentagon pricing study looked at a sample of 759 big-ticket Oil-for-Food contracts still awaiting full delivery when Saddam fell--a snapshot of the program in its final years. Among those were 178 contracts for food. Of these almost 90% were overpriced by an average of about 22%-- more than twice the 10% figure often quoted as Saddam's standard kickback. In this sample, totaling $2.1 billion in U.N.-approved grocery shipping by Saddam, the potential rake-off totaled $390 million.

And within that Oil-for-Food sample shopping spree, the baby formula deals were estimated to be even more egregiously overpriced than the average contract for most other staples. Compared to the hundreds of baby food and milk contracts in the overall program (many of those with France and Russia) the Pentagon sample was small. The study looked at four baby formula contracts, two originating in Egypt, one in Tunisia and one in Vietnam--totaling $43 million (which in any normal relief program might actually rank not as a small sample, but as a lot of money). But it seems telling that every single one of those four baby-formula contracts appeared "potentially overpriced" by about 26%, for a total of $11 million in potential overpayments. On the biggest of these sample contracts, a $26 million deal between Saddam and a Vietnamese dairy company--approved by the U.N. in October 2002, in the thick of the U.N. debate over going to war to remove Saddam--the estimated overpricing of 26% worked out to well over $5 million on that contract alone.

Translation: In late 2002, while Mr. Annan was lobbying against U.S.-led removal of Saddam, he was running a U.N. program in which money meant for baby formula, among other goods, was very likely flowing into the pockets of Saddam and his sons and cronies.

Somehow, that was the kind of problem that Mr. Annan's office managed to miss, although

according to a November 2002 statement to the Security Council by Oil-for-Food director Benon Sevan, U.N. staff in Iraq had by then made 1,187,487 total "observation visits" to ensure the integrity of Oil-for-Food. More than one million of those observation visits were devoted to checking on food and nutrition (and all of them were paid for out of the U.N. Secretariat's 2.2% oil sales commissions from Saddam).

In the same November 2002 statement, Mr. Sevan reported that "acute malnutrition" was still rampant among young children in Iraq. Mr. Sevan explained that although malnutrition had been halved since Oil-for-Food began (all this was based on Saddam's statistics), it was still double the rate of 1991--a situation Mr. Sevan himself described as "far from satisfactory." But the solution prescribed by Mr. Annan was not to spot and stop the kickbacks. Rather, while lamenting what he described in Nov. 2002 as the "dire funding shortfall" of Oil-for-Food, Mr. Annan's solution again and again was to urge more oil sales by Saddam. Which meant, most likely, more resources earmarked to feed babies but diverted to the Baghdad regime (and, by extension, more commissions for the U.N.).

It would be interesting for someone with full access to the contract details -- meaning, I suppose, the UN's own investigation into itself -- to total the scores of Oil-for-Food contracts for baby formula, weaning cereal, milk and so on (much of it bought from Security Council member nations Russia and France), and employ some pricing experts to fill in the rest of the numbers.

But what we know already is that Mr. Annan, whose Secretariat turned a blind eye to Saddam's food pricing scams, has never apologized for presiding over the biggest fraud in the history of relief. He has not used the word "illegal." The closest he's come has been to admit this past March, after much stonewalling, that there may have been quite a lot of "wrong-doing"--before turning over the whole mess over to a U.N. investigation that has since smothered all details with its own blanket of secrecy.

Mr. Annan is due to step down next year. If he wants to leave a legacy more auspicious than having presided over Oil-for-Fraud, he might want to devote his twilight time at the U.N. to mending a system in which a U.N. Secretary-General feels free to describe the overthrow of a murderous tyrant as "illegal," but no one at the top seems particularly bothered to have presided over that tyrant's theft of food from hungry children.

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